OPINION OF SUPREME COURT.

NEW JERSEY SUPREME COURT.

November Term, 1918.

STATE OF NEW JERSEY
Defendant in Error,

vs.

LOUIS UNGER, WILLIAM F. LOONEY and JOHN P. KELLY,
Plaintiffs in Error.

Submitted December 5, 1918.

Decided June 17, 1919.

SYLLABUS.

1. Upon the trial of an indictment of three members of board of registry and election, where the judge charged that the duty of making comparisons of the signature of the voter in the poll book with that in the registry book was cast upon the election officers, but also clearly and correctly charged, in the very language of the defendants' request, that not all of the election officers, but only one of them, was charged with that dut ", in accordance with Section 46 of the Act of April 19, 1911 (P. L. P. 276 as amended by P. L. 1916 p.593) which provides that "one of the members of the board of registry and election shall compare the signature," such charge, if objectionable

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as to a portion thereof when considered alone, was correct and not misleading considered as a whole, and could not have prejudiced the defendants.

2. Even if a portion of a charge, considered alone, is objectionable, it will not lead to a reversal when it is clear that, in the circumstances of the case, the charge, considered as a whole, was correct and not misleading and could not have prejudiced the defendants.

3. Where two or more defendants are indicted and tried together, the declarations of one, which have a legitimate tendency to establish his guilt are admissible against him even though not admissible against his co-defendants. In such case the proper remedy of the defendant against whom the declaration is not admissible is to request a limitation of its application.

4. It is within the discretion of the trial judge to admit in rebuttal, or at the time of rebuttal, evidence which is not strictly rebuttal, and which should or might have been offered in chief, and the admission of such evidence will not lead to reversal except in cases of gross abuse of such discretion.

5. In a criminal case the admission of evidence of declarations made by the defendant, offered by the state at the time of rebuttal, which should or might have been offered in chief, will not lead to a reversal when it was left open to the defendant to contradict it in surrebuttal if he had seen fit to do so.

6. It is not error for the trial judge to ignore

or refuse a request for an instruction upon a matter immaterial to the issue.

7. The direction of a mistrial in a criminal case rests in the sound discretion of the trial judge and is to be exercised only in very extraordinary and striking circumstances, in order to prevent the failure of justice. Since it rests in discretion a strict bill of exceptions wil not lie to its refusal, nor can it be availed of under Par. 136 of our Criminal Procedure Act unless its refusal resulted in manifest wrong or injury.

8. A mistrial will not be directed in a criminal case because of misconduct or irregularity of jurors, or of another person towards them, unless it be such as might affect their impartiality or disqualify them from the proper exercise of their functions.

9. Where the doing of a wrongful act is conceded or otherwise proved, and the innocent intent is in issue, the doing of the same or a closely similar act so nearly related in time, place and circumstance that the mental state involved is practically continuous, is admissible upon the question of intent.

10. On the trial of an indictment of members of the Board of Registry and Election for misconduct in allowing illegal voting and failure to comply with Section 46 of the Act of April 19, 1911, (P. L. p. 276 as amended by P. L. 1916 p. 593), requiring comparison of signatures upon the registry and poll books respectively, it was not erroneous for the trial judge after charging, as requested by the defendants, that "the failure, if there was a failure, to O. K. the signature in the

poll book cannot be a ground for liability" to add "but the failure to O. K. may be considered by you as bearing on the other evidence in the case," when the evidence showed that in many instances the election officers having charge of the poll book at the time the voter signed his name, instead of strictly following the requirement of Par. 46 "by writing his initials after such signature" wrote the letters "O.K.", and that in many other instances there was an entire absence of the "O.K." and the initials.

On Writ of Error to the Hudson Quarter Sessions Court.

Before Gummere, Chief Justice, and Justices Swayze and Trenchard.

For the plaintiffs in error, Robert H. McCarter and Alexander Simpson.

For the defendant in error, Pierre P. Garven, Prosecutor of the Pleas.

The opinion of the Court was delivered by Trenchard, J.

The plaintiffs in error were three members of the Board of Registry and Election for the second district of the second ward of Jersey City, and with one Hosbach, the fourth member, were indicted for misconduct at a special election held in Jersey City on October 7, 1917, to fill a vacancy in the Board of Commissioners of Jersey City caused by the death of Commissioner Brensinger. Hosbach was not tried, but appeared as a witness for the State, and the three plaintiffs in error were convicted.

OPINION OF SUPREME COURT.

We are of the opinion that the judgment must be affirmed.

The indictment contained three counts. The first charged the defendants with knowingly and fraudulently receiving the votes of persons who the defendants knew impersonated and voted upon the names of others. The second count charges them with wilfully and unlawfully aiding or abetting persons to vote upon names other than their own; and the third count is based upon the alleged wilful neglect and refusal of the defendants to carry into effect the provisions of Sections 46, 47 and 48 of the Act of April 19, 1911 (1st Sup. Comp. Stat. pp. 547, 548) requiring the comparison of the signatures upon the registry and poll books respectively, and the challenge of voters in certain cases.

The first point is that "the trial judge erred in charging the jury with reference to the defendants' duty to compare the signature of the voter in the poll book, with that in the registry book."

The real contention under this point is that the judge erroneously lead the jury to believe that it was the duty of the entire election board to make such comparison. But that he did not do. True he stated that the duty of making such comparison of signatures was cast upon the election officers, but he also clearly and correctly charged, in the very language of the defendants' request, that not all of the election officers, but only one of them, was charged with that duty, and this was in accordance with Section 46 of the Act of April 19, 1911 (P.L. p. 276 as amended by P.L. 1916 p. 593) providing that "one of the members of the board of registry and election shall compare the sig-

nature made in the poll book with the signature theretofore made by the voter in the registration book," etc. In view of the fact that different members of the board may make the comparisons at different times of the day we are not prepared to say that the instruction was objectionable as to the portion complained of considered alone. But if so, that would not lead to reversal because it is quite clear that in the circumstances of the case the charge on this topic considered as a whole was correct and not misleading and could not have prejudiced the defendants. State vs. MacDonald, 89 N. J. L. 421; affd. 103 Atl. 165. Kargman vs. Carlo, 85 N. J.L. 632.

The next point is that the trial judge erred in permitting Assistant Prosecutor McCarthy, called by the State in rebuttal, to testify as to certain declarations and admissions made to him by the defendant Unger after the election in question.

But we perceive nothing in this justifying a reversal.

Of course, where, as here, two or more defendants are indicted and tried together, the declarations of one, which have a legitimate tendency to establish his guilt are admissible against him even though not admissible against his co-defendants. In such case the proper remedy of the defendant against whom the declaration is not admissible is to request a limitation of its application. This seems not to be seriously questioned by the defendants, but they insist that, even if proper in chief, it was not admissible in rebuttal. But it is within the discretion of the trial judge to admit in rebuttal, or at the time of rebuttal, evi-

dence which is not strictly rebuttal, and which should or might have been offered in chief, and the admission of such evidence will not lead to reversal except in cases of gross abuse of such discretion. State vs. Skillman, 76 N. J. L. 464; affd. 77 N. J. L. 804.

In the present case no such abuse appears. It was entirely open to the defendant to have contradicted the evidence as to his declarations by testimony in surrebuttal if he had seen fit to do so.

It is next contended that "there was error in the trial judge's refusal to charge the defendant's thirteenth request."

That request read as follows: "13. The Assistant Prosecutor of the Pleas, as such, has no authority to instruct the Boards of Election how to perform their duties; and any instruction or advice he gave them was not authoritative, nor entitled to more credence than that of any other intelligent man. The statute imposes upon the Secretary of State the duty of issuing instructions, and the Board was under no obligation to obey any instructions that Mr. McCarthy may have given."

But it is not error to ignore or refuse a request for instruction upon a matter immaterial to the issue, (Com. vs. Adams, 168 Mass. 101, 71 N. E. 78) and we think the question whether the Assistant Prosecutor had or had not authority "to instruct the Board of Election how to perform their duties," was not material to the issue at the trial.

OPINION OF SUPREME COURT.

It is next contended that the action of the trial judge in refusing to direct a mistrial upon the ground that the jury, during the adjournment of the court, was subjected to improper influences, should result in a reversal.

It seems that at the trial four constables were sworn to take the jury to some convenient place, and there keep them separate from all others during the adjournment of the court, and not to permit any person to speak to them, nor speak to them themselves upon the subject of the trial, etc., and to that action, of course, no objection was or could properly be made.

It appeared, however, that in addition thereto, the trial judge (without the knowledge of the Prosecutor of the Pleas) directed one of the county detectives, attached to the office of the Prosecutor of the Pleas, to guard the jury against extraneous influences, and particularly with reference to telephonic communications, and that such county detective was not sworn for that purpose. It also appeared that this county detective accompanied the jury and the constables to the hotel to which upon adjournment the jury was taken for the night, escorted some of the jurors and constables through the corridors, and talked with some of the jurors at the table in the dining room in the presence of the constables.

These were the matters upon which the trial judge was requested and refused to order a mistrial.

We are bound to say that we think the conduct of the county detective in this mingling and conversing with the jurors is deserving of censure,

but whether it should result in a reversal is another question.

The direction of a mistrial in a criminal case rests in the sound discretion of the trial judge, and is to be exercised only in very extraordinary and striking circumstances, in order to prevent the failure of justice. Since it rests in discretion a strict bill of exceptions will not lie to its refusal, nor can it be availed of under Par. 136 of our Criminal Procedure Act unless its refusal resulted in manifest wrong or injury. State vs. Lewis, 83 N. J. L. 161, affd. 84 N. J. L. 417.

It is quite clear that the refusal to order a mistrial in the present case did not result in manifest wrong or injury. When the motion was made the county detective and all of the jurors were examined under oath, and it appeared without contradiction, and to the satisfaction of the trial judge, and to our satisfaction, that no communication touching the case was made to any juror by the county detective or any other person or by any of the jurors to the county detective or any other person. In that situation the trial judge rightly refused to grant a mistrial for the rule is that a mistrial will not be directed because of misconduct or irregularity of jurors, or of another person towards them, unless it be such as might affect their impartiality or disqualify them from the proper exercise of their functions. State vs. Cucuel, 31 N. J. L. 249. Titus vs. State, 49 N. J. L. 36.

The next point is that the trial judge erred in permitting the State to show that the defendant Unger himself voted at the election conducted by the defendants, although he was not regis-

tered, and permitted others to vote who were registered as living in places where they did not in fact reside.

We think the evidence was proper as bearing upon the question of the criminal intent of the defendants with respect to the illegal conduct charged in the indictment. Where, as here, the doing of a wrongful act is conceded or otherwise proved, and the innocent intent is in issue, the doing of the same or a closely similar act so nearly related in time, place and circumstance that the mental state involved is practically continuous, is admissible upon the question of intent. State vs. Raymond, 53 N. J. L. 260; State vs. Deliso, 75 N. J. L. 808.

The last point is that "there was error in the failure of the trial judge to charge the defendants' seventh request" which was that "the failure if there were a failure, to O.K. the signature in the poll book cannot be a ground of liability under this indictment."

The judge did so charge, and it was not erroneous for him to add, as he did, "but the failure to O.K. may be considered by you as bearing on the other evidence in the case." The evidence showed that in many instances the Election Officer having charge of the poll book at the time the voter signed his name, instead of strictly following the requirements of Section 46 "by writing his initials after such signature," wrote the letters "O.K." In many other instances there was an entire absence of the "O.K." and the initials.

The judgment under review will be affirmed.

RULE OF AFFIRMANCE.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, Defendant in Error,	)	In Error to Hudson Quarter Sessions. Rule of Affirmance.
vs.	)	
LOUIS UNGER, JOHN P. KELLY, WILLIAM F. LOONEY, Plaitiffs in Error.	)	

This cause having been duly argued at the November Term, A. D. 1918, of this Court, by Robert S. Hudspeth, Prosecutor of the Pleas of the Coun- of Hudson, Counsel for the State of New Jersey, Defendant in Error, and Alexander Simpson and Robert H. McCarter, Counsel for the Paintiffs in Error, and the Court having considered the same, and having examined the record and proceedings of the Hudson Quarter Sessions in the said cause and finding no error therein, it is hereby,

Ordered and Adjudged that the judgment of the Hudson Quarter Sessions in the above entitled cause be, and the same hereby is affirmed with costs.

Entered June 19, 1919.

On Motion of

Pierre P. Garven, Prosecutor of the Pleas,
Attorney for State, Deft. in Error.

A true copy,

Enoch L. Johnson, Clerk.

WRIT OF ERROR, COURT OF ERRORS.

NEW JERSEY, to wit:

THE STATE OF NEW JERSEY to
(Seal) the Chief Justice and other Justices of our Supreme Court of Judicature:

Greeting: Forasmuch as in the records and proceedings and also in the giving of judgment in a certain plaint, which was in our said Supreme Court of Judicature, before you, between Louis Unger, William F. Looney and John P. Kelly, Plaintiffs in Error and The State of New Jersey, Defendant in Error, manifest error hath intervened to the damage of said Plaintiffs in Error, as is said; and we being willing that the error, if any there be, should in due manner, be corrected, and full and speedy justice be done to the Plaintiffs in Error aforesaid, in this behalf do command you, that you distinctly and openly send under your hand and seal, the record and proceedings aforesaid, with all things touching and concerning the same, to our Judges of the Court of Errors and Appeals in the last resort in all cases in Trenton, on the 9th day of July next, together with this writ that the records and proceedings aforesaid being inspected, we may cause to be further done thereon, for correcting that error, what of right and according to the laws and the custom of the State of New Jersey ought to be done.

Witness, EDWIN ROBERT WALKER, Esquire, our Chancellor, and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the 21st day of June, Nineteen Hundred and Nineteen.

THOMAS F. MARTIN,
ALEX. SIMPSON, Clerk.
Attorney for Plaintiffs in Error.

RETURN.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

LOUIS UNGER, WILLIAM F. LOONEY and JOHN P. KELLY,
Plaitiffs in Error.

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE,
C. J.

ASSIGNMENTS OF ERROR.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, Defendant in Error, vs. LOUIS UNGER, JOHN P. KELLY and WILLIAM F. LOONEY, Plaitiffs in Error.	In Error. Assignments of Error.

Afterwards, in the Court of Errors and Appeals in the last resort in all causes, come the said Louis Unger, John P. Kelly and William F. Looney, by Messrs. Robert H. McCarter, Alexander Simpson and Louis Hansen, their attorneys, and say that in the records and proceedings aforesaid in the trial court and in the Supreme Court and also in the matters recited and contained in the bill of exceptions; also in the giving of the verdict and judgment aforesaid in the Court of Quarter Sessions of the County of Hudson and also in the judgment of the Supreme Court affirming the verdict and judgment of the Court of Quarter Sessions aforesaid, there is manifest error in this respect, to wit:

1. Because in the trial of the case the learned trial judge denied the motion of defendants' counsel to quash the indictment on the grounds that the foreman of the Grand Jury should have cer-

tified a list of all the witnesses examined by the Grand Jury, and also that the indictment does not charge a crime.

2. Because in the trial of the said case the learned trial judge allowed two poll books to be admitted in evidence against the objection of the defendants' counsel, that there was no proof that their condition was the same as at the close of the election.

3. Because in the trial of the said case the Court permitted Valentine Hill, against the objection of the defendants' counsel, to testify that subsequent to October 1, 1916, no one resided at 11, 113 or 115 Ninth Street.

4. Because in the trial of the said case the learned trial judge refused to permit the defendants' counsel to ask the witness Peter Fox, on cross-examination:

> "It would be perfectly easy for anybody to come in to them, and say they were Peter Fox?"

5. Because in the trial of the said case, the learned trial judge permitted the following question to be asked of Jacob Coursen, against the objection of the defendants' counsel:

> "Did you vote at the Commission Government Election on Tuesday, October 16th of last year?"

6. Because in the trial of the said case, the Court permitted Herman Hotchkiss to say that he

signed the poll book S-5, over the objection of the defendants' counsel.

7. Because in the trial of the said case the learned trial judge permitted the following question to be asked of Benjamin Toback, against the objection of the defendants' counsel:

> "Do you remember the circumstances under which you signed the poll book, where you signed?"

8. Because in the trial of the said case the Court, against the objection of defendants' counsel permitted the State to ask of Benjamin Toback:

> "I call your attention to vote No. 118, Toback, Benjamin, 140 Pavonia Avenue, and the signature of Ben Toback, and ask you whether that is your signature, whether you wrote it?"

9. Because in the trial of the said case, the learned trial judge, against the objection of defendants' counsel, allowed the State to question Benjamin Toback as follows:

> "I call your attentiong to a page in the same poll book, after the name of Less, William, 129, 156 Pavonia Avenue. I will ask you whether, by examining this page, where the signature of William Less, or the name of William Less in the signature column appears, by examination of that you can say whether your name, as you wrote it in the registry in the poll book, at the time you voted, was on that page?"

ASSIGNMENTS OF ERROR.

10. Because in the trial of the said case, the Court, against the objection of defendants' counsel, permitted Benjamin Toback, to be asked by the State:

> "Who was the election officer who directed you to put your name on that page at the time you voted?"

11. Because in the trial of the case, the learned trial judge, against the objection of defendants' counsel, allowed William W. Small to testify that he could not find the names of Harry Arrowhill, Peter O'Reilly and John Cash in the Homestead Hotel register under the date of October 16, 1917.

12. Because in the trial of said case, the learned trial judge permitted William F. Looney, one of the defendants against the objection of defendants' counsel, to be asked on cross-examination, whether or not he compared the signature of one James Gillen in the poll book.

13. Because in the trial of the said case the Court permitted the State, against the objection of defendants' counsel, to inquire of William F. Looney, one of the defendants, whether any one went away with him to Bridgeport, Connecticut, after October 16, 1917.

14. Because in the trial of the said case the learned trial judge overruled the following question put to Louis Unger, one of the defendants:

> "What is the usual vote cast in that voting place?"

15. Because in the trial of the said case, the

Court allowed Louis Unger, one of the defendants to be asked on cross-examination, against the objection of the defendants' counsel, whether he received any votes before he got the official poll book.

16. Because in the trial of the said case the learned trial judge, allowed the following question to be asked by the State of James W. McCarthy, against the objection of defendants' counsel:

> "On that occasion did Mr. Unger say to you that Mr. Kane told the Board before they started that the Board should act in harmony, or words to that effect?"

17. Because the Court erred in adding to the language of the second request to charge, as charged by the Court, the following:

> "But in that connection I also charge you that while the law says that one of the members shall compare the signature book, as I have stated, the comparison of the signature and answers on election day with the signature and statements shall be in full view of the watchers, challengers or agents, and the right to challenge voters shall exist until the ballot shall have been deposited in the ballot box, if the signatures of the voters or the answers to the questions made by the voter do not correspond, it shall be the privilege of the watchers and challengers to challenge, and the duty of each member of the Board of Registry and Election to challenge unless some other authorized person shall challenge."

ASSIGNMENTS OF ERROR.

18. Because the Court erred in adding to the language of the seventh request to charge, as charged by the Court, the following:

> "But the failure to O.K. may be considered by you as bearing on the other evidence in the case."

19. Because the Court erred in refusing to charge the defendants 12th request to charge:

> "The defendants cannot be convicted because of a lack of comparison of the names as written in the poll book with the same names as written in the registry, nor can the mere failure on their part to make such comparison be charged against them, unless they knew of the provisions of the law in that respect, and wilfully violated them."

20. Because the Court erred in refusing to charge the defendants' 13th request to charge:

> "The Assistant Prosecutor of the Pleas as such has no authority to instruct the Boards of Election how to perform their duties; and any instruction or advice he gave them was not authoritative, nor entitled to more credence than that of any other intelligent man. The statute imposes upon the Secretary of State the duty of issuing instructions, and the Board was under no obligation to obey any instructions that Mr. McCarthy may have given."

21. Because the learned trial judge, in charging the jury, stated:

> "If the signature or answers to the ques-

tions did not correspond, the challengers or watchers are privileged to challenge, but it still remains the duty of each member of the Board to challenge, if some one else did not do so."

22. Because the learned trial judge in the course of his charge to the jury stated:

"I charge you it was their duty to make this comparison; that it was their duty if the signatures did not identify or indicate a sufficient similarity to them, to challenge, unless some other person authorized for the purpose, so challenged."

23. Because the learned trial judge in charging the jury stated:

"But look at the signatures, look at the spelling, the writing, to compare them, and say whether, as election officers, entrusted with the conduct of this election, you believe they used such care as the law requires, to satisfy themselves of the identity or sufficient similarity of the signatures."

24. Because the learned trial judge in the course of his charge to the jury, stated:

"As these defendants are charged with the duty of comparing the signatures, if the jury finds that they wilfully neglected and refused to perform that duty or that they knowingly and fraudulently acted in contravention and violation of these requirements, they should be found guilty."

ASSIGNMENTS OF ERROR.

25. Because the learned trial judge, in charging the jury, stated:

> "The law does not require your test, or my test, or an expert's test of comparison. It requires their examination to satisfy themselves, and if you believe they satisfied themselves by the comparison which the law requires, and that they had no other knowledge of false voting, or that false voters were voting, the defendants should be found not guilty. As bearing upon whether they did this, in the comparison, you have the right to take all the circumstances, all the work they did, or permitted to be done in that election on that day, the number of witnesses who have testified here that they did not vote, yet whose names were falsely voted upon, seemingly, you have a right to take the poll book and compare the signature entered therein in the columns where the voters were required to sign."

26. Because manifest injustice was done to the defendants by the whole charge of the Court.

27. Because the Court erred in charging the jury on the subject of the meaning of the word "wilful."

28. Because the Court in charging upon the subject of "wilfulness," after having read from Supreme Court decisions, omitted from the rule laid down in the Supreme Court, that the thing must be done with a bad purpose, saying to the jury that if that thing was done intentionally, that is, with knowledge, it is wilful, and omitting

from the statement the statement laid down in the Supreme Court that if it was intentional and voluntary, it must also be done with a bad purpose.

29. Because the Court in charging the jury, which charge was delivered when the jury returned into Court, charged as follows:

> "I have to say just this, that if the defendants herein determined or intended the thing in question should be done, then that thing is said to be wilful and he is said to have done it wilfully."

30. Because the New Jersey Supreme Court before whom the conviction was for review, affirmed the said conviction, whereas it should have reversed the said conviction because of the errors which occurred at the trial which are fully and completely set forth in the assignments of error herein.

ROBERT H. McCARTER,

ALEX. SIMPSON,

Attorneys for Plaintiffs in Error.

CAUSES FOR REVERSAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, Defendant in Error,	
vs.	In Error. Causes for Reversal.
LOUIS UNGER, JOHN P. KELLY and WILLIAM F. LOONEY, Plaitiffs in Error.	

The plaintiffs in error assigns the following reasons or causes for reversal of the verdict and judgment of conviction in the above stated cause upon the whole record:

1. Because the learned trial judge permitted R. Martin Hosbach, against the objection of the defendants' counsel, to answer questions based upon the poll book used on October 16, 1917, said book not having been admitted in evidence.

2. Because the learned trial judge allowed the State's witness, R. Martin Hosbach, against the objection of the defendants' counsel, to answer the following question:

> "In the course of that conversation was the interview in the Prosecutor's office referred to by you or Mr. Unger?"

CAUSES FOR REVERSAL.

3. Because the learned trial judge permitted the State to ask the witness William M. Small, against the objection of the defendants' counsel, whether Anthony Miller, James McCabe, Frank Meeker and James Burns, lived at the Homestead Hotel, 121 Pavonia Avenue, on the 16th of October, 1917.

4. Because in the trial of the said case the learned trial judge permitted William M. Small, against the objection of the defendant's counsel, to answer the following question:

> "Do you remember that you were waked up on one occasion when Mr. McCarthy came there. You had been asleep and you were waked up?"

5. Because in the trial of the case the learned trial judge refused to strike out the answer of R. Martin Hosbach, on cross examination, to the following question put by the defendants' counsel:

> "When you had control of this poll book, all these signatures in blue ink, you did not determine the man—after the man made his signature, which you said he did make, you did not take the signature and compare it with the registry book, did you?"
>
> A. I passed it over to Kelly or Unger who was sitting on the other side of the table, they checked it off with the corresponding signature."

6. Because the learned trial judge refused to

strike out the answer of R. Martin Hosbach, on cross examination, to the following question put by the defendants' counsel:

> "When you were not writing in this book, when somebody else had control of the poll book, did you compare the voter's signature as made in the Commission Government Election, with the signature in the register?
>
> A. No.
>
> Q. You never compared the signature that whole day?
>
> A. Because I was on the other side of the table."

7. Because the learned trial judge allowed William F. Looney, one of the defendants, against the objection of the defendants' counsel, to be asked the following question on cross-examination:

> "Can you give any explanation as to why it is you cannot identify any of your handwriting in the poll book except your signature?"

8. Because the Court in the trial of the case allowed William F. Looney, one of the defendants, to be asked on cross examination, against the objection of the defendants' counsel, who had taught him what to do at the primary election.

9. Because the learned trial judge allowed L. Meyer, one of the defendants, to be asked on

cross examination, against the objection of the defendants' counsel, the following question:

> "Did you accept any votes before you had the poll book?"

10. Because the Court permitted the State, on cross examination, to ask the following question of Louis Unger, one of the defendants, against the objection of the defendants' counsel:

> "Did he (referring to Mr. McCarthy, the Assistant Prosecutor) make any criticism at all with regard to the way the names appeared there (in the poll book)?"

11. Because the learned trial judge, in the trial of the case, allowed Louis Unger, one of the defendants, to be asked by the State on cross examination, against the objection of the defendants' counsel, the following question:

> "And do you remember Mr. Clark coming at the registry for the general election in 1916, and registering there by your assistance?"

12. Because the Court permitted the State, on cross examination, against the objection of the defendants' counsel, to ask Louis Unger, one of the defendants, the following question:

> "How do you know if you don't remember the names—how do you know you did not know the men?"

13. Because the learned trial judge allowed the State, on cross examination, against the ob-

jection of the defendants' counsel, to ask John P. Kelly, the following question (referring to his leaving Swift's employ):

"Where did you go?"

14. Because the Court refused to strike out the answer of Joseph James to the following question:

"You went with them, and with the constables each night they have been out?"

15. Because the learned trial judge denied the motion of the defendants' counsel for a mistrial on the ground that an improper person, Joseph James, went out and stayed with the jury, taking meals with them and remaining over night.

16. Because the learned trial judge, allowed James W. McCarthy, to answer the following question, against the objection of the defendants' counsel:

"Did Mr. Unger on that occasion show to you—what if anything, did Mr. Unger show on that occasion as to where he lived and where he voted, and what was done at that time between yourself and Mr. Unger with respect to that particular phase of the conversation?"

17. Because the learned trial judge permitted the Prosecutor, against the objection of the defendants' counsel, to question each juror as to whether Mr. James had said anything to them, or discussed the case in their presence.

CAUSES FOR REVERSAL.

18. Because the Court, against the objection of the defendants' counsel, permitted the State to ask the following question of James W. McCarthy.

> "When Mr. Unger said, as you have testified, that Mr. Morris Dorman was his brother-in-law, etc., how did the name of Morris Dorman at that time come up? What took place between you and Mr. Unger which brought up that name?"

19. Because the learned trial judge, against the objection of the defendants' counsel, allowed James W. McCarthy to relate at length a conversation with he said he had with Louis Unger, one of the defendants.

20. Because the learned trial judge, against the objection of the defendants' counsel, permitted the following question to be asked of James W. McCarthy:

> Q. Since then Mr. McCarthy, have you and Mr. Unger had conversation with reference to these matters alleged by you to have been told you by him, and if so, when and where?"

21. Because the Court, against the objection of the defendants' counsel, allowed the State to ask James W. McCarthy the following question (referring to the District Election Board):

> "Q. Did you tell them anything as to how they should proceed?"
>
> "A. In answer to a question of Mr. Unger, yes."

CAUSES FOR REVERSAL.

22. Because the Court against the objection of the defendants' counsel, permitted James W. McCarthy, to give his conversation with Louis Unger, one of the defendants, as to how they were to determine whether or not the signature of the voter was the same as the one in the registry.

23. Because the Court denied the motion of the defendants' counsel to strike out the evidence touching on the voting of Rostrand, Kelly, Newman and the several other persons who testified in the case, over the objection of the defendants' counsel, they not being named in the indictment.

24. Because the New Jersey Supreme Court before whom the conviction was for review, affirmed the said conviction, whereas it should have reversed the said conviction because of the errors which occurred at the trial which are fully and completely set forth in the specification of causes for reversal herein.

ROBERT H. McCARTER,

ALEX. SIMPSON,

Attornys for Plaintiffs in Error.

INDEX.

	Page
Writ of Error	1
Return	3
Answer	12
Appearances	13
Motion to Quash	13

Testimony for the State:

Harry J. Mauchet:	
Direct	16
Cross	20
George H. Bowly:	
Direct	20
Harry J. Mauchet:	
(Recalled) Direct	23
Exhibit S-2	24
James F. Houghton:	
Direct	25
Cross	27
Redirect	31
Recross	32
James W. McCarthy:	
Direct	33
Cross	36
R. Martin Hosbach:	
Direct	38
Cross	43
Redirect	55
Recross	59
Re-redirect	61

Page

Valentine Hill:
Direct 68
Henry Minsch:
Direct 75
Cross 77
Valentine Hill:
(Recalled) Direct 79
Cross 82
Peter Fox:
Direct 83
Cross 83
John Wright:
Direct 85
Cross 86
Jacob Courson:
Direct 87
Cross 89
Lizzie Murphy:
Direct 90
Cross 92
Herman Hotkiss:
Direct 93
Cross 95
Maurice Dorman:
Direct 96
Cross 97
Henry Tamke:
Direct 98
Herman Tamke:
Direct 99
Cross 100

Page

Adolph Schoenberg:
Direct 100
Cross 101

Charles Clark:
Direct 104

Michael J. Kenny:
Direct 106

Francis J. Donohue:
Direct 107
Cross 109

Morris Sigel:
Direct 109

Isaac Sigel:
Direct 111

Charles Rothschild:
Direct 113

Charles J. Kelly:
Direct 114
Cross 115
Redirect 117

John C. Sheehan:
Direct 118

Patrick Egan:
Direct 118

James Egan:
Direct 119
Cross 122

Paul Newman:
Direct 123
Cross 124
Redirect 125

Page

Recess.

John Courtney:
Direct 126
Cross 131
Benjamin Toback:
Direct 132
Cross 137
Redirect 139
John Kellett:
Direct 140
Cross 142
Redirect 143
William Nealon, Jr.:
Direct 143
John Crimmins:
Direct 145
Cross 146
James Joseph Curley:
Direct 148
Wm. M. Small:
Direct 149
Cross 166
Redirect 170
Clarence McKenna:
Direct 171
Cross 174
Redirect 176
R. Martin Hosbach:
(Recalled) Direct 176
Cross 177
Redirect 191

Page

Recross 195
Re-redirect 198

Testimony for the Defense.

William F. Looney:
Direct 199
Cross 204
Louis Unger:
Direct 230
Cross 243
John P. Kelly:
Direct 281
Cross 290
Redirect 300

Testimony for the State:

William Turner:
Direct 301

Adjournment.

Motion for Mistrial.....305
John James:
Direct 306
Cross 311

Jurors Called by Mr. Hudspeth:

Rudolph Deutl:
Direct 317
Cross 318

Page

Benjamin Freeman:
Direct 319
Cross 320
George Busch:
Direct 321
Edward Miller:
Direct 321
Michael O'Rourke:
Direct 322
Herman Roskamp:
Direct 323
George Colmer:
Direct 323
William Lumlein:
Direct 324
Henry Corfield:
Direct 324
August Sackerman, Jr.:
Direct 325
Carl Kerntopf:
Direct 325
Montgomery Wilson:
Direct 326

State's Case in Rebuttal.

James W. McCarthy:
Direct 327
Cross 328
Redirect 345
Recross 347
Re-redirect 347

	Page
Re-recross	348
Motion to Strike Out Evidence	350
Affirmative Opening	351
State's Summing Up	360
Defendants' Requests to Charge	365
Court's Charge	373
Exceptions to Charge	398
Motion to Arrest Judgement	403
Certificate of Judge	404
Assignments of Error	405
Causes for Reversal	413

WRIT OF ERROR

NEW JERSEY, to wit:

THE STATE OF NEW JERSEY to HON. GEORGE G. TENNANT, Judge of the Court of Quarter Sessions of the
(Seal) County of Hudson, holden at Jersey City, in and for the County of Hudson, of the Term of January, Nineteen Hundred and Eighteen.

Because in the record and proceedings, and also in giving of judgment upon a certain indictment against Louis Unger, William Looney and John P. Kelly, of the City of Jersey City, in the County of Hudson, for violation of the Election Laws, whereof before you he has been indicted, and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Louis Unger, William Looney and John P. Kelly, as it is said, manifest error hath intervened to the great damage of the said defendants, as from their complaint we have received information, we being willing in their behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to them the said Louis Unger, William Looney and John P. Kelly, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Justices of our Supreme Court of the State of New Jersey, on the fourteenth day of February next, and this writ, that the record and proceedings aforesaid being inspected we may further cause to be done thereupon, for correcting that error, what of right and according to the laws of New Jersey ought to be done.

Witness, WILLIAM S. GUMMERE, Esquire, Chief Justice of our Supreme Court, at Trenton,

this twenty-fifth day of January, Nineteen Hundred and Eighteen.

ALEX. SIMPSON,
Attorney.

WM. C. GEBHARDT,
Clerk.

A True Copy,
Wm. C. Gebhardt,
Clerk.

STATE OF NEW JERSEY, HUDSON COUNTY, TO WIT: Be it remembered, that at a Court of Oyer and Terminer holden at Jersey City, in and for the said County of Hudson, on the Second Tuesday of December, in the year of our Lord One Thousand Nine Hundred and Seventeen, before Honorable Francis J. Swayze, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Honorable Mark A. Sullivan and Honorable George G. Tennant, Judges of the Court of Common Pleas in and for said County of Hudson, according to the form of the Statute in such case made and provided, by the oaths of

1. Harry C. Louderbough, Foreman and
2. Joseph Hourigan
3. John C. Dohrman
4. Frederick W. Bietz
5. J. E. Davis
6. Herman Theren
7. Francis Gormly
8. Charles Ravell
9. Bart J. Kiernan
10. Jerome O'Keefe
11. H. H. Dierksen
12. Louis W. Jacobs
13. William Parpart
14. Morris Fox
15. William Chidester
16. Robert C. Dixon
17. J. J. Lauterbach
18. M. W. O'Gorman
19. William C. Farmer
20. J. DeWitt Combes
21. Alfred W. Booth
22. James E. Souter
23. Edward Mulvaney

Good and lawful men of said County, duly empanelled, sworn and charged to inquire for the State in and for the body of the said County of Hudson, it is presented in manner and form following, that is to say, that the bills following are true bills.

H. C. LOUDERBOUGH,
Foreman.

And the foregoing being presented to the said Court on the 4th day of January, in the year of our Lord One Thousand Nine Hundred and Eighteen, with Bills of Indictment Nos. 4 to 16 inclusive, it is ordered by said Court that the said Bill of Indictment so as aforesaid included as Bill

Number 11, for VIOLATION OF ELECTION LAW, as charged upon Louis Unger, John P. Kelly and William F. Looney, should be handed to the Court of Quarter Sessions for trial and disposal according to law and said bill is in words as follows:

HUDSON OYER AND TERMINER
December Term, A. D. 1917.

HUDSON COUNTY, to wit: The Grand Inquest of the State of New Jersey, in and for the body of the County of Hudson, upon their respective oath, Present, that Louis Unger, John P. Kelly, R. Martin Hosbach and William F. Looney, late of the City of Jersey City, in the County of Hudson and State of New Jersey, on the sixteenth day of October, A. D., One Thousand Nine Hundred and Seventeen, were members of and did constitute the Board of Registry and Election in and for the Second District of the Second Ward of the said City of Jersey City, and as such Board of Registry and Election did then and there hold and conduct in and for the said District and Ward, under the authority of the laws of the State of New Jersey, a special election then held throughout the said City of Jersey City, to fill the vacancy in the office of Commissioner of the said City of Jersey City caused by the death of the late George F. Brensinger;

And the Grand Inquest, upon their oath aforesaid, do further present, that the said Louis Unger, John P. Kelly, R. Martin Hosbach and William F. Looney, being and acting as such Board of Registry and Election aforesaid, and then and there holding and conducting the said special election in and for the said District and Ward so had and held as aforesaid, did then and there knowingly and fraudulently receive and deposit in, and cause to be received and deposited in, the official ballot box of the said District and Ward

at the said special election, the votes of divers persons whose names are to this Grand Inquest as yet unknown, who as they, the said Louis Unger, John P. Kelly, R. Martin Hosbach and William F. Looney, then and there well known, then and there personated and voted upon the names of the following named persons, then and there registered as voters in said District and Ward in the said special election, that is to say, upon the names of John J. Murphy, Henry Minch, John Wright, Peter Fox, Jacob Courson, John C. Sheehan, Clarence McKenna, Cornelius Kelly, James Maloney, Charles Newman, Charles C. Kelly, Peter O'Reilly, James McCabe, Anthony Miller, Benjamin Toback, and Joseph Curley, and upon the names of divers other persons then and there registered as voters in the said District and Ward at the said special election, whose names are to this Grand Inquest as yet unknown, contrary to the form of the Statute in such case made and provided against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their oath aforesaid, do further present, that the said Louis Unger, John P. Kelly, R. Martin Hosbach and William F. Looney on the sixteenth day of October, A. D., One Thousand Nine Hundred and Seventeen, were members of and did constitute the Board of Registry and Election in and for the Second District of the Second Ward of the City of Jersey City, in the County of Hudson aforesaid, and as such Board of Registry and Election did then and there hold and conduct in and for the said District and Ward, under the authority of the laws of the State of New Jersey, a special election then held throughout the said City of Jersey City to fill the vacancy in the office of Commissioner of the said City of Jersey City, caused by the death of the late George F. Brensinger. And the Grand Inquest aforesaid, upon

their oath aforesaid, do further present, that the said Louis Unger, John P. Kelly, R. Martin Hosbach and William F. Looney, being and acting as such Board of Registry and Election aforesaid, and then and there holding and conducting the said special election in and for the said District and Ward so had and held as aforesaid, did then and there wilfully and unlawfully counsel, procure, aid, advise, assist and abet divers persons, whose names are to this Grand Inquest as yet unknown, to vote in the said District and Ward in the said special election upon the names of other persons, that is to say, upon the names of John J. Murphy, Henry Minch, John Wright, Peter Fox, Jacob Courson, John C. Sheehan, Clarence McKenna, Cornelius Kelly, James Maloney, Charles Newman, Charles J. Kelly, Peter O'Reilly, James McCabe, Anthony Miller, Benjamin Toback and Joseph Curley, and upon the names of divers other persons whose names are to this Grand Inquest as yet unknown, they and each of them, the said persons herein above last named, and the said divers other persons hereinabove last referred to being then and there registered as voters in the said District and Ward in the said special election so had and held as aforesaid, contrary to the form of the statute in such case made and provided, against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their oath aforesaid, do further present that the said Louis Unger, John P. Kelly, R. Martin Hosbach and William F. Looney, on the sixteenth day of October, A. D., One Thousand Nine Hundred and Seventeen, were the members of and did constitute the Board of Registry and Election in and for the Second District of the Second Ward of the said City of Jersey City, and as such Board of Registry and Election did then and there hold and conduct, in and for the said District and

Ward, under the authority of the laws of the State of New Jersey, a special election then held throughout the said City of Jersey City, to fill the vacancy in the office of Commissioner of the said City of Jersey City caused by the death of the late George F. Brensinger; and the Grand Inquest aforesaid, upon their oath aforesaid, do further present, that the said Louis Unger, John P. Kelly, R. Martin Hosbach and William F. Looney, being and acting as such Board of Registry and Election aforesaid, and then and there holding and conducting the said special election in and for the said District and Ward so had and held as aforesaid, did then and there give to divers persons whose names are to this Grand Inquest as yet unknown and who then and there represented themselves to be John J. Murphy, Henry Minch, John Wright, Peter Fox, Jacob Courson, John C. Sheehan, Clarence McKenna, Cornelius Kelly, James Maloney, Charles Newman, Charles J. Kelly, Peter O'Reilly, James McCabe, Anthony Miller, Benjamin Toback and Joseph Curley, they and each of them the said persons hereinabove last named being then and there registered as voters in the said District and Ward in the said special election, to each an official ballot for voting in the said special election, and did then and there cause and permit the said divers persons to cast the said official ballots in the official ballot box in and for the said District and Ward in the said special election, whereas the signatures signed by the said divers persons in the poll book in and for the said District and Ward in the said special election were neither the same as, or sufficiently similar to the signatures written of the said names so registered as aforesaid at the time of the registration thereof, as to identify the said signatures first hereinabove referred to as being written by the same persons who wrote the signatures of the said names so registered as aforesaid at the time

of the registration thereof; and whereas the said divers persons so representing themselves to be the said registered voters as aforesaid were not challenged in their right to cast their votes in the said special election, by them, the said Louis Unger, John P. Kelly, R. Martin Hosbach and William F. Looney, or either of them, or by any other authorized persons, and whereas, the said divers persons so representing themselves to be the said registered voters as aforesaid did not take any oath or affirmation whatsoever concerning their respective right to vote in the said special election; and so the Grand Inquest aforesaid, upon oath aforesaid, do present that the said Louis Unger, John P. Kelly, R. Martin Hosbach and William F. Looney, as such Board of Registry and Election, being then and there charged under the provisions of the laws of this State relating to election with the duty of ascertaining, prior to receiving the votes of voters in the said special election, the identity or the sufficient similarity of the signature of the voters therein, made at the time of the registration thereof, with the signatures of the voters therein, made at the time of their voting in the said special election, and with the duty of challenging, in the event of their failure so to ascertain, the person offering to vote therein in their right to cast their votes in the said election, or of requiring the person offering to vote therein to take the oath or affirmation provided by the law of the qualifications entitling them to vote therein, did in manner and form aforesaid wilfully neglect and refuse to perform the said duty, contrary to the form of the statute in such case made and provided, against the peace of this State, the government and dignity of the same.

ROBERT S. HUDSPETH,
Prosecutor of the Pleas.

ENDORSED: Bill No. 11 Hudson Oyer and Terminer, December Term, 1917. The State vs. For Violation of Election Law.

ROBERT S. HUDSPETH,
Prosecutor of the Pleas.

A True Bill.
H. C. LOUDERBOUGH,
Foreman.

Presented
January 4th, 1918
And handed down to the Court of Quarter Sessions.

JOHN J. McGOVERN,
Clerk.

And afterwards to wit: on the Eleventh day of January, in the year of our Lord One Thousand Nine Hundred and Eighteen, at a session of the Court of Quarter Sessions of the County of Hudson, aforesaid, being now of the term of December, One Thousand Nine Hundred and Seventeen, in the said year, before the Honorable Mark A. Sullivan, Judge of the Court of Common Pleas in and for the County of Hudson, who doth constitute and hold the Court of Quarter Sessions in and for the County of Hudson, here cometh the said.

And having heard the indictment read and forthwith being demanded of and concerning the premises in the said indictment above specified and charge upon them, how they will acquit themselves thereof, they say they are not guilty thereof, and therefore for good and evil they put themselves upon the country, and Robert S. Hudspeth, Esq., Prosecutor of the Pleas of said County, who prosecutes for the State of New Jersey, in this behalf, doth the like.

Therefore let said indictment be continued until January 21, Nineteen Hundred and Eighteen, and let a jury come before the Honorable George G. Tennant, Judge of the Court of Common Pleas in and for the County of Hudson, constituting and holding the Court of Quarter Sessions, for the said County, being now of the Term of December, One Thousand Nine Hundred and Seventeen, of twelve good and lawful men of this State and residents in the County of Hudson, over the age of twenty-one and under the age of sixty-five years, by whom the truth of the matter may be better known, and who are not of kin to the said Louis Unger, John P. Kelly and William F. Looney.

To recognize on their oath whether the said be guilty of VIOLATION OF ELECTION LAW as in the indictment aforesaid is charged against him, or not guilty thereof, because as well the said Robert S. Hudspeth, Prosecutor of the Pleas of the County of Hudson, aforesaid, who prosecutes for the State of New Jersey, in their behalf, as the said Louis Unger, John P. Kelly and William F. Looney have put themselves upon the same jury, and the same day is given to the parties aforesaid at the same time and place.

At which time, that is to say on the twenty-first day of January in the year of our Lord One Thousand Nine Hundred and Eighteen, at Jersey City, aforesaid, in the County of Hudson aforesaid, before the Honorable George G. Tennant, Judge as aforesaid, constituting and holding the Court of Quarter Sessions as aforesaid, here come as well the said Robert S. Hudspeth, Prosecutor of the Pleas, aforesaid, who prosecutes as aforesaid, as well the said Louis Unger, John P. Kelly and William F. Looney and the jurors of the jury by the Sheriff of the County of Hudson, aforesaid, for the purpose chosen, empanelled and returned to wit: Rudolph Duetel, Benj. Freeman, Geo.

Busch, Edw. Miller, Michael O'Rourke, Herman Roskamp, Geo. Callmer, Wm. Brumlein, Harry Gaulfield, Aug. Sackerman, Earl Kerntopf, Montgomery Wilson, being called, come who being chosen, tried and sworn to speak the truth and concerning the premises, and thereupon the trial of the said issue commenced before the said Court and Jury, and at which days the evidence of the parties is submitted and the Attorneys were heard thereupon and the said issue after a charge from the Court was submitted to the said Jury, and the said Jury in charge of the said Officers of the Court duly sworn for that purpose were taken to a private room to consider of their verdict, and afterwards to wit, at the last aforesaid at the City of Jersey City aforesaid, the said Jury returned to the Court in charge of said Officers, sworn as aforesaid to keep them in charge, and then and there in the presence of the said Robert S. Hudspeth, Esquire, Prosecutor of the Pleas as aforesaid, and of the said Louis Unger, John P. Kelly and William F. Looney do say that the said Louis Unger, John P. Kelly and William F. Looney are guilty of Violation of Election Laws as in the aforesaid indictment is charged against them.

Therefore, let the said indictment be continued until January 28th, 1918. Whereupon all and singular the premises being seen and by the Court here fully understood, the sentence of the law is and it is by the Court here considered, and adjudged, that the said Louis Unger, John P. Kelly and William F. Looney, be and are hereby sentenced to be confined in State Prison at Hard Labor for a Maximum Term of Three (3) Years and a Minimum Term of Two (2) Years, and pay a fine of One Thousand Dollars and costs of prosecution and stand committed until such fine and costs are paid.

Judgment entered and signed this January 28,

1918.

GEORGE G. TENNANT,

Judge of the Court of Quarter Sessions in and for the County of Hudson State of New Jersey.

The answer of George G. Tennant, Esq., Judge of the Court of Quarter Sessions in and for the County of Hudson and within named the record and proceedings of the plaint whereof mention is within made with all things touching the same, I send to the Justices of our Supreme Court of Judicature at Trenton, N. J., at the day and year within contained in a certain schedule to this Writ annexed as within I am commanded.

GEORGE G. TENNANT,

Judge.

HUDSON COUNTY COURT OF QUARTER SESSIONS.

Tennant, J.

THE STATE

vs.

LOUIS UNGER, JOHN P. KELLY and WM. F. LOONEY.

Trial of the above entitled case, January 21, 1918, before Hon. George G. Tennant, Judge, and a jury.

APPEARANCES:

Mr. Robert S. Hudspeth, Mr. George T. Vickers, Mr. James W. McCarthy, for the State.

Mr. Robert H. McCarter, Mr. Alexander Simpson, Mr. Lewis Hansen, for the Defendants.

MR. HUDSPETH: I move the trial of the indictment against Unger, Kelly and Looney, charged with violation of the election law.

MR. SIMPSON: What is the indictment for—conspiracy or violation?

MR. HUDSPETH: Violation.

MR. SIMPSON: I move to quash this indictment on the ground that the foreman of the grand jury which found this indictment, under

section 12 of the Act Concerning Juries, is to certify a list of all witnesses examined by the grand jury, and has not done so, and because of that failure, the grand jury was without authority to go so far as to make this a court record, on the ground that the statute is for the benefit of the defendant. Section 12 of the Act provides that the foreman of the grand jury shall certify into court the names of all witnesses examined by the grand jury. I make that motion for the purpose of having the indictment quashed, because I contend that is not due process of law under the 14th Amendment of the United States Constitution.

MR. VICKERS: In behalf of the State, I desire to say there is no proof here to sustain the motion.

MR. SIMPSON: The Court must know its own records. It is the Court—if the Court does not know its own records, I don't know how proof can be furnished.

MR. VICKERS: The State challenges the statement of fact, and the Court cannot be presumed to know its own record until it is shown to it.

THE COURT: Is there any other motion?

MR. SIMPSON: There is an additional motion, on the ground the indictment does not charge a crime. It is for wilful—I think the language of the indictment is—wilful violation of the duties of the election officers; that this indictment only at the end uses the word "wilful," in the last paragraph of the indictment.

THE COURT: I have not seen the indictment.

MR. SIMPSON: In brief, my motion is that the indictment does not state a crime.

THE COURT: Is there anything else?

MR. SIMPSON: That is all, the only two grounds, I think, that I want to make the motion to quash on.

THE COURT: I will deny the motion. You may have an exception.

(Exception allowed and signed and sealed accordingly.

George G. Tennant, Judge.
Seal).

MR. VICKERS: For the purpose of clarifying the record, I desire to have it appear that it is not contended on behalf—I would take it—not contended on behalf of the defence that this term at which this indictment has been found, has been concluded? It is the same term?

MR. SIMPSON: It is the same term, that is so.

THE COURT: I have denied the motion. The record will show the facts.

MR. VICKERS: On its face now it would appear there is no such list filed. That, in itself, is correct, a correct statement of the fact, but it does not appear that this indictment is now being tried still of the term in which it is found.

MR. SIMPSON: I will stipulate that. It is being tried in the term in which it is found.

As I understand it—I do not represent all of these defendants—

MR. VICKERS: I move for a severance in the case of the State vs. Hosbach. I will state to the Court, now, the State intends to use Mr. Hosbach as a witness.

The Jury was called and sworn.
Mr. McCarthy opened to the Jury.

MR. VICKERS: I call the representative of the City Clerk.

MR. SIMPSON: I will concede that there was held on this day a special election to elect a successor to George F. Brensinger, who had died—under whatever form you want it in.

MR. VICKERS: That the defendants constituted and acted as—

MR. SIMPSON: That they acted as an election board. I will admit your record if you will produce it; I don't know whether the appointment was legal or not, therefore I don't think I should admit it, but I will admit they were acting as an election board at this election. That at least would make them de facto.

MR. VICKERS: (To the proposed witness): Has the City Clerk the record of the appointments, or the Election Board?

THE WITNESS: That is in the County Board of Elections. We have a copy of it, sent to us by the County Board of Elections.

MR. SIMPSON: I don't think we will waste any time—I will admit they were the election board of this district. There is no contest that the ballot-box which will be produced, purporting to be the ballot-box of the Second District of the Second Ward, is the official ballot-box and that the return therein found is the official return made by these officers.

MR. VICKERS: If he will swear to that —I don't know what the condition of the box is.

MR. SIMPSON: I don't mean we admit the condition.

(Witness sworn).

HARRY J. MAUCHET, a witness produced on behalf of the State, being sworn, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. You are in the employ of the city of Jersey City, in the department of the city clerk? A. Yes.

Q. Are you here representing the city clerk, in answer to a subpoena duces tecum— A. Yes.

Q. Have you a record of the sending of the ballot-box to the Second District of the Second Ward, for the election held on the 16th day of October, 1917, in Jersey City? A. We have, yes.

Q. Have you that with you? A. No sir. All the election stuff was turned over to the Prosecutor's office the morning after the election.

Q. Stuff—you mean— ? A. The ballot-boxes, the books, and so forth.

Q. What method have you of identifying the

election returns if there was such a return, as having been part of the record of your office? Do you know whether it bears any endorsement? I show you what purports to be a return. I don't know whether it is or not. A. That is a return, yes.

Q. That is the return. Have you a record with you which shows the return of the ballot-boxes from the various districts in Jersey City at the close of the election of October 16th, 1917? A. The Grand Jury has that book.

Q. You are certain it has not been returned? A. No, it has not been returned. After the last General Election the ballot-boxes of the Second Ward, and that book, were taken up to the Grand Jury.

Q. Have you made a search for it? A. Looked this morning, yes. I think I have a receipt here from Mr. Bowly.

Q. I think he has one from you.

MR. VICKERS: Why can't you admit it?

MR. SIMPSON: I admitted the return. What do you want me to admit?

MR. VICKERS: The box.

MR. SIMPSON: I will admit that.

MR. VICKERS: The box, here produced by Mr. Bowly has been in his custody, and is the ballot-box, the official ballot-box, of the Second District, Second Ward, of Jersey City, of the election of October 16, 1917, of the city of Jersey City.

MR. SIMPSON: I don't admit anything about its condition.

MR. VICKERS: Used on that day at that election.

MR. SIMPSON: Yes, I will admit that.

MR. VICKERS: I offer in evidence the return which has been admitted.
(It is marked Exhibit S 1).

THE COURT: That is the return of the district election officers, as a result of the election?

MR. VICKERS: Yes. With respect to the ballot-box, and that the ballot-box which is now produced, which the city clerk turned over to Mr. Bowly, the representative of the Court, on Justice Swayze's orders—is that admitted?

MR. SIMPSON: Yes.

MR. VICKERS: I am not certain whether it is admitted that the election in question was duly called by proclamation.

MR. SIMPSON: By the Governor?

MR. VICKERS: By the City Commission.

MR. SIMPSON: Yes. All those technical details, there is no question about that.

THE COURT: Called and held in accordance with the law?

MR. SIMPSON: With the law, yes.

THE COURT: That these three defendants on trial were the election officers for that district?

MR. SIMPSON: For that district.

CROSS-EXAMINATION by Mr. Simpson:

Q. You know nothing of your own knowledge about the condition of this box? A. No.

Q. You simply come from the city clerk's office to testify; that is all.

GEORGE H. BOWLY, a witness called on behalf of the State—

MR. SIMPSON: Is it your purpose to prove by Mr. Bowly that it is in the same condition as when he got it?

BY MR. SIMPSON:

Q. It has always been in your custody? A. Yes.

Q. That is what you will testify to? A. I will swear that the box has been entirely in my custody except during the time it was in the custody of the County Board of Elections for the purpose of recounting votes cast, and the times it was in the grand jury room. I know nothing else.

MR. SIMPSON: I will admit he will swear to that if you want to save time.

THE WITNESS: I also have the keys here and a receipt for one poll book.

(Witness sworn).

DIRECT EXAMINATION by Mr. Vickers:

Q. Have you the keys for this box, and a receipt for one poll book, the poll book having been removed, if you know, by whom? A. Removed by Mr. McCarthy, from the box. My present recollection of it is, because of that receipt signed by Mr. McCarthy, there were several poll books, amongst which is the poll book for the Second Ward, Second District, I have here in my hand.

Q. And were you present at the time that the County Board of Elections had this box, if it did have it, for the purpose of recount? A. I was not present. The box was delivered by me to the County Board of Elections, and then passed out of my possession, and after the recount it was tied and sealed in the manner in which you see it there, delivered to me, locked in the vault, of which I have the combination only.

Q. No one else has access? A. No one else in that time has had any access to it. The poll book that was taken out of the box at the time it was delivered by me to the County Board to be recounted, was delivered to me, and by me was delivered to Mr. McCarthy.

MR. McCARTHY: If Mr. Simpson will agree, I will admit that the box was opened by the County Board of Elections, when the poll book was taken out of it by Mr. Houghton, a member of the County Board, and turned over to me, and has been in my custody since that time.

THE WITNESS: It was turned over to me first, because I have here in my hand your receipt to me for the poll book.

Q. After having been sealed and taped, as it

now appears to be, and locked, as it appears to be, this box was turned over to you by the County Board of Elections? A. Yes.

Q. When you turned it over to the County Board of Elections was this box in the same condition in which you received it from the city clerk of Jersey City? A. Exactly the same condition.

Q. Was the poll book, you refer to taken from the box before or after it was turned over by you to the County Board of Elections? A. It was taken after it was turned over by me to the County Board of Elections, on the box being open by me—first, up to that time.

Q. When you received this box from the city clerk was it taped and sealed? A. It was taped and sealed when I received it from the city clerk.

Q. Locked or unlocked? A. As far as I know it was locked. I didn't try the box.

Q. When you delivered it to the County Board of Elections, did you deliver the keys with the box, or did you unlock it first? A. The keys were delivered to the County Board of Elections by the county clerk, I at that time not having had delivered to me the keys of the election boxes. The box itself was in exactly the same condition in which I received it from the city clerk.

Q. Before you delivered this box to the County Board of Elections you had no keys with which to open the box? A. No sir. Not in my possession.

Q. When you delivered it, it was sealed, locked, and in the condition in which you received it from the city clerk? A. It was.

Q. You were holding this box, together with other boxes in Jersey City, on the order of Justice Swayze? A. Justice Swayze had delivered to me an order to go to the city hall, take possession of these boxes and hold them subject to further

orders.

MR. SIMPSON: No cross examination.

THE WITNESS: I have the keys here.

MR. VICKERS: Have it on the record that Mr. Bowly delivers to the State from an envelope, three keys, marked one, two, and three, being numbered S S R K 12, 13 B 888, and S S R K 11.

HARRY J. MAUCHET, recalled.

DIRECT EXAMINATION by Mr. Vickers:

Q. I show you what is entitled Ballot-Box Record No. 2, turning to page 53 of that record, headed General Municipality Election, October 16, 1917, I ask you whether by referring to this book, and to the particular place, you can tell whether or not you received the box in question of the Second District of the Second Ward of Jersey City, and if you received it, from whom you received it, and in what condition? A. The box was brought down by Unger and Kelly and Officer Kelly, at 8.25.

Q. Unger and Kelly being election officers? A. Yes.

Q. Officer Kelly being a police officer? A. Yes.

Q. 8.25, October 16, 1917? A. That is right.

Q. That appears from this record in your handwriting? A. Not in my handwriting.

Q. It is a record of the city clerk? A. That is a record of the office.

Q. With respect to the record in question, can you say in what condition the box was when it was delivered by Mr. Kelly and Mr. Unger and Officer Kelly? A. The box was apparently in

perfect condition; otherwise there would be a note there.

Q. That is the custom of the office? A. Yes.

MR. SIMPSON: No cross examination.

MR. VICKERS: We now offer the ballot-box in question in evidence, and we offer the poll book as the poll book referred to as having been in the ballot-box when it was delivered to the city clerk, and taken from the ballot-box by Mr. Houghton and Mr. Bowly, and delivered by Mr. Bowly to Mr. McCarthy.

MR. HUDSPETH: We offer the ballot-box and contents, together with the poll book which was in the box at the time of the delivery by the District Board of Elections to the city clerk, and at the time of the delivery of the ballot-box to the County Board of Elections on the recount, taken therefrom at the County Board of Elections inquiry, and reaching Mr. McCarthy's hands, as already testified to, being the poll book used by this District Board of Election, at this election, on this day in question.

MR. SIMPSON: I object, on the ground there is no proof of the condition of this box being the same as it was at the time the box was delivered by these defendants to the city clerk; second, that this was an election held under the Act of 1911, which provides that the election shall be carried on as nearly as may be as the primary was then carried on, and the primary as then carried on required no poll book. Therefore it has no competency or

relevancy, because at this election it was not necessary to use a poll book. Although there was a subsequent act saying that a Walsh Act election shall be conducted as nearly as may be, as a general election, I think it should be construed with the original act itself, which points out how it must be held. On those two grounds I object.

THE COURT: Do you object to the box?

MR. SIMPSON: As it is now, no sir.

THE COURT: Do you object to its going in evidence?

MR. SIMPSON: No—as it stands. As it stands, no.

THE COURT: That includes its contents?

MR. VICKERS: We renew the offer, as far as it is concerned, excepting the poll book. We renew the offer, excepting therefrom at this time the poll book.

MR. SIMPSON: Then I make my other objection—unless there is something in the box. I don't object to the box as it is proven. I think the proof is all right.

THE COURT: As far as the box is concerned, there seems to be no objection. It may be marked in evidence.

(The box is marked Exhibit S 2. The keys are marked Exhibit S 3).

JAMES F. HOUGHTON, a witness produced on behalf of the State, being sworn, testified as

follows:

DIRECT EXAMINATION by Mr. McCarthy:

Q. You are a member of the County Board of Elections? A. Yes.

Q. During the recount of the ballots in the special election of October 16, 1917, you were present in the County Board of Elections room, were you not? A. Yes.

Q. Were you there when the Second District of the Second Ward box was opened and recounted? A. Yes.

Q. Who opened the box? A. Chairman Taylor.

Q. Opened in your presence? A. Yes.

Q. What was done in respect to the poll book that was in the box? A. He would take it out, pass it down the table, I would get it.

Q. Do you recall my being in there when that particular box was opened up? A. I remember you being there—I wouldn't be positive—I have no recollection.

Q. What did you do with the poll book of the Second District, Second Ward? A. I wouldn't say positively, but there were some books I turned over to you, and there were some I turned over to the Prosecutor himself, but the majority of the books I turned over to Mr. Bowly. We had an understanding that Mr. Bowly was to get a receipt from the Prosecutor's office for all the books.

Q. The books that were taken from the boxes, and were turned over to you, and which you in turn turned over to Mr. McCarthy or Mr. Bowly, or Mr. Hudspeth, did you do anything in the way of altering or changing them in any respect? A. No.

Q. Were they in the same condition as when taken from the box by Mr. Taylor and handed

to you? A. Yes. All I done was to count the names.

CROSS-EXAMINATION by Mr. Simpson:

Q. You handled how many boxes at that recount? A. I wouldn't say I handled any of them, Mr. Counsellor, but the boxes were opened, and I principally looked over the poll books and counted the number of names on each and every poll book.

Q. There were the entire board sitting in two rooms? A. The entire board sat in one room.

Q. You didn't open the box, did you? A. No.

Q. Who opened the boxes? A. Mr. Taylor.

Q. Who took the poll books out of the boxes? A. Mr. Taylor.

Q. What did he do with them after he took them out—he passed them?—they were on the table? A. He passed them right along the table, I sitting over here—

Q. And how many men did they have to go through to get to you? A. Wouldn't go through any men; pass along the table.

Q. Directly to you? A. Sometimes to me, sometimes hand to some one else to pass to me.

Q. Did you get physical possession of every poll book yourself? A. I did.

Q. Did you get the Eleventh of the Fourth Ward? A. That I couldn't say.

Q. How do you know this is the poll book of the Second of the Second Ward? A. That is the poll book that came out of the box.

Q. You couldn't identify this poll book if I gave you a Fourth Ward poll book, unless you made an examination of it, you couldn't say what ward it came from? A. No.

Q. You couldn't identify it as having seen it before except from the general custom? A. No.

Q. In other words, except that it came with the box. If somebody took that poll book out of the box and put in another poll book in the box, you wouldn't know it was so, except they had put on it the ward and district number, would you? A. The poll books were put back in the boxes.

Q. You don't know who you delivered them to? A. I delivered them to either Mr. Hudspeth, Mr. Bowly or McCarthy.

Q. You don't know who you delivered the Second of the Second to? A. I wouldn't say positively whether Mr. McCarthy. Mr. McCarthy was in the room.

Q. Do you know whether you delivered it to Mr. McCarthy? A. I wouldn't say. I have no record of it.

Q. Have you any record? A. I had a record, but I don't know where it is. In fact, I never thought of it.

Q. How long did you have possession of this poll book, personally? A. I maybe—I may have held the book until the count was finished, when I showed it to the different lawyers representing the different sides.

Q. Allowed them to take it? A. Allowed them to look at it.

Q. They took it, physically, examined it? A. Yes.

Q. Could kiss it if they wanted to? A. I don't know.

Q. Why do you hesitate about the poll book? A. I am trying to tell you the truth.

Q. The poll book was in the room where this recount was going on? A. Yes.

Q. Crowded with people—that room? A. Sometimes it was.

Q. Don't you know you couldn't get any more people in the room? A. I wouldn't say that.

Q. Well, I would if I was a witness. You al-

lowed those people to have these poll books, lawyers representing Warren and lawyers representing Gannon, to take possession of these poll books? A. Only one representing each side.

Q. All had it. All had the opportunity to write in it, alter it, change it? A. I was watching them.

Q. Oh, you were watching them? A. Yes.

Q. Why? A. Because there was somewhat of a contest over the election.

Q. You were watching the lawyers? A. I was watching everything that was going on.

Q. Why were you watching the lawyers? A. I wanted to make sure that everything that was going on was straight.

Q. You say you wanted to see that the lawyers didn't do any writing? A. I didn't care who it was.

Q. Who had possession of the Second Ward, Second District, poll book? A. Who had possession?

Q. Who had possession of it, when you were watching it? A. Whatever lawyer represented Warren, or Mr. Milton, or whoever represented Gannon.

Q. What day of the month did the Second of the Second come to your possession? A. That I couldn't say.

Q. What day of the week? A. I can't say.

Q. What hour of the day? A. That I never kept track of.

Q. You don't know anything but this general custom? A. I know I was there.

Q. You were there. Do you know whether this book was torn when it was taken out of the box? A. That I couldn't say. There were hundreds of them torn.

Q. Practically all torn? A. I believe—and different things, yes.

Q. How long did the board have the poll book

out of the box—possession of it? A. Only while the box was open; as soon as the box was closed—

Q. How long would it take? A. Well, it may have been half a day, argument might arise, in the counting of the votes. That I couldn't specifically say.

Q. There was a great deal of argument? There was bitterness? A. No; that was one of the quietest recounts they ever had.

Q. Didn't they have an instrument to weigh, measure, the paper of the ballots on each side? A. Some kind of instrument they held in their hand.

Q. To see if the ballots were the proper weight? A. Yes.

Q. A quiet recount? A. Yes.

Q. No interest? A. There was quiet some interest.

Q. How many people would you say were at or around the table? What was the greatest number of people, during that recount? A. Probably fifteen or twenty.

Q. When you gave this poll book, or a poll book, to anybody, did you take a receipt for it? A. No; I handed those books to Mr. Bowly or to Mr. Hudspeth; the poll book I would give either to the Prosecutor or his assistant, or Mr. Bowly.

Q. What voucher did you have to show it was in good condition? Didn't you take a written voucher? A. No.

Q. Just handed it over? A. I understood Mr. Bowly was to look after that.

Q. To look after what? A. Mr. Bowly.

Q. To give a receipt to you? A. He was to hold the receipts.

Q. You don't know to this day whether he has any receipt for the Second District, Second Ward, poll book? A. I am pretty sure he has.

Q. Have you seen it? A. No.

MR. McCARTHY: He did see one.

Q. Have you seen it? A. I don't know as I have; he did show to me, but I don't claim to have seen this particular book or any other book. He showed me a receipt.

Q. You delivered these poll books indirectly to Mr. Hudspeth, the Prosecutor? A. Yes.

Q. Took no vouchers yourself? A. No sir.

Q. Who actually opened the boxes? A. Mr. Taylor, the chairman of the board, opened the boxes.

REDIRECT EXAMINATION by Mr. Hudspeth:

Q. Then I understand there was a recount in the Warren-Gannon case? A. Yes.

Q. The ballot boxes were all in this room where the County Board of Elections were sitting, hearing that recount? A. Yes.

Q. Mr. Taylor was chairman of the Board? A. Yes.

Q. There was a table there, similar to this table the ballot box is now on? A. It was about twice as long.

Q. At the head of that table sat Mr. Taylor? A. He was at that end, yes.

Q. By the table sat the other members of the Board, including you? A. Yes.

Q. At that table were the lawyers who represented the contestants? A. Yes.

Q. The ballot boxes were brought in and placed on the table? A. Yes.

Q. Were opened by Mr. Taylor? By breaking the seal, breaking the cord, and disclosing the contents; is that right? A. First we would show it to the lawyers, to let them see the condition of the box.

Q. After that, it was opened by Mr. Taylor? A. Yes.

Q. In your presence? A. Yes.

Q. The contents taken out? A. Yes.

Q. Among the contents were the poll book; is that right? A. Yes.

Q. A poll book from each box? A. There was, I think, one case, one box, the poll book was missing.

Q. It was not the Second of the Second? A. No.

Q. Do you remember that when you commenced this proceeding Prosecutor Hudspeth demanded of the Board in your presence that the poll books be turned over to him?

MR. SIMPSON: I object. It is irrelevant and incompetent. It was not said in the presence of the defendants.

THE COURT: Objection sustained.

Q. Do you remember that some demand was made regarding the disposition of the poll books by the Prosecutor? A. Yes.

Q. In your presence this poll book was examined, wasn't it? A. Yes.

Q. At that table. And then turned over by you to either the Prosecutor, or his assistant, or Mr. Bowly? A. Yes.

RECROSS EXAMINATION by Mr. Simpson:

Q. How many poll books were missing from the boxes? A. I am not positive whether it was one or two—there were some missing.

Q. What wards? A. I think that was in the Second Ward.

Q. Second Ward? A. I think it was, yes; I am not—

Q. Why do you tell the Prosecutor it was not the Second District of the Second Ward? It

was one, you don't know which one they were, but you knew they were from the Second Ward. You have said to the Prosecutor—he said to you, "It was not the Second of the Second?" You said, "Yes"—or "No sir." A. I am pretty sure of that because I remember the incident of Mr. McCarthy going in there.

Q. But you haven't any distinct personal knowledge as to which of the Second Ward books were missing? You cannot say whether the first, second, third, fourth, fifth, sixth, seventh, or eight district, can you, now? A. I would not say that, no.

Q. You wouldn't say that? A. No.

JAMES W. McCARTHY, a witness produced on behalf of the State, being sworn, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. You are Assistant Prosecutor of the Pleas of the County of Hudson? A. Yes.

Q. Have been how long? A. Almost ten years.

Q. Subsequent to October 16, 1917, did you receive from Mr. Bowly, or from Mr. Houghton, a poll book taken from the ballot-box of the Second District of the Second Ward of the city of Hoboken? A. Jersey City.

Q. Jersey City—being the ballot-box of the municipal election of October 16, 1917?

MR. SIMPSON: I object. It assumes a lot of things. It calls for a conclusion. It is not shown within the foundation of the witness's knowledge where the book came from.

MR. VICKERS: I will withdraw the

question.

Q. Did you get a poll book taken from the ballot-box which is S2, on the table here, marked Second Ward, Second District, Jersey City, October 16, 1917?

MR. SIMPSON: I make the same objection. It calls for a conclusion. It is for the jury to say, from the facts, how he got the poll book.

THE COURT: Objection sustained.

BY THE COURT:

Q. Please look at the ballot-box already in evidence, see if you can remember taking anything from that ballot box.

MR. VICKERS: I the form in which the Court puts the question—

Q. (By Mr. Vickers). Can you by looking at the ballot-box, which is here, on the table, marked S 2, say whether or not you received any of the contents of that ballot-box either from Mr. Houghton or Mr. Bowly, subsequent to October 16, 1917? A. No sir, not by looking at the ballot-box. I was in the recount room of the County Board of Elections when the box announced as the Second District, Second Ward, of Jersey City, was opened,—

MR. SIMPSON: I object.

(Continuing)—for recounting.

MR. SIMPSON: This is hearsay. It was simply "announced."

THE COURT: Yes.

Q. I show you what purports to be a poll book, and ask you whether you received that poll book subsequent to this October 16, 1917, whether you received it from Mr. Bowly or Mr. Houghton, and under what circumstances. A. Yes.

MR. SIMPSON: I would like an objection to that part of the question which characterizes this document. I submit it is improper to characterize a document not yet in evidence. I object to characterizing it as a poll book.

THE COURT: Witness being shown a book—

MR. VICKERS: —designated as a poll book—

MR. SIMPSON: I object to the designation.

THE COURT: —is asked whether he got it from Mr. Houghton or Mr. Bowly—

MR. VICKERS: And the circumstances under which he received it.

A. I received this book from Mr. Bowly, within, I think it was some time, a week or so, after the recount was started, and I gave Mr. Bowly my receipt for it. I saw this book taken from a box in the County Board of Elections room at the time the recount was made of a box of the Second District of the Second Ward.

Q. Do you know whether or not that book which has been handed to you was the book which was used at the October election, October

16, 1917, by the Election Board of which three of these defendants were members, Second Ward, Second District, Jersey City? A. Yes.

Q. Was it or was it not? A. It was, yes.

CROSS-EXAMINATION by Mr. Simpson:

Q. How do you know it? A. Because I saw it in use by the Board that day.

Q. Did you mark it to identify it? A. No sir, I did not have to.

Q. Were there any marks on it to identify it? A. Yes.

Q. What marks? A. I went in the polling place on October 16th, in the afternoon, with one of our detectives—

MR. SIMPSON: I submit that is not responsive. I asked what marks were there to identify it.

THE COURT: I think it is responsive. You asked him how he knows.

A. (Continuing). I called the attention of Mr. Unger and Mr. Hosbach, who were there, conducting the election, asked them to let me see the poll book, and they showed me this book. I know this is the book because I called the attention of Mr. Unger and Mr. Hosbach, who was inspector, and wrote these names in here (indicating)—

Q. Referring to what? A. Referring to the page starting with "J. Smith."

Q. What streets? A. "Boats," under B, Boat Kentucky, Theresa, Bushy, J. P. Irish, Barge 298, of the Erie Railroad, Palestine, of the Erie Railroad, Boat J. P. Coursen; I asked them who wrote these names on there, they said the voters did. I said, "Why, aren't they in practically the

same handwriting?" Showed that right to Mr. Unger, he said, no, the voters wrote them in there. I turned over to the page on Pavonia Avenue, called his attention to the names of Morris Siegel, and Isaac Siegel, and also the name of Patrick Kane, of Pavonia Avenue. He said they had all been written by the voters. Since that time I also had a talk with one of the defendants, Mr. Unger, about this very book after Mr. Bowly had turned it over to me.

Q. I asked you about the marks. Were there any marks on it which identified it as having been the book which you saw on that day? A. Yes. What I have detailed.

Q. You don't profess to have any special skill in handwriting, do you—I mean, to identify handwriting? A. No.

Q. What is it, then, that fixes that in your mind—simply a conversation about these voters? Is that what fixes it in your mind? A. The general appearance of the book. This is the book.

Q. Was it torn? A. No. That book got torn when I carried it around myself, going around, picking up evidence about the voters.

Q. Did you only look at the two things in the book that day—the Boats and Pavonia Avenue, you have referred to? A. I passed over the book to the gentlemen to look over it, and they were using one of the pages.

Q. Without looking at the book to refresh your memory, you do not recall anything else you looked at? A. At that time?

Q. Yes. A. No.

Q. So that without refreshing your memory you cannot say whether this book as it now is on the table is in the same condition, as to names and identity of names, blots, marks, erasures, as it was on the day you saw it? A. No, I could not say that.

Q. At this conversation, only Unger and Hos-

bach were there at that time? A. That is all I saw.

Q. You didn't see these two other defendants? A. I didn't see them, no. They may have been there, but I did not see them.

Q. But your conversation was with Unger and Hosbach, who is not on trial? A. With Unger, principally.

R. MARTIN HOSBACH, a witness produced on behalf of the State, being sworn, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

MR. SIMPSON: Was this book offered before?

MR. VICKERS: It has been offered.

THE COURT: It has not been admitted.

Q. I show you a book and ask you whether, by referring to that book you can tell whether or not the book is the poll book used on October 16, 1917, at the Second District of the Second Ward of Jersey City, at the municipal election then held. A. It was.

Q. (By the Court). You are one of the district election officers who served? A. Yes.

Q. I show you what purports to be the signature copy of the registry of voters and ask you whether by referring to it you can say whether that was the signature copy book of the registry of voters which was used in the Second District of the Second Ward at the election on the 16th day of October, 1917, in Jersey City. A. This I cannot swear to positively because I had no handling of this at the general election of 1916. I remember the registry book being at the Commission Government election, but I couldn't swear

this is the book or not. I can swear to the poll book, that is all.

Q. Are you a voter in that district? A. Yes.

Q. By referring to the book before you, can you tell whether you are there registered?

MR. SIMPSON: I object on the ground that this book has not been admitted in evidence. It is not proper to read from its contents.

MR. VICKERS: For the purpose of identifying it.

THE COURT: To see whether he signed his name in the book?

MR. VICKERS: Yes.

THE COURT: You may ask him that.

Q. (By the Court). Look to see whether you signed your name in that book. A. I did—1916.

Q. By the Court). Point it out to the Prosecutor. A. (Witness indicates).

Q. Did you personally register? A. Yes.

Q. By referring to that book, can you identify by your signature, and the number of the registry there, on that registry, can you tell whether or not, with respect to your own vote on the day in question, at that election, whether that book was in use by your board at that time? A. It must have been, according to the name, had to be rechecked back.

Q. Was it?—that is the question. Is there, with respect to your name on that registry—is there a vote number, which is identifiable—

MR. SIMPSON: I object to getting in the contents of this book without offering

it.

MR. VICKERS: What I am trying to get at is to direct the witness's attention to certain matters which seem to me to make it competent, irrespective of his memory.

THE COURT: I suppose what you are trying to do, is to have this book identified as the signature book used at the Spring election, carried over to the Fall election, under the statute.

MR. VICKERS: The General election. The last General Election.

THE COURT: From which they could compare signatures?

MR. VICKERS: I am not so much concerned as to whether this was the book that should have been used; what I am trying to prove is that this was the book that was used. I am trying to find out by this witness, whether by reference to his own—he being an election officer—registration, and the marks on the book, he can say whether he voted, and at the time he voted, whether this registry was used.

THE COURT: He said he signed it for that purpose.

MR. VICKERS: For the general election, but now, with reference to this election, whether there was a mark by which he can identify this book.

Q. (By the Court). Is there anything on the

book which will serve to refresh your mind as to whether or not that book was used in that election of 1917- A. The only way I could refresh my mind is looking up the ballot number in the poll book, seeing if it would jibe.

MR. SIMPSON: I object to using that poll book not in evidence.

Q. By referring to the poll book, which you have identified as having been signed by you, and the registry, which you have identified as having been signed by you, and having been an election officer at that election, can you tell whether or not the signature copy, the registry before you, was the one in use by you and your board on October 16, 1917, in the Second District of the Second Ward, Jersey City? A. It was, according to the evi—— according to the book in front of me, yes.

Q. According to the book in front of you, which is what has been called the registry signature— A. That is the book, yes.

Q. —signature copy book. By referring to the poll book, where you have identified your own signature, can you tell it? A. That is the only way I can tell it.

Q. (By the Court). Do you say so now, they were used? A. Yes.

Q. On October 16, 1917, and during the course of your sitting—of the sitting of your board, at that election, did you, while Mr. Unger, the defendant here, was present, see Mr. James W. McCarthy, First Assistant Prosecutor of the Pleas of this county, there? A. Yes.

Q. Have you been here in the court room during this trial and during the period while Mr. McCarthy was on the witness stand, preceding you? A. Yes.

Q. Did you hear the conversation which Mr.

McCarthy swore to as having taken place in your presence, with the defendant, Unger? A. I did, yes.

Q. Subsequent to that election, were you in the office of the Prosecutor of the Pleas of this county at any time, when the defendant, Unger, was present there? A. I was.

Q. And did you hear any conversation which took place between the defendant, Unger, and Mr. James W. McCarthy, First Assistant Prosecutor? A. I heard it.

MR. SIMPSON: I object, unless it is limited entirely to Unger. The three men are indicted, Unger could not make any admission as against these other men.

THE COURT: It will be, under instructions of the Court.

Q. At that time what was said by Mr. Unger to Mr. McCarthy? A. Shall I repeat what was said?

Q. Yes. A. Mr. McCarthy had the poll book in front of him, he asked Mr. Unger whose writing was this; he pointed to the name of Simon Hotkiss, 486 Grove Street. Mr. Unger said it was not his. He showed him another name, the name of Schoenberg, 148 (I think) Pavonia Avenue; he said, "Whose writing is this?" Mr. Unger admitted it was his.

Q. Whose signature was that—what name? A. Schoenberg. Then he turned to another page, the name of Tamke, Henry Tamke, of one hundred—I think, one hundred and thirty something Pavonia Avenue, and asked him whose writing was this. He admitted it was his. He asked him, "Why did you write those?" He didn't answer. He said to him, "Your name is not Hotkiss, is not Schoenberg, your name is not

Tamke." He asked him, why did he write it? He said he didn't know. He asked him did he know who Hotkiss was? He said he was a hardware man on Grove Street, near Eighth. Then Sena— Mr. Egan called me out of the room.

Q. (By the Court). Who? A. Mr. Egan was in the adjoining room to Mr. McCarthy's.

Q. At that time, when this conversation took place, was the book which has been referred to as the poll book, and which you have identified, and in which you say you identify your signature, the book which was used by Mr. McCarthy in referring to the names of Hotkiss, Schoenberg and Tamke, and at the numbers, the addresses, you have given? A. Yes. It was the book, because he asked me, is this your writing? I showed him where I marked with a certain colored ink. I identified it that way.

Q. Blue? A. All blue, yes.

Q. Were you the only one of the board— A. That had that pen, yes, that ink.

Q. —that pen and that ink.

MR. VICKERS: I now offer the poll book.

MR. SIMPSON: I object, unless I may cross-examine.

CROSS-EXAMINATION by Mr. Simpson:

Q. How long were you at the Board that day? A. Nearly all day, except I went home for dinner and supper.

Q. Weren't you there only three hours? A. No.

Q. Attending to business? You attend your own business? You were—you are in business? A. Yes.

Q. Do you mean you were at that polling place

all day until the polls closed, with the exception of an hour at dinner and an hour at supper? A. Except to go across the street to get a paper or a pack of cigarettes, yes.

Q. How long would you be away for that purpose? A. Maybe fifteen or twenty minutes.

Q. How many times? A. Probably three times during the day.

Q. Did you write any false signatures in this book yourself? A. False?

Q. Yes. A. No sir.

Q. You say you didn't write in any that was incorrect? A. I wrote lots of names, given to me, I wrote in the poll book.

Q. Did you intentionally, yourself, and wilfully, write in any false names of any person, or the name of any person you knew was not entitled to vote? A. No.

Q. You didn't do that? A. I had no interest at stake to do it.

Q. You didn't do it? A. No.

Q. You were there all the time? A. Yes.

Q. If you had seen any person voting there, you knew was not entitled to vote, you would have stopped them, wouldn't you? A. I would have, yes.

Q. So if anybody did vote there unlawfully on that day you were quite innocent of it, weren't you? A. I was, yes.

Q. You didn't wilfully do wrong? A. I didn't wilfully do wrong, no.

Q. To your knowledge, so far as you know, it was not going on? A. To my knowledge, yes.

Q. You were there all day, you say? A. Yes. I can recall one instance in the afternoon, if it is admissible now.

Q. You will be kind enough to answer my questions.

MR. HUDSPETH: He is asked generally

if any wrong was done, whether he participated. I ask that he be allowed to answer.

Q. You were going to make a qualification to your previous answer? A. Yes. When I came back from dinner, I saw the name of Benjamin Toback written on a blank page. Mr. Kelly asked me to scratch that off, a mistake had been made. I done so. And the next voter came in, I believe, Mr. Kelly got some voter to fill out the erasure. Some time during the afternoon Mr. McKenna, I think his name is Clarence McKenna, came in to vote. I know him well, because he has been raised up in that neighborhood. Just as I was going to put his name down in the book, to sign—have him sign the poll book, somebody called him outside from the street. While he was gone I looked on the poll book and I seen his name had already been signed.

Q. Was Mr. McKenna—one question I want to ask you—you saw this name, you say, written, when you came in; that is what name? A. Benjamin Toback—from dinner.

Q. Do you know everybody in the neighborhood that voted at that precinct? A. No.

Q. How many voted? A. According to the book, must have been about one hundred and ten, I believe.

Q. How many would be the normal vote in that district? You had been an election officer there before? A. No; first time.

MR. HUDSPETH: I object. It is immaterial, incompetent and irrelevant.

Q. How many voted while you were there? A. During the morning there was about thirty-five. When I was gone to dinner and came back, there was about seventy-two or seventy-three there, on the register. During that hour there

were over thirty-five voted.

Q. What was the rest, up to the time you closed? A. That should make it a hundred and seventy odd. Well then, I think there was a hundred—a hundred and eighteen or something, in the entire vote, made it the difference between the supper hour, the dinner hour and the closing time.

(NOON RECESS).

Q. What time did you arrive at the polling place on the day of the special election in October, 1917? A. Six o'clock.

Q. You didn't have the poll book there then, did you? A. No.

Q. It didn't come until what time? A. Pretty near ten o'clock.

Q. Were there any votes taken before it came? A. I don't think there was.

Q. Not from six to ten, in a workmen's neighborhood like that? A. I don't think there was.

Q. You say there was no voter came in until ten o'clock? A. There was several came. It was half past nine, I guess, nearly ten o'clock.

Q. You didn't take any votes? A. No.

Q. You wouldn't allow them to vote because you didn't have the poll book? A. Somebody from the County Board brought up the poll book.

Q. What did you tell the voters? A. Mr. Unger had the say on that.

Q. What did he say in your presence? A. I cannot recall what he said.

Q. When did you go to dinner? A. Half past twelve.

Q. When did you come back? A. Half past one.

Q. This is a workmen's district, isn't it? A. Supposed to be.

Q. Sort of a tenement district. You say that

when you came back, you found that thirty-five men had registered, and that that surprised you? A. Yes.

Q. Why did that surprise you, if that is a workmen's district. Isn't it the dinner hour that they come in to vote in there? A. If it was so slow in the morning, from ten o'clock to half past twelve, to have a rush like that kind of surprised me, that was all.

Q. Had you worked there before as an election officer? A. No.

Q. You didn't know whether most of the votes came in at noon and after five o'clock? A. I can't answer that.

Q. You don't know that. What did you do? What were your duties there—your office? A. Clerk.

Q. Who was the other clerk? A. Looney.

Q. Were you the Republican or Democratic clerk? A. Republican.

Q. What was the duty of the Republican clerk? A. Enter names in the poll book, generally, Mr. Unger said, "We will work in harmony."

Q. Did you enter names in the poll book? A. Yes.

Q. As clerk? A. As clerk.

Q. Did you ever enter names of men in the poll book who you knew or thought had no right to vote? A. Did I?

Q. Yes. A. No. Unless it was checked back by the Board, or the member of the Board, according to the registry book. I didn't sign anybody's name.

Q. You don't understand me. Did you knowingly put in the book the name of any man you knew had no right to vote? A. No.

Q. That is what I asked you. How many of those names did you put in the book? A. I guess there may have been a dozen and a half, I guess.

Q. In the poll book, you put there? A. Yes.

Q. When did you put them in? A. During the entire sitting of the day.

Q. How would you do that? What arrangement did you have? How did you do that one time and not another time? Was that arranged between you and the rest of the Board? A. Each man relieved the other at the station.

Q. You travelled in rotation. When you were not entering names in the poll book, what were you doing?? A. Standing around.

Q. Calling the names of the men as they came in? A. No.

Q. Just watching what was going on? A. Not particularly, no.

Q. You were sworn as an election officer? A. Yes.

Q. You knew it was your duty to see that everything went straight? A. It was my duty, yes.

Q. You did, as far as you know, see that everything was all right? A. As far as I know.

Q. You did not intentionally violate any of the election law? A. No.

Q. You are in business? A. Yes.

Q. Were, how long? A. Twenty-four years.

Q. Where? A. In Grove Street.

Q. You have the ordinary knowledge of a man of affairs, and all that, haven't you? A. I suppose so.

Q. I understand you, in your service in the board, you honestly tried to see that everything was entirely fair? A. I did.

Q. You didn't permit anybody to do anything that was wrong, so far as you know? A. It was not done while I was present.

Q. You were there all the time except when you went to lunch and to get cigarettes; you told me, you were there all day? A. Yes.

Q. And you acted as an honest man? A. Yes.

Q. You didn't aid in doing anything wrong? A. No.

Q. As far as you know, everything was all right? A. In my presence, yes.

Q. Weren't you around all the time? A. No.

Q. That is what I am asking you—what I am talking about—your presence. A. Yes.

Q. What time did the polls close? A. Seven o'clock.

Q. Then the votes were counted? A. Yes.

Q. The exhibit S 1, the return—that is your signature, on this S 1, the return? A. Yes.

Q. You signed that? A. Yes.

Q. Did you check off the counting of the votes? A. Yes.

Q. As far as you know, when you signed it, it was an honest return? A. Yes.

Q. You would not have signed it if it was not honest, to your knowledge? A. No, I would not.

Q. What part did you take in the counting of the votes? A. The votes—I read the names on the ballots.

Q. Some one else tallied them? A. Yes.

Q. Did you read all the ballots? A. I did, yes.

Q. I notice this return says the whole number of names on the registry list, signature copy book, 178; the whole number on the poll book, 161; rejected, three; is that the fact—there were 161 votes? A. Yes, according to the signature, the amount of the—

Q. You told me 118, as I remember it. A. That was to my knowledge. I wouldn't say positively.

Q. That is correct though? A. That is correct, yes.

Q. 161 names? A. Yes.

Q. You said there were 35 cast before you went to lunch? A. About thirty-five.

Q. When you came back you found there were seventy-two? A. About seventy-two or seventy-five.

Q. That would be thirty-five or thirty-seven more? A. Yes.

Q. That would be seventy-two. Then before you went to supper how many were cast? A. I didn't take the figures exactly. I wasn't studying that sharp enough.

Q. When you came back after supper, how many were cast? A. I didn't know until I got ready to count up.

Q. You say you couldn't tell that? A. No.

Q. But you noticed, you say, when you came back, thirty-five names that had voted during the dinner hour? A. I simply happened to remark, "Why, you were busy." I said, "Did you have a rush?" He said, "Yes, we were quite busy."

Q. When you closed you had 164 votes in the box? A. Yes, according to that report.

Q. You said you identified this poll book, as I remember it, because of the color ink in it? A. Yes.

Q. You wrote with blue ink? A. Yes.

Q. You don't know, of course, this book, now as it stands—you don't know what has been done to it since you wrote in it? A. No.

Q. If anything? A. No.

Q. You are not vouching, therefore, that the book is the same as when you left—when it left your hands? A. I cannot vouch for it.

Q. You don't know what has been—if anything has been done. What kind of people were they that voted at that polling place—foreigners, principally? A. Quite a number of foreigners, a number of Polish people.

Q. Can you now tell me, of these 164 names, how many you knew personally? A. I should imagine, about two dozen.

Q. About twenty-four. So that would leave

about 140 you didn't know at all? A. About that, yes.

Q. If I came in the polling place, said I was John Smith, unless you knew me personally, you wouldn't know whether I was John Smith or not? A. No.

BY THE COURT:

Q. How long had you lived in that neighborhood? A. Lived there all my life.

Q. Had you ever served as an election officer before? A. No.

Q. What is your business? A. Ladies' and Gents' furnishings.

BY MR. SIMPSON:

Q. You spoke of a conversation between you and Mr. McCarthy and Mr. Unger—you were both in his office? A. Yes.

Q. You say he admitted certain names—two or three—were in his handwriting. Isn't this the fact—(I will withdraw that). You also said that he didn't answer. Isn't this the fact, didn't Mr. McCarthy say first to you, "Those names are in your handwriting?" You said, "No, they are not." Then didn't he say to Mr. Unger, "Those names are in your handwriting?" Mr. Unger simply was mum; isn't that what happened? A. No.

Q. What? A. No.

Q. What did you mean by saying that Unger didn't answer? What did you mean when you said that? A. When he asked him—what is that?

Q. What did you mean when Mr. Vickers asked you to describe this conversation between you and Mr. McCarthy and Mr. Unger, you said, "Unger didn't answer?" A. Because he hesitated

at first.

Q. Did he— A. He knew what he had done.

MR. SIMPSON: I ask to have that struck out.

THE COURT: It may be struck out.

Q. I ask you again, about that conversation—is it the fact that Unger didn't answer, as you swore on direct?

MR. VICKERS: I object. It contains an unwarranted assumption of fact.

Q. Did you swear on direct, in describing this conversation, that Unger didn't answer? Did you so swear? A. I said he didn't answer on the first name that was questioned to him, but he answered on the second.

Q. That is what you say now? A. Yes.

Q. You say that is how you testified when Mr. Vickers was asking you the question? A. I am positive of that, yes.

Q. How long did this conversation last there? A. I was in the office fully twenty minutes. Then Mr. Egan called me out. I don't know what occurred then.

Q. Did you go in with Unger, or was he there when you got there? A. We both went in together.

Q. You left him there? A. Yes.

Q. You don't know what conversation he and Judge McCarthy had then? A. No.

Q. How long did you say you were in there with Unger? A. Twenty minutes, half an hour at the most.

Q. Did you point out to Judge McCarthy in the poll book, the names in your handwriting? A. I did, yes.

Q. What book do you say Unger admitted his

writing was in—the poll book or the registry book? A. The poll book.

Q. The poll book is used by you to enter the names in, on this side, the name of the man who also signs it—the voter? A. Yes.

Q. What is your purpose in entering the name? A. The same as a clerk would do that, put the name in the poll book, and it is rechecked from the registry.

Q. It is a record? A. It is a record, yes.

Q. However, the man is supposed to sign it, sign the poll book. Is he supposed to sign it more than once? A. Once.

Q. Does he sign on the same page that the clerk enters his name in? A. Yes, same line, same page.

Q. That the clerk enters his name on? A. Yes.

Q. Was there any rush there of voters? A. Certain times there was, yes.

Q. When would that rush be? A. In the afternoon.

Q. What would you do during the rush? A. Same as I did all day.

Q. You had to keep your attention on what you were doing? A. Yes.

Q. Then a man had to keep his attention fixed on what he was doing so there would be no mistakes? A. Yes.

Q. What was the greatest number of people appearing, or waiting, to vote at one time? A. Three.

Q. What do you mean by a "rush?" A. You would call that a rush, wouldn't you?

Q. Three? A. Yes.

Q. Who was in the place beside the election officers and the three voters—challengers? A. I don't remember any challengers.

Q. Who would legally be there?

MR. HUDSPETH: I object.

MR. SIMPSON: Question withdrawn.

Q. Who were there during this election,—the officers, the voters, anybody else? A. There was men in and out there; I don't know who they were.

Q. How big was this place? A. The place must have been five feet long, eight feet; five by eight.

Q. Pretty crowded? A. Close quarters.

Q. Light good? A. Yes.

Q. Electric light? A. Gas light in the latter part of the day.

Q. Before that? A. Day light, in front—

Q. Was this a barber shop? A. Tinsmith.

Q. Where was the polling place,—in back of the shop? A. In front of the shop.

Q. How many booths did you have there? A. Three.

Q. After you counted the votes and signed the return what was done? Did you put the stuff in the box and lock it up? A. Yes.

Q. Who took it to the city clerk? A. Unger and Kelly.

Q. You didn't go with it? A. No, I didn't think it was necessary.

Q. Who was the other Republican member of the Board? A. Mr. Kelly.

Q. Unger and Looney were the Democratic members? A. Yes.

THE COURT: There has been an offer made in relation to these two books. You asked the right of cross-examination.

MR. SIMPSON: I object to the admission of the poll book at this time because there is no proof its condition now is the

same as it was at the close of the election.

THE COURT: I will admit the books in evidence. They may be marked.

MR. SIMPSON: I ask an exception.

(Exception allowed and signed and sealed accordingly.
George G. Tennant, Judge.
Seal).

(The signature book is marked Exhibit S 4 in evidence. The poll book is marked Exhibit S 5 in evidence).

REDIRECT EXAMINATION by Mr. Vickers.

Q. Calling your attention to S 5, the poll book, under Pavonia Avenue, the name of William Leff, 156 Pavonia Avenue, vote number 129, I ask you to examine that book, on the signature side, and say whether that is the place where you erased the name of Toback, as you testified to. A. Yes. You can see it.

Q. With respect to Mr. Clarence McKenna, how long had you known Mr. McKenna? A. Ever since he is a little baby.

Q. Is Clarence McKenna in court? (No answear).

Q. With respect to the conversation between Mr. McCarthy and Mr. Unger, that you testified to, did you after that conversation had taken place, have any conversation with Mr. Unger, relating that conversation? A. No.

Q. After that, did you see Mr. Unger? A. He was present there, yes.

Q. What do you say? A. He was present in the board.

Q. After that day at the office did you see

him again and did you have any conversation with him with regard to it? A. Over that, no sir.

Q. After you had been in Mr. McCarthy's office? A. After Mr. McCarthy's office, yes. I seen him since then.

Q. Did you have any talk with Unger as to what had taken place at the polling place on election day with respect to the conversation in Mr. McCarthy's office? A. I said nothing to him about the polling place. I spoke to him about the conversation he had with Mr. McCarthy.

Q. What conversation did you have with Mr. Unger after you had been at Mr. McCarthy's office? Where was it, and when, and under what circumstances? A. I went up to his house to deliver a package to his wife, and previous, during the day, his sister-in-law or sister came in the store and wanted to know whether I had seen Mr. Unger, he had went away that Friday night—

Q. Never mind.

MR. SIMPSON: I object.

THE COURT: I will strike that out.

Q. Come to the time you had the conversation with him. A. His wife told me he was away.

MR. SIMPSON: I object.

Q. Never mind that. You cannot testify to that. A. Then the conversation was on Monday morning, Monday noontime, at the store.

Q. What store? A. My store.

Q. Where is that? A. 484 Grove Street. He came in, he wanted to know what was new. I told him there was nothing new. I asked him where he was, what did he go away for? I heard he was away through his sister. He said he was

away on a business trip. I said, "You should stand your ground if you feel certain you are innocent, don't be afraid of anything. If you know the truth, tell it, it would be the best for you." That was all that was said.

Q. In the course of that conversation was the interview in the Prosecutor's office referred to either by you or Mr. Unger?

MR. SIMPSON: I object. This witness has just been exhausted on that conversation. That is a leading question. He is asking him about something he has not testified to, and the witness said he had given the whole conversation.

THE COURT: I will allow it.

A. I guess it might have been referred to by me, brought out the office, being he said he wanted to know if there was anything new. If my memory is right now, I think he said he had hired Mr. Simpson as his lawyer to defend him. And I said to him, "What did you do that for?" He said that he needed a lawyer to defend him in this case. That was about all I can remember now, in my mind.

Q. With respect to the conversation you have related on cross-examination, about working in harmony; who was present in the polling place at the time of the conversation about your working in harmony? A. I can't recall who was present, but I know Mr. Unger said that.

BY THE COURT:

Q. Were all of the District Election Board there? A. They were, yes.

Q. Four members? A. Yes.

Q. Two men besides yourself? A. Yes.

Q. Was anyone else there? A. Not to my knowledge, at that time.

Q. That is what he wants to know..

BY MR. VICKERS:

Q. Do you know Mr. John Kane? A. John Kane, yes.

Q. The committeeman down there in that ward? A. Yes.

Q. Was he there at that election district and polling place on the day of the election? A. He was in and out, yes.

Q. What conversation had you or any of the members of the Board with Mr. Kane on that occasion respecting the election? A. I had none. I done know about the others. The others were talking to him. I had nothing to do with him.

Q. What was done at that time by the members of the Election Board or Mr. Kane with respect to the conduct of the election? A. I couldn't say whether anything was done by Mr. Kane or not. I can't swear to that. I know there was a list of names of voters taken from the registry.

Q. Who took them? A. Mr. Kelly.

Q. What was done with that list? A. I don't know what was done with that.

Q. Was that while Mr. Kane was present? A. No.

Q. What time of day was this when Mr. Kelly took the list? A. It was in the morning.

Q. From what was the list taken? A. From the registry book.

Q. This book that has been used by you here? A. Yes.

Q. This Mr. Clarence McKenna—is that the man who lived at 139 Ninth Street? A. I think it is Ninth Street.

Q. Did you see him there on that day? A. Yes.

Q. Do you know whether he voted there on

that day? A. He came in while I was there, I was starting to put his name down in the book when somebody called him outside, and he never came back. I looked at the poll book—he never came back. I looked at the poll book and found his name already signed. That is all I know about that.

Q. Where you looked in the poll book and found his name signed, do you know whether or not Mr. McKenna had votel and signed that name? A. No, I couldn't swear to that, because I don't know.

RECROSS-EXAMINATION by Mr. Simpson:

Q. But if a man had come in to vote as McKenna—was it Clarence McKenna? A. It was not Clarence McKenna.

Q. If anybody came in to vote as Clarence McKenna while you were there, you would have known it was not Clarence McKenna? A. Yes.

Q. You would not have let him vote? A. No.

Q. As far as you know, no other man voted on the name of McKennaa? A. No.

Q. You wouldn't let him do it. I understand you to say you told Unger he shouldn't hire a lawyer. Don't you think lawyers have a right to make a living?

MR. HUDSPETH: He didn't say that.

Q. Didn't you say that Unger told you that Simpson was his lawyer, and you said, "Why do you want to hire a lawyer?" Do you want to grab the lawyers' fees? A. No, that didn't make any difference to me.

Q. You say you said to him, "You know you are innocent, stand your ground, you don't need any lawyer?" A. Yes, certainly.

Q. That was after the interview in the Prose-

cutor's office? A. Yes.

Q. You said to him after that interview, "You know you are innocent, stand your ground?" A. I didn't say he was innocent at all.

Q. What did you say about innocence? A. I said, "If you think you are innocent, don't be afraid, stand your ground."

Q. You thought you were innocent? A. Yes, I think I am yet.

Q. You stood your ground? A. Yes.

Q. You were a member of the same Board, and you said to him, "If you think you are innocent, stand your ground?" A. Yes.

Q. You didn't think it necessary to have a lawyer? A. No.

Q. You haven't found it necessary? You are not being tried? A. Well, of course—

Q. You would write your names in blue ink. Did you use a fountain pen? A. Yes.

Q. There were other pens there? A. Yes.

Q. When you would write the name in blue ink the man would take the ordinary ink and sign his name? A. Either that or my pen.

Q. Which did he do? A. He did both—not one man, but used both pens.

Q. Here is a signature, Francis Donahue, Jr. That looks to me to be green ink, or blue ink. Is that made by him,—No. 131? A. Yes. That is my writing (indicating).

Q. Did you write the name of the voter? A. No. He used my pen.

Q. He used your pen? A. Yes.

Q. Don't you think there is a certain similarity between the "F" of Francis, in the signature, you say was made by the voter, and the "F" made by you? A. No.

Q. Don't you think there is any similarity? A. No.

Q. But you are sure you didn't write it? A. Yes, I am positive; not sure, but positive.

Q. What is the etymological distinction between "positive" and "sure?" A. I am sure, then.

Q. You are not sure, but you are positive? A. One way or the other.

Q. This book does not seem to have been kept in alphabetical order; you have M under A. What was the idea of that?—James Murphy under A. What is the idea of that—and Henry Schwartz and Frank Kudeck? A. That is on Grove Street.

Q. You did it under streets A. Yes.

Q. (By the Court). Why do you keep Provost Street under A? A. I don't know why that was done. Mr. Unger had that idea. "B" was under Boats.

Q. When you came back from lunch—I don't mean to repeat, but I want to get this fixed in my own mind—when you came back at half past one the highest numbered vote when you came back was seventy-two? A. Seventy-two, yes.

Q. That is about it? A. Yes.

Q. There were a lot of names mentioned in this indictment—do you remember whether you wrote in the book the name of Murphy, Minsch, Wright, Fox, Coursen, Sheehan, Clarence McKenna, Michael Kelly, James Murphy, Julius Newman, James Kelly, Peter McVey, Benjamin Toback, and Joseph Kelly? Did you write any of those names? A. I cannot remember, only by the poll book.

REDIRECT EXAMINATION by Mr. Vickers:

Q. Mr. Simpson has called your attention to the signature of Francis Donahue, Jr., and on the same page I call your attention to the first name, Frank Donahue. A. That is the father.

Q. That is the father? A. Yes—Senior.

Q. Were you there at the time that vote was

cast, do you remember? A. I couldn't say that, no.

Q. With regard to the number of votes cast up to the time of your going to lunch, do you remember what the number of the vote was? A. I think that was thirty-five, if I ain't mistaken.

Q. Do you remember the person? A. No.

Q. Directing your mind again to the conversation had with Mr. Unger after the visit to the office of the Prosecutor by yourself and Mr. Unger, do you remember whether at that time anything was said about an affidavit said to have been made by Mr. Unger in the meantime? A. I don't just recollect now, no.

BY MR. HUDSPETH:

Q. Why did you put these names down in the poll book by street instead of alphabetically? A. I don't know why that was done. That was the instructions to me, that was all.

Q. Who started it, do you know? A. I don't know, no.

Q. Was it started the first thing in the morning, to your knowledge? A. It must have been started the first thing in the morning.

Q. Didn't you know you ought to do it alphabetically? A. No, I didn't. I don't know how the thing worked out at all.

Q. Who suggested it? A. Mr. Unger was Judge. He suggested it.

BY MR. SIMPSON:

Q. You passed the Civil Service before you were appointed? A. No, I did not.

Q. You were not appointed by the County Board, or the Judge, or how? A. I was appointed by the County Board of Elections. I have received a notice from there.

BY MR. VICKERS:

Q. When you went to your lunch, and when you went out these various times, when you say you went out for ten minutes or so at a time, to get a pack of cigarettes, and when you were gone for your supper, did you men, with the other members of the Board, close the polling place—that is to say, put the box and so forth in such a position that no votes would be taken during your absence? A. No.

Q. Were there any members of the Board absent at any time during the course of the election that day, other than yourself? A. There was two men at one time on the Board, and two returned, and then the other two would go.

Q. During any of those intervals, when one or more of the members of the Board absented themselves, was the polling place closed, and an official recess taken by the Board— A. No, it was not.

Q. —until all four members should return? A. No.

BY MR. SIMPSON:

Q. At times there were two there and two absent? A. At times there was three there and one absent.

Q. There was always three there? A. Either two or three.

Q. Three would relieve one to go out to eat, and he would come back and another fellow would go out to eat? A. Three would relieve, two would relieve.

Q. There were times you were there with one man? A. Yes.

Q. Who was the man? A. It was Judge Unger.

Q. Then the other two would be away? A.

Yes.

Q. So that Unger and you were there when the other two were away? A. Yes.

BY MR. HUDSPETH:

Q. How did you number the names? A. According to the ballot.

Q. The number of the voter on the left hand page? A. Yes.

Q. Did you do that as they came in? A. Yes, as they came in to vote.

Q. As each man voted? A. Yes.

Q. You would number the vote consecutively, but place the name not alphabetically, but according to the street? A. I think that was the idea, that each number of the street would show the voter there, not the number of the ballot, if I ain't mistaken.

Q. When the first voter came in and voted he was numbered One, was he, on the poll book? A. Number one in that street, yes.

Q. Second man, number Two? A. On that same street.

Q. On that same street? A. Yes.

Q. You didn't enter them alphabetically? A. No.

MR. SIMPSON: I don't object to this examination, but it is outside the indictment. It is not charged in the indictment. If the State says that this evidence—

MR. HUDSPETH: I don't say that. I want to show the modus operandi.

Q. You say when you went at noon, thirty-five was the last number? A. The last number on the ballot number.

Q. We will find 35 here. It appears to be

Calibrese Angelo. Do you know whose handwriting that is? A. It looks like Mr. Unger's handwriting.

Q. You will notice on the page following the name of Newman, Charles, Number 65; right? A. Must have been the number, yes.

Q. Dixon, Thomas, Number 66?

MR. VICKERS: What street?

MR. HUDSPETH: Henderson Street.

Q. Then it jumps from 69 to 91. A. That must have been the way they arranged it from the ballot number.

Q. What do you mean? A. Number 65 must have been 65 on the ballot.

Q. You think that is the number of the ballot? A. Yes.

Q. That would be the first as they came from the booth, by the voter? A. Yes.

MR. VICKERS: That is not right.

Q. How did you get the numbers? A. That is the only way,—I see this writing.

Q. Do you know? A. Do I know?—yes, that is the only way I do know.

Q. I call your attention again to Number 35, Calibrese Angelo, which is Angelo Calibrese, as the man signs his name; then the number following, where did you get those numbers in that order? A. From the number on the ballot.

Q. How did you get the number on the ballot? A. If there was sixty-five voted, this is number sixty-five—must have been Charles Newman.

MR. SIMPSON: I object—"must have been." This witness is drawing conclusions. It is apparently hazy surmise.

Q. If you don't know how that got to be numbered 65, say so. A. That is the way, I am sure of it, that is the way it was done, on account of the number of the ballot, that went down alongside the voter's name.

Q. Did Angelo produce ballot thirty-five, it was entered on the margin? A. Yes.

Q. Newman produced ballot 65, it was entered up along side? A. Yes.

Q. I call your attention to ballot 36, Thomas Hill. A. Yes.

Q. You will notice a lot of numbers following in consecutive order, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, to the bottom of the page; do you mean to say that if your explanation is correct, that they were all taken from the ballots as they were produced by the voter? A. Because they all came in from one street.

Q. All the one street? A. Yes.

Q. All voted from one street, one after the other? A. Yes.

Q. So far as the poll book indicates? A. Yes.

BY MR. SIMPSON:

Q. Do I understand you to say that the numbers depend upon the ballot which the voter produced? For instance, a man would come up with ballot 35, if the next one came up with 65, you would enter 65 under 35, if it was the same street? A. That is the way it was put, yes.

BY MR. VICKERS:

Q. At what time in the proceeding was the number of the ballot placed before the voter's name, if you know? A. The number was put down there after he had signed his name.

Q. Certainly after he was in the booth, isn't

that so? A. Yes.

Q. You didn't get the number, as you told Judge Hudspeth, after it came from the booth, did you? A. That is the same thing. You got to vote before you register the ballot.

BY THE COURT:

Q. You required them to vote in the order in which the ballots had been given to them, as they went in the booth? A. Yes.

Q. If a man took a little longer to prepare his ballot than the man who came behind him, you would make the second man wait until he voted? A. No, we wouldn't hold him if there was one of the booths open.

Q. That is what he asked you. When was the ballot given to the voter? A. It was given to him after he signed his name in the poll book.

Q. He signed as he came in? A. Yes.

Q. Then he would go in the booth to prepare the ballot for voting? A. Yes.

Q. If another man came in and signed his name in the poll book, as you required, he would be given a ballot? A. Yes.

Q. With a number on it? A. Yes.

Q. If the first man didn't come out until after the second man had come out with his ballot prepared, would you wait? A. There was three booths there, there always happened to be one open, but if there was only two—

Q. The question is whether you required him to vote in the serial number according to the way the ballots were given out? A. Well, they did.

Q. It so happened, that way? A. Yes.

Q. What they have been asking you—I don't understand it myself—take this page, indexed under letter Q. In that case, what does "Q" refer to? A. That continues on Pavonia Avenue, be-

cause they haven't enough pages.

Q. Carried from "P?" A. Yes.

Q. All those under "Q," are simply carried from "P" in the index? A. Yes.

Q. Do you mean to say that all these names registered, respectively, numbers 27, 28, 29, 30,—down to 53, voted in the order in which they are indicated there? A. Yes, these names are set down by themselves individually, yes.

Q. All from Pavonia Avenue? A. Hmmm hmmmm.

Q. All on Pavonia Avenue? A. That is the way it appears to be, if they came in consecutively, or one after the other, one number, 34, one after the other, 35, 36, each had a number of his own.

VALENTINE HILL, a witness produced on behalf of the State, being sworn, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 207 Academy Street, South Orange, New Jersey.

Q. What is your business? A. President of the Hill & Newman Company, employed in the manufacture of packing boxes, on 9th Street, running from 111 to 121 Ninth Street.

Q. 111, 113, and 115—those premises are occupied by the Hill & Newman Company? A. At the present time?

Q. Yes. A. Yes.

Q. When did this concern take possession of these premises, in the business you have described? A. 117 and 119 were taken in 1912. 111, 113 and 115, I took possession of them on November 1st, 1916.

Q. A year ago last November? A. Yes.

Q. Subsequent to October 16, 1917, did anyone reside in those buildings or either of them—

111, 113 or 115 Ninth Street? A. No. The last parties that moved out of 115 was the day after election, in 1916.

MR. SIMPSON: Is this in the indictment?

THE COURT: I don't know.

A. (Continuing). That was an employe of ours.

MR. SIMPSON: I object unless it is within the indictment, that we are charged with allowing some one to vote from this address. We are entitled to be informed of the nature of the accusation against us.

THE COURT: There is an omnibus clause in the indictment which says "divers other persons." I suppose, if the indictment had not given the names as it has given them, you might have applied for a bill of particulars.

MR. SIMPSON: I have the names here.

THE COURT: What is in my mind—having attempted to give particulars, whether that precludes them.

MR. VICKERS: We contend, and the indictment charges that with respect to certain names, which are given, and divers other names to the grand inquest unknown at the time of presentation, those names at the time of trial we may be able to supply, and if we are able to supply them we are entitled to supply them, because it shows knowledge, wilfulness, intent, on the part of this Election Board. In other words, if

the indictment showed but one person, the State contends that nevertheless we would be entitled to show the conduct of the Board, in order that the jury therefrom might judge whether or not, with respect to the one person named in the indictment, the act of the Board was wilful and corrupt.

MR. McCARTER: I have been over this indictment, I fail to see how it is possible, under the three counts that it contains—or four—to undertake now to prove as a dereliction of duty the fact that certain men were permitted to vote from an address that was not their regular address. There is no such charge. As I understand this witness's evidence, he is called to show that he had a factory at a certain place where certain people are registered as having voted from. There is no such charge in the indictment. They cannot prove knowledge or wilfulness, which is essential to the charge in the indictment, by proving some other alleged crime not charged. There is no claim in this indictment that this Board permitted men to vote from an address where they didn't live. That is the effort, as I understand it, and the charge, as I read it, is that these people wilfully permitted certain men to vote in the names of these dozen names mentioned, that they aided and abetted certain men to vote in their names, and that certain people undertook to impersonate these individuals, that they wilfully permitted them to do so, without challenging them or comparing their signatures. That is the total charge. Now the effort is to prove another crime.

THE COURT: Is it another crime?

MR. McCARTER: Other than charged.

THE COURT: Is it another crime that they are trying to prove?

MR. McCARTER: I confess I am not familiar—to say whether it is a dereliction of duty on the part of an election officer to permit Robert H. McCarter to vote from an address which is a factory. That is what they are trying to prove. That is not charged. If not charged, how does it prove the offence charged? You cannot prove one offence by proving another. It is immaterial and irrelevant, and they are seeking by innuendo to do these defendants harm by proving they permitted men to do that with which they are not charged with having permitted them to do.

MR. HUDSPETH: Mr. McCarter says it would be wrong to allow Mr. McCarter to vote from this factory. It might be wrong, but not wilful and corrupt, unless we showed the wilfulness and corruption. If we show general conduct on the part of this Board, which is antecedent and following the acceptance of his vote—they accepted a lot of other votes, of dead men and repeaters, we would be showing wilfulness and corruption in connection with the allowance of his vote.

MR. McCARTER: I may misunderstand the claim of the State. If so, I want to be corrected. I don't understand there is any charge in this indictment at all covering the case where men are permitted

to vote who did not live where they voted.

THE COURT: Give me a minute. I have not had an opportunity to look at this indictment. I want to see what the charge is. See if we can get our minds together as to the sequence of the indictment. The charge is that these men were members of the Election Board, that acting as such they knowingly and fradulently received and deposited in, and caused to be received and deposited in the official ballot-box, the votes of divers persons whose names are to the grand inquest unknown, whom they, naming the defendants, then and there well knew then and there impersonated and voted upon the names of the following named persons; that is to say, as I understand the indictment, they permitted men to vote upon the names of Murphy and so forth who were registered, and upon the names of divers other persons then and there registered, whose names are to the grand inquest unknown. What is the effort now being made?

MR. VICKERS: We propose to couple the evidence we are now producing; that is to say, at a given place which is at the time of the election a factory, there were registered persons as residing there, that the exhibits now in evidence will show that from this place there were certain persons registered as residing. We are entitled to show, if we can, either by knowledge of the persons themselves, that is on the part of the Election Board, as to the persons themselves, which were said to live there, or to the knowledge of the defendants, that it was, for instance, a well known fact that

this factory had moved into the neighborhood, occupied those premises, and it was not a place of residence. It is competent, evidential, material and relevant, to show what the knowledge was, what the wilfulness was, on the part of these election officers, with respect to their other acts there. For instance, if the polling place had been at 111 Ninth Street, in the office of the Hill & Newman Company, and the buildings manifestly constituted a factory, and it was perfectly manifest to anyone who looked that they were not residences, and notwithstanding that this board permitted persons to come there and vote, as residing at 111 Ninth Street, we would be entitled, under this indictment, in order to disclose to the jury the knowledge, the wilfulness, and the intent of the Board, with respect to any act that they did, which was charged in the indictment; on the theory, exactly, as in a case of obtaining money under false pretences, on a check, we are entitled to show conduct precedent to a certain transaction. It proves an independent crime, to be sure, but that is not the purpose, the purpose to prove the crime so that the jury may infer a likelihood to have committed the one charged; but to bring home to the defendants the knowledge and the wilfulness of their acts. It seems to me that for that purpose a series of crimes may be shown, not at all as proving a likelihood, not by proof of an independent crime to attribute a likelihood on the part of the defendant to commit the crime charged, but to bring home knowledge of the situation.

For instance, receiving stolen goods, we have the right, if it is charged that the re-

ceiver bought at a price which is below the market—know that the goods must have been stolen—if he bought copper which at the market is worth twenty-four cents a pound, and he bought it for four cents, we would be entitled to show that he bought it for four cents, we would be entitled to show that he bought copper within the last six months at a given market price, we would be entitled to show that he had bought other copper and had sold copper, at a higher price, in order to show one of the elements which the law says go to make up the crime of knowingly receiving stolen goods.

So, to prove wilfulness, we have the right to show the conduct of this Board with respect to the others—covering the point "other persons unknown to the grand inquest."

MR. McCARTER: This indictment is based merely upon the theory of false impersonations—that they permitted John Jones to vote on the name of Peter Smith. My theory—my understanding of the rule is when you specify a dozen of these names, as they have, a general allegation is useless. Also, we are not now confronted with the question whether we can be properly confronted with evidence of some thirteenth man being impersonated, beyond the twelve named; what the State is seeking to do is not to prove the crime of false impersonation, but to prove a dereliction of duty on the part of these defendants in that they permitted somebody to vote from —the site of this Court House—obviously not a residence. Of course that cannot be done.

I do not say that it is not possible for an election board to permit John Jones, who says he lives at a vacant lot, to vote, and if they did permit him to vote, they would be derelict in their duty; but how prove the crime of false impersonation, a crime which requires knowledge and wilfulness—being wholly statutory—by proving some other violation of law, namely permitting a man to vote from a vacant lot or from what is notoriously a factory? That cannot be done, as you cannot prove that A. B. committed murder by proving he was an adulterer.

THE COURT: I would like to hold this. Can you take up another question?

(The question and answer re-read by the Stenographer—

Q. Subsequent to October 16, 1917, did any one reside in those buillings or either of them—111, 113 or 115 Ninth Street?

A. No. The last parties that moved out of 115 was the day after election, in 1916).

MR. SIMPSON: We will stipulate the fact is whatever the witness will say. If His Honor says it may be received, you need not hold the witness here.

THE COURT: You will not have to hold him long. I do not think I should pass it by lightly.

(Witness excused).

HENRY MINSCH, a witness produced on behalf of the State, being sworn, testified as follows:

DIRECT EXAMINATION by Mr. McCarthy:

Q. Where do you live? A. Erie Elevator, Pavonia Avenue.

Q. How do you spell your name? A. M-i-n-s-c-h.

Q. First name Henry? A. Henry.

Q. You are Captain of a boat? A. Yes.

Q. What boat? A. Bushey.

Q. How long have you been captain of the boat, "Bushey?" A. Little over three years.

Q. Do you vote in Jersey City? A. Yes.

Q. Did you vote at the special election for Commissioner on Teusday, October 16, 1917? A. No sir.

Q. Where were you on that day—do you know? A. I was out somewhere. I don't know really where I was, I didn't keep track, but I know I didn't vote.

Q. I show you what purports to be a signature of Henry Mint, of the Boat Bushey, Erie Railroad, in the poll book, State's exhibit 5, and ask you whether or not you signed that. A. No sir.

Q. That is not your signature? A. No. No sir, it is not. On the registry, you will find mine.

Q. I show you S 4, being the registry of the November election, 1916, and ask you if that is your signature, Henry Minsch? A. Yes.

Q. That is your signature? A. Yes.

BY THE COURT:

Q. Do you know anyone on the boat by your name other than yourself? A. Myself and wife, that is all.

Q. A man who could vote. Was there anyone on the boat having any name like yours? A. No.

Q. Son or father or brother? A. No.

Q. No one by your name? A. No. Only got one brother, he is in Oneida. Nobody but myself.

BY MR. McCARTHY:

Q. How old are you? A. Seventy-two, going on seventy-two, the twelfth of next July, I will be seventy-two.

Q. When? A. Seventy-two the twelfth of next July.

Q. How long have you lived in the State of New Jersey? A. Something like fifteen or sixteen years.

Q. Where were you born? A. I was born in the Old Country. When I was a baby I come over the water. That is all I can tell you.

Q. Where? A. I don't know the place from Adam.

Q. It wasn't Germany? A. Place they call Roosia—not Roosia, no—next to Germany, this way; Holland.

Q. Holland? A. Yes, Holland.

CROSS-EXAMINATION by Mr. Simpson:

Q. You are a boatman? A. Yes.

Q. During the fifteen or sixteen years you say you have lived in New Jersey, you were a boatman? A. Yes.

Q. Go all over with your boat? A. Yes.

Q. What kind of a boat—tugboat? A. Grain boat.

Q. Where would it go? A. We get loads here, at the Erie Elevator, goes all over the harbor.

Q. All over New York harbor? A. Yes.

Q. When you tied up, did you tie up in New York? A. Sometimes in New York.

Q. Sometimes you would, but your home is on the boat? A. My home is on the boat.

Q. You live at the Erie Elevator? Didn't you say that was your address? A. Yes.

Q. Is that the address you gave—Erie Eleva-

tor? A. Yes.

Q. When registering you would give that address? A. Yes.

Q. Not the boat, Bushey. You would give Erie Elevator as your address? A. Yes.

Q. That is your address? A. Yes.

Q. You are a stranger? Your friends are not made up of people around the neighborhood, are they? You didn't know many people up in this neighborhood, did you, up in Henderson Street? A. Oh, yes, I used to live there, in Third Street.

Q. How long ago? A. I lived three years in Third Street.

Q. How long ago? A. That is about eight or nine years ago.

Q. You know the neighborhood is largely Hebrew and Polish people. A. I moved away from there, on Grove Street and Pavonia Avenue, over the bank, lived there for a while.

Q. How long have you lived at the Erie Elevator? A. I lived there, I have been living there a long, long time, it is now, but I lived there certainly fifteen years, on the boat.

Q. On the boat? A. Not just one boat, but different boats.

Q. Before you went to live on the boat, you lived on Henderson and Grove Street? A. Oh, yes, long before that.

Q. Before that? A. Yes, sent the children to school, moved to the shore.

Q. But your friends and acquaintances are principally boatmen, aren't they? You didn't know—. A. Oh, yes, yes.

Q. You live down at the foot—where your boat lies, down at the foot of Pavonia Avenue? A. Yes.

Q. Did you vote at the election in November, 1916? A. No, I didn't, not that time.

Q. Didn't vote at the election? A. No.

Q. When was the last time you voted? Do

you know? A. I cannot remember that—presidential election was the last vote I voted.

Q. That would be 1916? A. Yes, that is the last I voted.

Q. You did vote then, did you? A. Yes.

Q. When before that had you voted? A. I didn't vote in Jersey at all.

Q. Is that the first time you voted in Jersey? A. Yes.

Q. Where did you vote? A. I voted up in the New York Central.

Q. In New York State? A. Yes, I used to work there.

VALENTINE HILL, recalled.

BY MR. VICKERS:

Q. (Read by Stenographer). Subsequent to October first, 1916, did any one reside in those buildings, or either of them, 111, 113 or 115 Ninth Street?

A. (Read by Stenographer). No, the last parties that moved out of 115 was the day after election, 1916.

MR. SIMPSON: I object. This is irrelevant and incompetent. It charges a different crime. It does not tend to show knowledge on the part of the defendants, being not connected up with them. The mere fact that this man is about to testify no one lived in this house—the so-called omnibus clause in the indictment is mere surplusage, because the charge that they did certain things cannot be amplified, the charge that we did certain things in reference to this man cannot be amplified by proving another man. It is well known that the crime proved must be the crime

alleged in the indictment. On the contrary, this is an attempt to prove something not alleged in the indictment.

THE COURT: I will overrule the objection.

MR. SIMPSON: I ask an exception.

(Exception allowed and signed and sealed accordingly.

George G. Tennant, Judge.

Seal).

Q. (By the Court). Go on. Finish your answer. A. We took possession of this property on November first, part of the premises was occupied by one of our employes, who asked me as to whether I would allow him to stay in there—

MR. SIMPSON: I object to the conversation.

Q. (By the Court). Don't tell us anything about that.

MR. VICKERS: As far as the State is concerned the question is answered.

MR. HUDSPETH: What was his answer?

MR. VICKERS: That nobody lived there.

THE COURT: Nobody lived there after —

MR. VICKERS: After November first, 1916, a year ago last November.

Q. (By the Court). That is inclusive of what time? A. With the exception of this one party who desired us to allow him to reside there until he voted.

Q. (By the Court). What was his name? A. Brown, our employe was a boarder by the name of Kelly.

Q. Cornelius Kelly? A. Cornelius Kelly, yes.

Q. How long did he reside there? A. Until the day after election. Then they moved to Greenpoint.

Q. What election? A. Election of 1916, Fall Election.

Q. Since the general election, the presidential election, of 1916, has anybody resided in 111, 113 or 115 Ninth Street? A. No sir.

Q. The premises occupied by you? A. No sir.

MR. SIMPSON: I object.

THE COURT: Objection overruled.

MR. SIMPSON: I ask an exception.

(Exception allowed and signed and sealed accordingly.

George G. Tennant, Judge.

Seal).

Q. What sort of a building is this? A. It was originally a dwelling house, five-story tenement house. We turned it into a storage house.

Q. That is to say, you occupied these three numbers— A.. 111 and 113 is simply frame shacks, we didn't occupy at all. We were compelled to lease that to secure the brick building, 113 and 115.

Q. Are they locked up? A. Yes, everything

is locked tight, three buildings locked up.

Q. (By the Court). Day time and night? A. Yes. We use it for dead storage.

CROSS-EXAMINATION by Mr. Simpson:

Q. You live where? A. South Orange.

Q. You have no social acquaintance around your factory? A. No.

Q. You don't know these three men? A. No.

Q. Never been in your factory? A. No.

Q. As far as you know, they don't know anything about your factory? A. No.

Q. These houses on the exterior look like dwellings? A. They were dwellings originally.

Q. What do you use them for now? A. Storage.

Q. Exterior, they look like dwellings? A. With the exception they are boarded up, that is all.

Q. Boarded up now? A. Yes.

Q. You say in 1916, however, you permitted two people to live there for the purpose of voting from there? A. They were tenants from the people before we got them.

Q. You allowed them to live there until after the presidential election? A. Yes—they rented their premises—to live there.

Q. Their names were what? A. Brown, and had a boarder named Kelly.

BY THE COURT:

Q. The Kelly you say, whom you say you permitted to occupy those premises—do you know his first name? A. Cornelius, one of my employes; since moved to Greenpoint, Long Island.

PETER FOX, a witness produced on behalf of the State, being sworn, testified, as follows:

DIRECT EXAMINATION by Mr. McCarthy:

Q. Where do you live? A. Canal boat Palestine.

Q. Are you Captain of that boat? A. Yes, captain.

Q. How long have you been living on the boat Palestine? A. Something over nine years.

Q. Did you vote at the special election for Commissioner in Jersey City on Tuesday, October 16, 1917? A. No sir.

Q. I show you what purports to be your signature, Peter Fox, in the poll book of that election, S 5, and ask you if that signature was made by you. A. No sir.

Q. I show you a signature of Peter P. Fox, in the registry of November 7, 1916, which is before that special election, S4, and ask you if that was made by you? A. Yes.

Q. That is your signature.

CROSS-EXAMINATION by Mr. Simpson:

Q. Where did you live, what boat? A. Palestine.

Q. How long have you lived on the boat Palestine? A. A little over nine years.

Q. You voted at the presidential election, 1916? A. Yes.

Q. When did you vote before that? A. There is a whole lot of times I wasn't going to vote at all.

Q. Your friends are in the harbor, you don't know any people up around 141 Pavonia Avenue? A. No, no, I am running around the harbor. I don't leave the harbor at all.

Q. Your home is really in the harbor? A. Yes.

Q. You don't know Unger, do you? A. Sir?

Q. Unger, or Looney, or Kelly, you don't

know them? A. No, I ain't acquainted with the gentlemen at all.

Q. It would be perfectly easy for anybody to come into them and say they were Peter Fox?

MR. VICKERS: I object. It calls for a conclusion.

MR. SIMPSON: I am getting his judgment of the fact. The contention is that these three men knowingly permitted some one to vote as Fox. If I can show by Fox himself that insofar as he knows it would be easy for any one to pass themselves off as him, it would be evidential.

THE COURT: I will overrule the question.

MR. SIMPSON: I ask an exception.

(Exception allowed and signed and sealed accordingly.

George G. Tennant, Judge.

Seal.)

Q. Your last vote before 1916, do you remember where that was cast? A. Last voting I done was for the presidential election.

Q. Before that? A. Well, might have been a year or two before that.

Q. How old are you? A. Seventy-three.

Q. How long have you been on the boat Palestine? A. Little over nine years.

Q. You are known well in the harbor? A. Yes.

Q. Where does she lie? A. In the Erie Elevator, in Pavonia Avenue.

Q. She goes all over the harbor? A. Yes.

Q. How far does she go up the harbor? To

what distance—to Brooklyn, to Bush Terminal? A. We are at Bush Terminal now.

Q. Right there? How long have you been there? A. Went there Saturday.

Q. Still there? A. Yes.

Q. It is your custom to tie up where you are? A. Wherever you are ordered to.

Q. How far do you go from Pavonia Avenue? A. From Pavonia Avenue?

Q. How far away would you go? A. To Bush dock is about as far as we go. Sometimes as far as 131st Street.

Q. Have you ever voted when you were tied up in New York? A. No sir, never voted in New York in my life.

JOHN WRIGHT, sworn on behalf of the State.

DIRECT EXAMINATION by Mr. McCarthy:

Q. Where do you live? A. On the boat John P. Irish.

Q. Are you captain of that boat? A. Yes.

Q. How long have you been living on that boat? A. A couple of years.

Q. Did you vote at the special election for Commissioner held in Jersey City, October 16th, last? A. No.

Q. I show you what purports to be a signature of John Wright, boat J. B. Irish, at that election in S-5, and ask you whether that is made by you? A. No sir.

Q. I show you a signature of John Wright in the registry of November, 1916 election, S-4, and ask you whether that was made by you? A. I think it is.

Q. You think it is. Did you vote? A. (Witness looks at the writing nearer to the right). This is my writing.

Q. When did you vote last in Jersey City?

A. I didn't vote in about fifteen years.

Q. You didn't vote at the Presidential election in 1916? A. I didn't vote in fifteen years.

Q. Not in fifteen years? (No answer).

Q. (By the Court). Did you register for the Presidential election? A. I registered once in Jersey City.

Q. When was that? A. Well, that is my handwriting there.

Q. On this registry, S-4, was that the only time you had registered in Jersey City? A. I think I registered once before.

Q. How long ago was that? A. Three or four years ago.

CROSS-EXAMINATION by Mr. Simpson:

Q. You didn't vote in fifteen or sixteen years? A. Fifteen years, maybe, yes.

Q. How old are you? A. Fifty-three.

Q. How long have you been living on this boat? A. I have been on that boat two years. I am around the Erie Elevator about nine.

Q. Where were you before that? A. Around the Erie Elevator about nine years.

Q. With boats? A. Not this boat—yes.

Q. With boats? A. Boats, yes.

Q. The same boat? A. Different boats.

Q. Do you know their names? A. Kittie Draper.

Q. What kind of a boat is this, Irish, you are on now? A. She is carrying grain.

Q. Goes by her own power? A. No.

Q. How? A. Tug boat.

Q. The same tug boat all the time? A. Well, two tugs tows out.

Q. You tie up anywhere you happen to be at night? A. Yes, but we are not lying there now we are in a flow of ice.

Q. Where? A. Forty-second street.

Q. In the terminal. How long trips do you make? A. It will take five hours or a month.

Q. You cannot tell? (No answer).

Q. (By the Court). Do you mean by reason of ice in the harbor? A. Without that, sometimes you can lie there half an hour, more times you lie there thirty-four hours.

Q. (By the Court). According to the way the work goes? A. Other boats may be there and the ships might not be ready.

Q. This is your signature, you say on the registry 1916? A. Yes, that is mine.

Q. You took the trouble to register? A. Yes.

Q. But you didn't vote? A. I don't know where I was.

Q. You identified that as your signature, did you? A. Yes, I guess it is.

Q. You guess it is. Do you mean it is? A. Yes, that is mine.

Q. Have you any clear recollection of going up to register? A. What?

Q. Any clear recollection of going up to register? A. Well, no, I haven't.

Q. Was it a barber shop or a saloon or a delicatessen shop or grocery store you registered? A. I know where I registered, is in that tin shop.

Q. Do you know whether you did or not? A. I ain't sure now.

Q. You are not sure? A. No.

Q. You don't know Looney or Kelly or the other fellow? A. No, I don't know them.

JACOB COURSON, sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. McCarthy:

Q. What is your full name? A. Jacob Courson.

Q. Any middle letter? A. No sir.

Q. How do you spell your last name? A. C-o-u-r-s-o-n.

Q. Where do you live? A. I live in Arlington now.

Q. What address? A. 389 David Avenue.

Q. How long have you lived in Arlington? A. One year.

Q. Can you tell us just when you moved there? A. It was in March.

Q. In March? A. Yes sir.

Q. In March, 1917? A. Yes.

Q. Last year? A. Yes sir.

Q. Where did you move from? A. Erie Elevator.

Q. Whereabouts did you live at the Erie Elevator? A. In a grain boat.

Q. What was the name of the grain boat? A. George B. Courson.

Q. What did you do with the boat in March? A. Lightered grain around the harbor.

Q. What? A. Boated grain around the harbor.

Q. Did you own the boat? A. Yes.

Q. What did you do with it in March of last year? A. Worked in the Erie elevator in grain. I couldn't tell you what I done at that time.

Q. When you moved to Arlington what did you do with your boat? A. I sold it.

Q. When did you sell it? A. Sold it in April.

Q. Last year? A. Yes.

Q. Last April? A. Yes.

Q. 1917? A. Yes.

Q. I show you the signature of Jacob Courson, in the registry book of November, 1916, S-4, I ask you if that is your signature, if you made that? A. No sir, I did not.

Q. You didn't make it? A. No sir.

Q. Did you vote at the Commission Government Election on Tuesday, October 16th, of last year? A. October 16th?

Q. Last year?

MR. McCARTER: I object. It is immaterial. There is no charge of anybody being permitted to vote who is not registered. This whole indictment is false impersonation, permitting people to vote on legally registered names.

MR. VICKERS: That is not the indictment—persons registered.

MR. SIMPSON: But he was registered.

MR. VICKERS: His name appears on the registry.

THE COURT: I will allow the question.

MR. McCARTER: I ask an exception.

(Exception allowed and signed and sealed accordingly.
George G. Tennant, Judge.
Seal.)

Q. (Repeated by stenographer). Did you vote at the Commission Government Election on Tuesday, October 16th, of last year? A. No sir.
Q. In Jersey City? A. No sir.
Q. I show you a signature alongside the signature of Jacob Courson in poll book S-5 of that special election and ask you if that was made by you? A. No sir.

CROSS-EXAMINATION by Mr. Simpson:

Q. You didn't register, yourself, in 1916, as I understand? You didn't make this signature, in 1916, did you? A. 1916?

Q. Yes, this election, only the Presidential election, this signature (indicating) you have already said you didn't make it? You didn't make that? A. No.

Q. You didn't make that? When was the last time you voted, do you remember? A. I voted for Hughes, Governor Hughes.

Q. Where did you vote for Hughes? A. Pavonia Avenue.

Q. For Hughes? A. Yes.

Q. 1916? A. Yes.

Q. But you didn't make this signature (indicating)? A. I did not.

Q. Who else was running when Hughes ran, do you remember, for President? A. Wilson, I think, wasn't it?

Q. (By the Court). That was the Presidential election in 1916, wasn't it? A. Yes.

Q. (By the Court). You voted at that election, did you? A. Yes.

Q. (By Mr. McCarthy). Where did you vote? A. Pavonia Avenue.

MR. SIMPSON: He said 141 Pavonia Avenue.

MRS. LIZZIE MURPHY, sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where did you live on the 16th of October, 1917? A. 494 Grove Street.

Q. You are a widow? A. Yes. sir.

Q. When did your husband, Mr. Murphy die? A. 1915, December 9th.

Q. December 9, 1915? A. 1915, the 9th.

Q. How long did you live at 494 Grove Street? A. Twenty-three years.

Q. Was there in October, 1917, on the 16th of

October, any John Murphy residing at 494 Grove Street? A. No sir, there was a John J. Murphy —

Q. What is that? A. There was a John J. Murphy, but my husband's name was John F. Murphy.

Q. (By the Court). There was what? A. John J. Murphy.

Q. (By the Court). There was a John J. Murphy there? A. Yes.

Q. (By the Court). He lives in the same house with you? A. Yes. He moved December a year ago.

BY MR. HUDSPETH:

Q. What? A. He moved December a year ago.

Q. (By the Court). Did John J. Murphy live at 494 Grove Street in October, 1917? A. No sir.

Q. (By the Court). Last October? A. No sir.

Q. When did he move away from 494 Grove Street? A. December.

Q. 1916? A. 1916.

Q. What was his business? A. Saloon keeper.

Q. On the premises there, or— A. No sir.

Q. —some other place? A. Pavonia Avenue.

Q. Pavonia Avenue and what other street? A. Provost, I guess, Provost.

Q. When? A. Oh,—1915—this is 1917?

Q. This is 1918. A. Yes, December a year ago.

Q. December, 1916? A. 1916.

Q. When Mr. John J. Murphy moved away from 494 Grove Street? A. Yes.

Q. (By the Court). Do you know where he is

now? A. To the best of my judgment he moved to Washburn Street.

Q. Jersey City? A. Yes.

Q. (By the Court). What part of the city is that? A. Right here, near the Court House.

CROSS-EXAMINATION by Mr. Simpson:

Q. John J. Murphy lived how long in the house there? A. I should judge about twelve years.

Q. Lived in a separate apartment? A. The same floor.

Q. But he didn't live in your household? A. I guess not—he had a wife and—

Q. He had his own household? A. Yes.

Q. Had a family? A. Yes.

Q. Are you sure he moved away a year ago December? A. I might be dreaming, I don't know.

Q. I mean as to time. I am not trying to be facetious as to time? A. The first of December, yes.

Q. Who came in? A. There has been three tenants since.

Q. Who is in there now? A. Brown.

Q. Who was there before? A. I couldn't tell you.

Q. Anybody named Murphy? A. No.

Q. How do you know whether it was or not—do you know? A. Positively.

Q. Do you know what the name was? A. Some German name, they were not Murphys. I didn't mix up with them.

Q. It was in the apartment, that you didn't know the name of— A. I think the other name was Rieman.

Q. Rieman, you think? A. Yes.

Q. What did that family consist of? A. Mother and daughter and husband, I believe.

Q. Did any of these three families have boarders? A. No sir.
Q. Do you know that? A. No.
Q. John J. Murphy is a saloonkeeper? A. Yes.
Q. Where? A. Pavonia and Provost Street, in partners with Mr. Reardon, I believe.
Q. Pavonia Avenue and what? A. Provost Street.
Q. Your husband's name was John S. Murphy? A. Yes.
Q. When did he die? A. December 9, 1915.
Q. So that John—think that is all.

HERMAN HOTKISS, sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. What is your full name? A. Herman Hotkiss.
Q. How do you spell your name? A. H-o-t-k-i-s--s.
Q. I show you the poll book S-5 and ask you whether you signed that poll book, the place that I point out to you? A. No.
Q. That name appears to be Herman Hotch—

MR. SIMPSON: May we have the benefit of our exception on this?

THE COURT: Yes.

MR. SIMPSON: We want to object to this line of testimony, people not mentioned in the indictment.

THE COURT: Yes.

MR. SIMPSON: We don't want to in-

terrupt the State.

THE COURT: Yes, it will be understood you object and the court overrules your objection. You may have an exception.

(Exception allowed and signed and sealed accordingly.
George G. Tennant, Judge.
Seal.)

Q. (Continuing). Hotchkiss—do you spell your name like that? A. No sir.

Q. Did you ever spell it like that? A. No.

Q. At the Commission Government Election on the 16th day of October, 1917, did you vote? A. No sir.

Q. At that time was your residence 486 Grove Street, Jersey City? A. Yes.

Q. I show you a signature, the signature copy of the registry, S-4, under the name of Herman Hotkiss, and ask you whether that is your signature? A. Yes.

THE COURT: S-4?

MR. VICKERS: S-4, the signature copy of the registry.

Q. In November, 1916, during the period of registration and at the time of the general election, did you live at 486 Grove Street? A. Yes.

Q. On the first floor of that building? (No answer).

Q. Do you know any of the defendants? A. No, the only one I know by name is Unger. The others, I don't know their names.

Q. Do you know them when you see them? A. I would not know their names, I would not know

who they were.

Q. How long have you resided in Jersey City? A. In Jersey City about twenty-five years.

Q. How long in the Second Ward ? A. About twenty.

Q. How long have you lived in the Second District of the Second Ward? A. About four years.

Q. How long have you known Mr. Unger? A. Intimately I have not known him. I don't know him intimately now either, but I know his name and I know who he is, that is all.

Q. Do you ever speak to him? A. Not any kind of conversation to speak of, probably pass the time of day, that is about all.

Q. How long have you known him to pass the time of day? A. Three of four years.

Q. Do you know where he lives? A. I don't.

Q. (By the Court). When you met him would he call you by name? A. No sir.

Q. Would you call him by his name? A. No sir, just the time of day, that is all.

CROSS-EXAMINATION by Mr. Simpson:

Q. As I understand, you simply knew who Unger was, you knew what his name was? A. Yes.

Q. But you had no intimate acquaintance with him at all? A. No sir.

Q. You had never been intimately associated with him, simply knew who he was, as you passed him, you spoke to him? A. Yes.

Q. You knew his name, but as far as you knew, he didn't know your name, he never called you by your name? A. His family knew me.

Q. He never called you by your name, did he? A. No, he didn't, as far as I can remember.

Q. Where do you live? A. 486 Grove Street.

Q. How near is that to the polling place? A. Two blocks.

Q. The polling place on Pavonia Avenue? A. Yes.

Q. What is your business, what are you employed at? A. Housefurnishing line.

Q. You sold goods? A. Yes.

Q. You knew a number of people in that ward, didn't know their names, but you knew their faces? A. Yes.

Q. You wouldn't know their names? A. Yes.

Q. People who pass your store? A. Yes.

Q. You know other people by name, simply because they are pointed out to you, somebody says, "There is Mr. Jones," and you knew people whose names you didn't know? A. In some cases I did.

Q. —but when some one would point them out to you like that? A. Oh, yes, went right on, from my head.

Q. You wouldn't remember—you didn't know these two defendants at all? A. Not at all, no sir.

Q. You say you voted at the Presidential Election, 1916? A. Yes.

Q. What time of day did you vote? A. In the morning.

Q. You didn't vote at the Commission Government Election? A. No.

Q. Didn't go there at all that day? A. Didn't go near the place.

MAURICE DORMAN, sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 313 Ninth Street.

Q. On October 16th, 1917, where did you live? A. The same.

Q. Did you ever live at 141 Pavonia Avenue? A. Yes.

Q. When did you move from there? A. January, 1917.

Q. I show you Exhibit S-5 and ask you whether you signed that signature, the place on the page under 141 Pavonia Avenue? A. No sir.

Q. At the Commission Government Election in 1917, did you vote? A. No sir.

Q. In October—on October 16th, at the Commission Government Election, you did not vote? A. No sir.

Q. (By the Court). Where did you move from in January, 1917? A. 141 Pavonia Avenue.

Q. I show you Exhibit S-4, pointing to Maurice Gorman, of 141 Pavonia Avenue, and ask you whether that is your signature on the registry? A. Yes.

MR. SIMPSON: Is this the registry?

MR. VICKERS: This is the registry.

Q. Are you acquainted with any of the defendants, Kelly, Unger or Looney?

MR. SIMPSON: We will admit that he is Unger's brother-in-law.

MR. VICKERS: That is what I want to know—want to prove, brother-in-law of the defendant, Unger.

Q. How long have you known Unger? A. Well, I have known him eight years.

Q. How long have you been his brother-in-law? A. Six years.

CROSS-EXAMINATION by Mr. Simpson:

Q. You didn't vote at all at the Commission Government Election? A. No sir.

Q. This is not your signature, Maurice Gorman? A. No sir.

Q. That is not your signature? Where were you on the 16th of October, 1917? A. 319 Ninth Street.

Q. Aren't you in business? A. No sir.

Q. Don't you work anywhere? A. I work, but that day I didn't work.

Q. Where A. I am a printer.

Q. In business for yourself?? A. No sir.

Q. Where were you that day? A. I was home.

Q. In the house? A. Yes.

HENRY TAMKE, sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 133 Pavonia Avenue.

Q. What is your business? A. The grocery business.

Q. How long have you lived in Jersey City? A. In Jersey City since 1879.

Q. How long have you lived at the address given? A. Sixteen years.

Q. I show you the poll book S-5, and call your attention to the signature under the name of Henry Tamke, 133 Pavonia Avenue, and ask you whether the signature in the signature column, Henry Tamke, is your signature? A. No.

Q. At the Commission Government Election, October 16, 1917, at the Second Ward—Second District, in Jersey City, did you vote? A. No sir.

Q. I show you exhibit S-4, in the registry copy book, signature copy of the registry list, and call your attention to the signature of Henry Tamke in this book and ask you if this is your signature?

A. Yes.

Q. Are you acquainted with any of the members of the Board of Elections—these defendants? A. Yes.

Q. Whom? A. Unger, Looney, and Mr. Hosbach.

Q. Unger, Looney and Masbach? A. Yes.

Q. How long have you known Mr. Hosbach? A. About five years, I guess.

Q. Looney?? A. Twenty-five years.

Q. Unger A. About ten years.

(No Cross Examination).

HERMAN TAMKE, sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 167 Pavonia Avenue.

Q. How long have you lived there? A. Ten years.

Q. What is your business? A. I work for the Erie, Erie watchman.

Q. Are you related to the last witness who was on the stand here? A. Yes, brother.

Q. I show you exhibit S-5 and call your attention to the name in the signature column, Herman Tamke, following the residence of the voter, 167 Pavonia Avenue, and ask you whether that is your signature? A. That, no.

Q. At the Commission Government Election, October 16, 1917, Second Ward, Second District, did you vote? A. No sir.

Q. I show you exhibit S-4 in the signature column, Herman Tamke, following the residence here, 167 Pavonia Avenue, place of occupation Erie Railroad, name Herman Tamke, and ask you whether that is your signature? A. No.

Q. That is not your signature? A. No. Looks like it, but—

Q. Are you in doubt? A. No, no.

Q. It is not? A. Looks pretty near like it.

Q. Do you remember whether you registered at the Presidential election in 1916? A. Yes.

Q. Did you register? A. Yes.

Q. At that time were you fifty-five years old? A. Yes.

Q. Did you reside—had you resided in the State of New Jersey thirty-eight years at that time? A. Yes.

Q. Born in Germany? A. Yes.

Q. How long have you lived in Hudson County? A. Since, about 1878.

Q. Name of person by whom you were employed, John Wolff, is he a foreman? A. Yes.

Q. On the Erie Railroad? A. Yes.

Q. Do you know any of the Election Board, any of these defendants here, Mr. Unger, Mr. Kelly or Mr. Looney? A. No, I don't know them.

CROSS-EXAMINATION by Mr. Simpson:

Q. You said when Mr. Vickers asked you if that was your signature it looked like it? A. It looks like it, I ain't sure, you know.

Q. You are not sure? A. No.

Q. Do you know Kane, the Committeeman down there, the Committeeman that has been spoken of in this trial? Do you know him? A. No, no.

Q. But you didn't vote, you say, at the Commission Government Election A. No.

ADOLPH SCHOENBERG, sworn on behalf of State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 152 Pavonia Avenue.

Q. How long have you lived there? A. Thirty-two years.

Q. How long have you lived in Jersey City? A. Thirty-two years.

Q. Always at this place? A. Yes.

Q. What is your business? A. Gents' furnishings.

Q. I show you exhibit S-5 and call your attention to the name Adolph Schoenberg, in the signature column, opposite the address 152 Pavonia Avenue, and ask you whether that is your signature? A. No.

Q. At the Commission Government Election on October 16, 1917, did you vote? A. No.

Q. Have you always voted in the Second Ward, Second District, Jersey City, when you have voted? A. Yes.

Q. Are you acquainted with any of the members of this Board, these defendants? A. Yes, I know them all.

Q. How long have you known Mr. Unger? A. I know them all, since they were born.

Q. Since they were born. I show you exhibit S-4, under the name Adolph Schoenberg, 152 Pavonia Avenue, and call your attention to the name in the signature column, A. Schoenberg, and ask you whether that is your signature? A. Yes, it is.

Q. That is your signature? A. Yes.

CROSS-EXAMINATION by Mr. Simpson:

Q. You didn't vote at the Commission Government Election? A. No.

Q. Where were you on that day? A. Home.

Q. Do you know Kane, the Committeeman down there? A. Yes, I know them all.

Q. Do you know Kane? A. Yes.

Q. What do you mean? A. I do.
Q. Do you know him? A. Yes.
Q. Hosbach? A. Yes.
Q. How near is Hosbach's place to you? A. A couple of blocks.
Q. You know him pretty intimately? A. Yes.
Q. You know Hosbach pretty— A. Yes.
Q. intimately? A. Yes.
Q. How long have you known him? A. Since he was born, since a small boy, anyway.
Q. He is as old as you? A. I guess not, I am fifty-four.
Q. How long have you been in business down there? A. Thirty-two years.
Q. Between what cross streets is your business? A. Between Henderson and Provost.
Q. How near to the polling place? A. Right across the way.
Q. Across the street? A. Yes sir.
Q. You didn't go across to vote on that day? A. No sir.
Q. You say that is not your signature in the poll book, you say that is not your signature? (No answer).

MR. SIMPSON: Where is the registry, where he said it is his signature?

Q. That is not your signature (indicating). A. No sir.
Q. But this is you say, this is your signature? (Indicating). A. Yes, this is mine.
Q. You are sure you didn't go across the street to vote on that day? A. No sir.
Q. Why didn't you go there and vote, you were right across from the polling place? A. I didn't—
Q. Weren't you interested in the Commission Government Election? A. No.
Q. You didn't care who won? A. I didn't

care who got in.

Q. You knew the Committeeman very well down there? A. Yes.

Q. Didn't he come and ask you to go and vote? A. No.

Q. Did he come and try to get you to vote? A. No.

Q. You are positive you didn't vote? A. I am sure.

Q. What day of the week was election on? A. I couldn't tell you.

Q. But you remember you didn't vote on that day? A. Yes.

Q. Was your store open? A. Yes.

Q. You are quite sure you didn't go across the street to vote? A. Yes.

BY THE COURT:

Q. Did you know either of the defendants beside Mr. Hosbach?

MR. VICKERS: He knew them all. Known them all since they were babies.

Q. All of these defendants? A. Yes.

Q. Did they know you by name, to speak to? A. Yes.

Q. Call you by name? A. Yes.

Q. What did they call you? A. Mr. Schoenberg.

Q. All of them? A. All of them. Some of them is my tenant's son. Know me well.

Q. He is a tenant of your son? A. He is a son of my tenant.

Q. (By Mr. Vickers). Who? A. Kelly.

Q. Kelly is a son of your tenant? A. Yes, knew them all thoroughly.

CHARLES CLARK, sworn on behalf of the

State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 508 Grove Street.

Q. How long have you lived there? A. The first day of April.

Q. 1917? A. Yes, we moved last April.

Q. Do you know what district that is in? A. I don't, but I think we voted at Ninth and Erie Street, where they vote, where James K. Murphy had his real estate office, where James K. Murphy's real estate office used to be.

Q. Did you live in the same neighborhood befor April 1st, 1917? A. I lived at 165 Pavonia Avenue for nine years. From April 1st, 1908, until April 1st, 1917.

Q. Did you vote at the last Commission Government Election? A. No sir.

Q. On the 16th of October, 1917? A. No sir, I didn't vote.

Q. You didn't vote. I call your attention to exhibit S-5, the last name on that page, under 165 Pavonia Avenue, Charles Clark, and the signature in the signature column there, and ask you whether that is your signature? A. I will tell you, the last vote I voted was for Wilson in 1916, the Presidential Election.

Q. Notwithstanding whether you voted or didn't vote at the Commission Government Election on October 16th, 1917, I ask you whether that is your signature there in that column? A. No, that ain't mine.

Q. Can you write? A. I can, a little with that hand, not very good.

Q. With the hand? A. Yes, bad hand, fingers all off.

Q. Can you write without assistance, without being helped? A. Yes.

Q. I call your attention to exhibit S-4, the

registry for the election of 1916, when you say you did vote, after the name Charles Clark, 165 Pavonia Avenue, and the name of your employer being Nick Ross, Erie Railroad; is that right? A. Yes, that is right.

Q. I show you the signature, Charles Ross, assisted by L. Unger. Did you write that or anybody assit you to write that? A. No.

Q. Do you remember going to the registry to register for the election at which you subsequently voted for Wilson? A. Yes, I registered that place, when I registered, was the first registry that I done.

Q. Was Mr. Unger there? A. I cannot say. I don't know the gentleman.

Q. When you registered at that time did somebody assist you to write your name in the book? A. No.

Q. You did it yourself, did you? A. To make sure it was there.

Q. (By the Court). What is the matter with your hand? A. You can see yourself, the fingers are off.

Q. Show the jury. (Witness shows his hand to the jury).

BY THE COURT:

Q. Do you write at all with your right hand? A. I do.

Q. How—with the fourth finger? A. With the pen in between the fourth finger.

Q. Was there any other Charles Clark who liver at 165 Pavonia Avenue at the time you lived there? A. I don't know.

Q. While you lived there? A. Not as I know of.

Q. You did live there for six years? A. Nine years.

Q. Throughout the time that you lived there

you knew of no other Charles Clark there? A. Not as I know of, Mr. Vickers.

Q. In 1917 were you forty-nine years old? A. Yes; forty-six the 15th of November past.

Q. You have been thirty-two years in the State of New Jersey? A. I was going—moved from Goshen, New York, May, 1885.

(No Cross-Examination).

MICHAEL J. KENNY, sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 494 Grove Street.

Q. How long have you lived there? A. About five years.

Q. Did you vote at the Commission Government Election, October 16th, 1917, from the Second District, Second Ward, Jersey City? A. No.

Q. Did you vote any other place in Jersey City that day? A. No.

Q. I show you exhibit S-5 and call your attention to the signature in the signature column following the name Michael J. Kenny, 494 Grove Street, and ask you whether you signed that? A. No sir.

Q. I show you exhibit S-4, being the signature copy of the registered voters and call your attention to the signature column following the name Michael J. Kenny, 494 Grove Street and ask you whether that is your signature? A. Yes.

MR. SIMPSON: What is the number of the vote?

MR. VICKERS: 150.

Q. Do you know any of the members of the

Board of Election? A. What is that?

Q. (By the Court). Do you know any of these defendants? A. No, I don't know them. I know them to see them on the Board of Election, that is all, don't know anything about them, don't know any of them.

Q. When did you see them on the Board? A. Presidential election.

(No Cross-Examination).

FRANCIS J. DONOHUE, Sr., sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 149 Ninth Street, Jersey City.

Q. How long have you lived there? A. Twenty years and over.

Q. Who are the members of your family that live at the same address? A. I have a son.

Q. Does he live at the same address? A. Yes.

Q. What is his name? A. Francis Joseph.

Q. Junior? A. Junior.

Q. How long has he lived at the same address with you? A. He is my son.

Q. How long has he lived at the same address with you? A. Lived all his lifetime with me.

Q. How long,—how old is he? A. Well, he is about forty, I think.

Q. Then he has not lived all his lifetime with you at that address. I show you exhibit S-5, the poll book, the first name, Francis J. Donahue, 149 Ninth Street, and ask you whether that is your signature in the signature column? A. Yes.

MR. VICKERS: What number is that?

MR. VICKERS: It is number 10.

Q. Do you know the signature of your son? A. Well, I guess I do.

Q. Don't guess at it. I call your attention to the signature 131, Francis J. Donahue, Jr., 149 Ninth Street, and ask you whether that is your son's signature? A. I think that is my son's signature.

Q. You think it is. But the other is not your? A. No sir.

Q. You sign your name Frank Donahue? A. Frank Donahue.

Q. Frank, F-r-a-n-k? A. And that one is F-r-a-n-c-k.

MR. SIMPSON: What is the number of his son's name that he identifies?

MR. VICKERS: 131.

MR. SIMPSON: In blue ink.

MR. VICKERS: In blue ink.

MR. SIMPSON: One of Hosbach's.

Q. I call your attention to Exhibit S-4, being the signature copy of the registry of voters, to the name Frank Donahue in the signature column, and ask you if that is your signature? A. That looks like mine.

Q. It looks like yours? A. Yes.

Q. You did register for the Presidential election in 1916? A. Yes.

Q. And you voted? A. Yes.

Q. Do you know any of the defendants here, Mr. Unger or Mr. Looney or Mr. Kelly or Mr. Hosbach? A. I know Mr. Looney.

Q. You know Looney? A. Yes.

Q. How long have you known him? A. About fifteen years I guess.

Q. Do you know any of the others? A. No.

CROSS-EXAMINATION by Mr. Simpson:

Q. Where is your son now? A. He is home.

Q. He didn't come to-day? A. No.

Q. When you say you think this is his signature you are not sure whether it is his signature or not, are you? A. No sir, I ain't sure.

MORRIS SIGEL, sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 209 Ninth Street.

Q. Before living at 209 Ninth Street where did you live? A. 161 Pavonia Avenue.

Q. When did you move from there? A. About September, 1916.

Q. September, 1916, a year ago this last September, is that right? A. Yes.

Q. How long had you lived at 161 Pavonia Avenue before you moved to 209 Ninth Street? A. I don't know, about three years, three or four years.

Q. I show you exhibit S-5 and ask you—call your attention to the signature in the signature column following vote number 18, the name Morris Sigel, 161 Pavonia Avenue, and ask you whether that is your signature? A. No sir.

Q. At the Commission Government Election the 16th of October, 1917, did you vote? A. Yes.

Q. You did vote? A. Not at this place, vote.

Q. From the old address? A. No, I voted from Ninth Street.

Q. Where was your polling place? A. Ninth and Erie Street.

Q. James K. Murphy's real estate office? A. Yes.

Q. Do you know this tinsmith's where the polling place was? A. Yes.

Q. Had that been your polling place when you lived at 161— A. Yes.

Q. At that polling place, the tinsmith's shop, you didn't vote at the Commission Government, did you? A. No sir.

Q. Do you know any of these defendants, Unger, Looney or Kelly or Hosbach? A. Don't know none of them personally, just by sight, that is all.

Q. By sight? (No answer).

BY THE COURT:

Q. You now live at 209 Ninth Street? A. Yes.

Q. In September, 1916, you moved from Pavonia Avenue? A. Yes.

Q. To 209 Ninth Street? A. Yes.

Q. When you lived on Pavonia Avenue where did you vote? A. At the tinsmith's place.

Q. Where these defendants had the election booths? A. Yes. But not in their time, when I voted at that place, there was only one of them there.

Q. One of them was an election officer there then? A. Yes, that I can remember.

Q. Which one of them was that? A. That fellow there, the middle one—(indicating defendant Unger).

Q. Unger was an election officer there when you voted there last? A. Yes.

Q. In the Commission Government election October, 1917, you did vote, but you voted from your new residence? A. Yes.

Q. On Ninth Street? A. Yes.

BY MR. VICKERS:

Q. You voted at the real estate office? A. Yes.

Q. Corner of Erie and Pavonia? A. Yes—Erie and Ninth Street.

Q. (By the Court). That is the polling place, the polling place of the district in which you had moved? A. Yes.

Q. I call your attention to Exhibit S-4, the signature opposite number 7, Morris Sigel, 161 Pavonia Avenue, and ask you whether the name appearing in the signature column is your signature? A. Yes.

Q. It is your signature.

(No Cross-Examination).

ISAAC SIGEL, sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 209 Ninth Street.

MR. SIMPSON: What are the numbers of the Sigel votes?

MR. VICKERS: Morris is 18, Isaac is 20.

Q. Before you moved to 209 Ninth Street where did you live? A. 161 Pavonia Avenue.

Q. Are you related to the last witness on the stand? A. Yes, son of mine.

Q. How long did you live at 161 Pavonia Avenue? A. A little over three years.

Q. Did you move at the same time your son moved away? A. Yes.

Q. He now lives with you? A. Yes.

Q. At the Commission Government Election,

October 16, 1917, did you vote at the tinsmith's place, the old election— A. No sir.

Q. —place on Pavonia Avenue? A. No, I voted in the Third District.

Q. The Third District of the Second Ward at the corner of Ninth and Erie? A. Yes.

Q. I call your attention to Exhibit S-5, to the signature here, in the signature column, opposite vote 20, Isaac Sigel, 161 Pavonia Avenue, and ask you whether that Isaac Sigel is your signature? A. No.

Q. Written by you? A. No.

Q. I call your attention to Exhibit S-4, the signature number 8, Isaac Sigel, in the signature column, and ask you whether that is your signature made at the time of registration? A. Yes, that is mine.

Q. The one right above that is your son's? A. Yes.

Q. Are you in business? A. Yes.

Q. What? A. Grocery.

Q. How long have you been in the grocery business in the Second Ward of Jersey City? A. In that business, I was about five—pretty near—over five years.

Q. Where is your store? A. 151 Pavonia Avenue.

Q. Right near to the tinsmith's polling place? A. It ain't far, 141 is the tinsmith's.

Q. Five houses away? A. About ten numbers.

Q. Five houses away from the polling place? A. Yes.

Q. Do you know any of the members of the Board? A. I know Kelly and I know Mr. Unger. I know by sight Mr. Hosbach.

Q. Mr. Hosbach—how long have you known Kelly? A. Kelly I know as a little boy, about ten years, already.

Q. How long have you known Mr. Unger? A.

About five years.

Q. How long have you known Hosbach? A. I don't know him very long, a few years.

Q. Not as long as the others? A. A couple of years, I guess.

(No Cross Examination).

CHARLES ROTHSCHILD, sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 177 Pavonia Avenue.

Q. How long have you lived at 177 Pavonia Avenue? A. About a year and a half.

Q. How do you spell your name? A. R-o-t-h-s-c-h-i-l-d.

Q. I show you Exhibit S-5 and call your attention to—

MR. SIMPSON: What is the number?

MR. McCARTHY: 117.

Q. —the entry of the voter, vote 117, Charles Rothschild, 177 Pavonia Avenue, and ask you whether the signature Charles Rothschild, is your signature? A. Not mine, I was not at the polls.

Q. You didn't sign that, did you? A. No.

Q. You don't spell your name? A. No sir, I don't write like that.

Q. You don't spell your name Rothchild? A. S comes after the H,—schild.

Q. I show you Exhibit S-4, being the signature copy, registry of voters, number 77, ask you—call your attention to the signature in the signature column there, and ask you whether that is your signature? A. Yes, that is.

Q. The registry? A. The regular—

Q. 1916 registry? A. Oh, yes, I did sign that.

Q. Irrespective of when it was, did you sign it—look at it? A. Yes, that is my writing, that is the presidential election.

Q. Is that your writing? A. Yes.

Q. As the name is there spelled in that signature, Rothschild, that is the way you spell your name; is that right? A. Yes.

Q. Do you know any of the members of the Board of Election in that district? A. No sir, I am not acquainted.

Q. Did you vote at the Commission Government Election on the 16th of October, 1917? A. No sir, not the Commission Government.

(No Cross-Examination).

CHARLES J. KELLY, sworn on behalf of the State, testifiel as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 116 Pavonia Avenue.

Q. How long have you lived there? A. About fifteen years.

Q. How long have you lived in Jersey City? A. Well, I couldn't say whether it is nineteen or twenty years, something in that neighborhood.

Q. Did you vote at the Commission Government Election on October 16th, 1917? A. Did I vote for Commissioners? October?

Q. (By the Court). Last October? A. No, I did not.

Q. I call your attention to Exhibit S-5, the signature of the voter, Charles Kelly, number 45, and ask you whether that is your signature? A. Don't look like my writing.

Q. Is it your writing? A. No.

Q. How do you sign your name? Charles Kelly, or Charles J.? A. Charles J.

Q. This is Charles Kelly. Did you write it? A. That ain't my writing, I write it different.

Q. I show you Exhibit S-4, the signature column, voter, registry, 63, Charles J. Kelly, 116 Pavonia Avenue, and I ask you if that Charles J. Kelly is your writing? A. Yes, that is my writing.

Q. Do you know any of the Board of Elections in that district, the defendants here, Unger or Looney, or Kelly or Hosbach? A. No, I don't know them. I know them by sight, that is.

CROSS-EXAMINATION by Mr. Simpson:

Q. You voted at the Commission Government Election? A. No.

Q. You went to vote, didn't you? A. I went to vote.

Q. You didn't vote? A. I didn't vote.

Q. Isn't the reason, somebody got you outside and told you not to go in, they had sent a man already to vote on your name? A. They didn't tell me they had sent a man, they said, "It is all right," I didn't vote.

Q. You went to vote, and somebody stopped you? A. Yes, I did.

Q. Before you got in the election booth? A. Before I got in, told me not—

Q. Told you not to go in because they had sent somebody? A. I don't know what they done.

Q. You didn't go in? A. I didn't go in, I walked away.

Q. (By Mr. Vickers). Who told you? A. (No answer).

BY THE COURT:

Q. Who told you not to vote? A. I couldn't tell you, somebody said, "It is all right, Kelly, you needn't bother."

Q. How near were you to the polling place when that conversation took place? A. As near as that pillar (indicating in the court room). I didn't go any further.

Q. On the sidewalk? A. Not on the sidewalk, just from the curb to the building, you might say, I was standing, coming across the street, stepping up on the curb.

Q. Would you know that man again if you saw him? A. No, I wouldn't say as I would.

Q. Can you recall what he looked like? A. No, I could not. I didn't pay any attention to it, I simply went there, I was in a hurry, I come from my work, I was a little late, and I went over, whoever it was, they said, "It is all right, Kelly, you needn't bother to vote. It is all right."

Q. Did you try to vote—did you want to vote? A. I should certainly have voted, but for—

Q. Why didn't you? A. Because I thought everything was all right, they said, give me to understand, the man was elected, there was no use of me bothering my time.

Q. How did they give you to understand the man was elected—who was elected? A. Well, the Gannons, that is, they said—they said, "It is all right."

Q. Who? A. Gernan. (Pronounced by the witness with a hard G). He was the man I intended to vote for. I simply says, "How is the election going?" They said, "It is all right, you needn't bother to go in to vote." There was no necessity of me going in to vote. I should have voted, but I thought, well, what is the use? He is going to get elected anyway.

Q. You don't know who that was? A. No sir, I couldn't.

BY MR. VICKERS:

Q. What time of day was that? A. After along five o'clock, quitting time. I am working in New York, I had to take the boat to come over, I was in a hurry.

Q. What is your quitting time in New York? A. Any time I like.

Q. This particular time? A. Well, sometimes I work until half past four.

Q. This particular time, what time did you quite that day? A. Somewhere around five o'clock.

Q. Where was your place of business at that time? A. 125 West Street.

Q. How long did it take you to come from your place of business to the polling place? A. Well, now, you have me. Sometimes takes three-quarters of an hour, sometimes half an hour, sometimes an hour, according to the way the boats run.

Q. Did you stop on your journey from your place of business to the polling place that day? A. No I don't think I did, only enough to take the boat.

Q. Do you know what time you reached your home on this day? A. No sir, I don't.

Q. Do you remember whether you reached it at the usual time? A. Around—around five or six o'clock, around in that neighborhood.

Q. If you left your place of business at five o'clock, were over in New York, you wouldn't be apt to reach your home around five o'clock? A. I can't tell you exactly what time it was. I told you I came right over, I went to the polling place, I wasn't particular to see what time it was, because it didn't interest me enough.

(No Cross-Examination).

JOHN C. SHEEHAN, sworn on behalf of the

State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 118 Pavonia Avenue.

Q. How long have you lived there? A. Six years.

Q. What is your business? A. Clerk.

Q. Where are you employed? A. Not at present. Last, the American Express.

Q. Where were you employed in October? A. American Express.

Q. At the Commission Government Election, October 16, 1917, did you vote? A. No sir.

Q. I show you Exhibit S-5, opposite number 13, ballot, in the signature column, and ask you whether the name John C. Sheehan is your signature, written by you? A. No sir.

Q. Neither your signature nor written by you? A. No sir.

Q. I call your attention to the signature copy book, John C. Sheehan, opposite 108— A. Yes, that is mine.

Q. You wrote it? A. Yes.

Q. You registered for the Presidential Election, 1916? A. Yes.

Q. Do you know any of the election officers, the defendants here? A. No sir.

(No Cross-Examination).

PATRICK EGAN, sworn on behalf of the State testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 121 Pavonia Avenue.

Q. How long have you lived there? A. Going

on four years.

Q. How long have you lived in Jersey City? A. Four years—1914.

Q. (By the Court). How long have you lived in Pavonia Avenue?

MR. VICKERS: Four years.

Q. How long have you lived at that address—have you lived at that address all the time you have been here? A. Yes.

Q. At the Commission Government Election, October 16, 1917, did you vote? A. No sir.

Q. I show you the poll book, opposite number 19, Patrick Egan, 121 Pavonia Avenue, the signature P. Egan, and ask you whether that is your signature or written by you?? A. No sir.

Q. Did you register for the Presidential election? A. In 1916?

Q. Yes, 1916? A. Yes.

Q. I show you the signature, copy of registry, number 30, Patrick Egan, 121 Pavonia Avenue; is that right? A. 121.

Q. Patrick Egan—is that your signature? A. A. Yes.

Q. You always sign your name Patrick Egan? A. Yes.

Q. You write it out, do you? A. (No answer).

Q. Do you know any of the members of the Board? A. No sir, I don't.

(No Cross-Examination).

JAMES EGAN, sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 127A Orient Avenue.

Q. Where did you live in October, 1917? A. 1917.

Q. Last October? A. 127 Orient Avenue, Greenville.

Q. Did you live at 183 Pavonia Avenue? A. Yes.

Q. When did you move from 183 Pavonia Avenue? A. Well, in Jersey City about a year before, then I moved from there to 165 Pavonia Avenue.

Q. You moved more than a year ago from 183 Pavonia Avenue? A. Yes.

Q. To 165, and from 165 you moved to your present address? A. Yes, my sister lives there.

Q. When did you move to your present address? A. I am staying with my sister since September.

Q. September, 1917? A. Yes sir.

Q. Did you vote at the Commission Government Election in October, 1917? A. 1917, no sir.

Q. I show you the poll book, vote number 16, James Egan, 183 Pavonia Avenue, signature, J. Egan, and ask you whether that is your signature or written by you? A. No sir.

Q. Neither your signature nor written by you? A. It is for the last—

Q. Commission Government Election? A. Yes.

Q. Irrespective of what it was for, you didn't write that, did you? A. No sir.

Q. I show you the signature, copy of the registry of the Presidential election, 1916, number 2, James Egan, 183 Pavonia Avenue, signature Jas. Egan, is that your signature? A. Yes.

Q. That is your signature? A. Yes.

Q. You wrote it? A. Yes, that is the way to spell it, too, E-g-a-n.

Q. E-g-a-n. A. They wrote it the other way, Eagan.

Q. Not E-a-g-a-n? A. That ain't the right

way, it is E-g-a-n, supposed to be my signature, the way I sign it.

Q. Do you know any of the election officers? A. Yes.

Q. Who? A. Know Looney.

Q. How long have you known him? A. On the average twelve or thirteen years.

Q. (By the Court). How intimately have you known him? A. On account I used to be a truck driver myself. He used to be a driver. I don't know what he is now.

Q. You know him by name, to meet him? A. Yes.

Q. Does he know you by name? A. Sure.

Q. How does he speak to you outside on the street? A. I can't hardly—get a few friends around there, used to live around Twelfth Street, around there, when I was stopping with my mother, before I was married, stopping with my sister now, see. Knew him and a good many of them around the avenue when I was living around there. Knew him when I was living around there.

Q. How does he speak to you when you meet? How does he call you? A. Jimmie.

Q. What do you call him? A. Tommie, or Eddie, whatever his name is.

Q. What is it? A. Tommie.

Q. Your name happens to be Jimmie? A. Jimmie.

Q. That is what your friends call you? A. They call me Mister sometimes.

Q. Do you know any of the other defendants? A. Well, I know the Committeeman, the Committeeman.

Q. Who was the Committeeman? A. Jack Kane, Johnnie Kane.

Q. But he isn't a defendant. Do you know any of the defendants here, these other three men, or Mr. Hosbach? A. I don't know any of them.

CROSS-EXAMINATION by Mr. Simpson:

Q. You say Mr. Looney used to live in your neighborhood? A. Yes.

Q. You knew him when you met him, you called him Tommie? A. In fact, I don't know his first name.

Q. You know him, and you call him Tommie? A. I think it is Tommie.

Q. You think it is Tommie? You know him so well. As a matter of fact his name is William, you call him Tommie. That is how well you know him. You know Kane, you said, you know Kane? A. John Kane.

Q. Which John Kane? A. He is supposed to be the Committeeman down on the avenue.

Q. Why do you name him when you were asked if you know any of the other defendants, you said you know Kane? A. I don't know only that because I thought I know a good many of them around the avenue.

Q. Did you go to this polling place to vote on this day? A. No.

Q. Did you see Kane on this day? A. No.

Q. And you were not at the polling place? A. No.

Q. Where do you live? A. 127A Orient Avenue, Greenville.

Q. How long have you lived there? A. Five months ago, not five months.

Q. Where did you live before that? A. 165 Pavonia Avenue.

Q. How long were you there? A. About the average, two years.

Q. Where were you before that? A. 183 Pavonia. Altogether about three years living on the avenue.

Q. You know this fellow very well? A. Yes.

Q. Where does he live? A. I couldn't say where he lives now. I know where he used to,

he used to vote.

Q. You know him so well, you call him Tommie, do you know where he lives? A. I don't know where he lives now.

Q. Did you ever know where he lives? A. No, I didn't know that I know, I know him on the avenue.

Q. You knew him by sight? A. I know him by sight, sometimes speak together.

Q. Had you ever voted in this election place? A. No.

Q. Did you ever vote there? A. Yes.

Q. That is where you saw him? A. Sure, I seen him around there.

Q. That is the way you knew him so well, because you saw him as an election officer. A. That is all.

BY MR. VICKERS:

Q. He wasn't acting as an election officer when you saw him driving a truck, was he? A. No.

PAUL NEWMAN, sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 474 Henderson Street.

Q. How long have you lived there? A. About five years.

Q. You lived at 474 Henderson Street, five years. Did you vote at the Commission Government Election, October 16, 1917? A. Not the special.

Q. For Commissioner to succeed Mr. Brensinger? A. No sir, I did not.

Q. Did you vote in the general election? A.

Yes.

Q. At the special election for Commissioner, did you vote? A. No, I did not vote.

Q. I show you Exhibit S-5, being the poll book of the election of October 16th, 1917, and I call your attention to the signature, voter, number 67, Paul Newman, 474 Henderson Street, and I ask you whether that is your signature or written by you? A. No sir. I can't write that way.

Q. I show you the signature copy of the general election in 1916, the Presidential election, signature number 5, Paul Newman, 474 Henderson Street, and the signature, and ask you whether that is yours? A. Yes.

Q. Do you know Charles Newman? A. My brother.

Q. He lives next door to you? A. Yes.

Q. Do you know any of these election officers, these defendants, or any of them? A. Yes, I know them, that is, you know—

Q. I don't know. A. —seeing them there.

Q. Seeing them there. Do you know them to speak to? A. I just pass the time, you know.

Q. Who did you know? A. I know them. (Witness looks toward the defendants).

Q. Not Mr. McCarter and Mr. Simpson, but the men in back of them? A. I know the man there, but I don't know what his name is.

Q. Which one? A. This one.

CROSS-EXAMINATION by Mr. Simpson:

Q. You know his face from seeing him around the neighborhood? A. Yes, his face.

Q. Seeing him in the neighborhood? A. Yes.

Q. Same as other people in the neighborhood? A. Being in the election there.

Q. Saw him on the Board? A. Yes.

Q. When? A. Election, when I came there to vote.

Q. Didn't you know he was never on the Board before this election? A. He was in there; I don't know if he was on the Board or not, but he was in there.

Q. Do you know whether he was on the Board? A. I know he was in there, around there, that is all.

Q. Seeing him in there? A. Yes.

Q. Do you know his name? A. I don't.

Q. Unger? A. I don't know his name.

Q. Do you know where he lives? I don't.

REDIRECT EXAMINATION by Mr. Vickers:

Q. Your brother Charles, who lived at 472 Henderson Street, does he still live there? A. He lives in Plainfield.

Q. New Jersey. When did he move to Plainfield, New Jersey? A. About three or four months ago, or more, I can't just say.

Q. Do you know whether he was here at the Commission Government Election in 1917? A. I don't think he was.

Q. Do you know his signature? A. No, I couldn't tell you his signature.

Q. Where does he live in Plainfield? A. I couldn't tell you, I think Sixth Street. I couldn't tell you now. I haven't his address with me. I think it is Sixth Street, but I don't know the address.

Q. Did you ever see him write? A. No.

Q. Did he write anything like that? A. Something like me, I guess.

Q. I show you—do you know whether he was here to vote at the Presidential Election in 1916? A. I don't know if he voted or not.

Q. Was he here? A. I couldn't say. Well, I couldn't say.

Q. Did he live here? A. I couldn't say.

Q. Did he live here in 1916? Do you know

whether he lived here in 1917 or 1916? A. I couldn't tell you.

Q. I call your attention to the signature of Charles Newman, in the signature copy book, the general registry of 1916, and ask you whether or not you can say that is your brother's handwriting?

MR. McCARTER: He says he doesn't know.

THE COURT: I will sustain the objection.

RECESS.

Adjournment to January 22, 1918, at 9.30 A. M.

January 22, 1918, 9.30 A. M., Trial of the cause resumed.

JOHN COURTNEY, sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 139 Ninth Street.

Q. How long have you lived there? A. Over forty years.

Q. In 139? A. Yes sir.

Q. What part of the house do you live in? A. A. The first floor.

Q. You were born there? A. Yes.

Q. Who else lives in that house? A. John Crimmins, Clarence McKenna—

Q. Clarence McKenna? A. Yes.

Q. Is he related to you? A. Yes.

Q. Is he here? A. He was here last night.

Q. He is not here this morning? A. He went in the wrong court, I believe, he was downstairs.

Q. When did you see him here? A. About, just before court adjourned.

Q. Where were you in court, or out? A. I was standing outside. He don't live there any more, he is living—he is boarding somewhere, I couldn't tell you where.

Q. His family is there? A. Yes.

Q. Clarence McKenna's family is there? A. Yes.

Q. How long has Clarence been away from there?

MR. SIMPSON: I object. It is irrelevant and incompetent. We are not bound by this man's hearsay knowledge of where he is.

MR. VICKERS: It may be collateral. This was developed with respect to the residence of McKenna who is a witness here, called yesterday several times.

MR. SIMPSON: I object to this statement before the jury. I think the Prosecutor should be instructed not to make statements of this kind before the jury, as to people who are not here.

MR. VICKERS: It is in evidence. I submit there is no occasion for strictures by counsel for the defendants. It is in evidence here that McKenna, Clarence McKenna, who went to the polling place and was told he need not vote, he was called here before this court, before this jury yesterday, various times, it was shown he was subpoenaed here and so stated to the court, and called yesterday before the court in order to identify him while the witness was on the stand. Now it develops he is a

nephew of this man, who lives in the house, he says he was here when he was being called here in this court. Each time a witness was called an officer of the court called outside. I would like to know, and I think this court is entitled to know—

THE WITNESS: He was not outside when he was called, wait a minute.

MR. VICKERS. Wait a minute. I think it is relevant and a pertinent inquiry.

MR. SIMPSON: I still object, this question is an attempt to smirch these defendants before the jury by attempting to show that a witness who is not here, ought to be here, trying to make us responsible for his presence. It is unfair. His absence or presence in this court room has no relevancy to these defendants. It is put in for the purpose—

THE COURT: What was the question?

(Question read by the stenographer): "How long has Clarence been away from there?"

MR. SIMPSON: I object.

MR. VICKERS: I submit. It was a question which followed logically an answer which the witness gave just previously.

THE COURT: The question is whether this witness now on the stand can testify whether or not a man whom I assume the poll books will show, I can reasonably assume, that the question would be asked, if it were not so, "Did you vote from a cer-

tain address?'' I suppose you want to show that he did not live at that address.

MR. SIMPSON: The question is directed to where is this McKenna now.

MR. VICKERS: I am trying to elicit information at this particular point as to where McKenna is now. I think I am entitled in view of the fact that his identity is disclosed by the evidence, he was called for, and although subpoenaed—

THE COURT: What relevancy—it might be proper were I asked to deal with the absence of a witness, but how does it affect the issue here whether the three defendants are guilty or not guilty?

MR. VICKERS: It is a relevant fact, supposing that one of the defendants were not present here, wouldn't his absence be competent, relevant and material? I don't know—quite to the contrary—that it is interposed for the purpose of affecting the defendants adversely, it developed from the answer of this witness without the knowledge on the State's part at all. It having developed, it seems to me that the court would be remiss in not making inquiry now, where is McKenna?

THE COURT: The point I am trying to get at is, so far as the issue we are now trying is concerned, how far is that material? What difference does it make?

MR. VICKERS: I think that might depend somewhat upon what the evidence is, I am not willing even by way of discussion,

to suggest that, because that might be prejudicial, but it might be from an entirely different angle, relevant and material.

THE COURT: Unless counsel can assure me, I can see one phase of it that might be material, unless counsel can assure me that is the purpose, I assume it would be that this witness about whom the present witness has been interrogated, has been abstracted or taken out or deported by these defendants—

MR. VICKERS: I wouldn't do that. I would rather have the Court overrule the question than that.

THE COURT: I don't see how it is material.

Q. On the 16th of October, 1917, at Jersey City, at the Commission Government Election, did you vote? A. No sir.

Q. I show you the poll book, pointing to the signature J. Courtney, after number 72, J. Courtney, 139 Ninth Street, did you write that? A. No sir.

Q. I call your attention to the registry for the Presidential election, the name John Courtney, 139 Ninth Street. Is that your signature? A. Yes.

Q. That is your signature in the registry? A. Yes.

Q. The name of Clarence McKenna appears immediately following yours, number 73 in the poll book. You wouldn't know, if you were not in there— I will withdraw the question.

Q. (By the Court). Did you vote at the last Presidential election? A. Yes.

Q. (By the Court). That is your signature

in the registry book, Mr. Vickers showed to you? A. Yes.

Q. (By the Court). But you did not vote at the Commission Government Election in October last? A. No.

Q. Have you seen the defendants here, do you know any of these men, the defendants? A. Don't know them at all.

Q. You don't know Unger, Looney or Kelly? A. Don't know any of them. I never bother with anybody.

CROSS-EXAMINATION by Mr. Simpson:

Q. Live your own simple life in your own simple way, I suppose. At the time of this Commission Government Election did you live on Ninth Street? A. My address was there, but I wasn't there. I was in Howell, New York.

Q. You were away from town? A. Yes.

Q. If you were at home your address was what number? A. 139.

Q. Between what streets? A. Provost and Henderson.

Q. Pavonia Avenue,—and the next street is Ninth Street? A. Yes.

Q. That is a tenement neighborhood, flat and apartment? A. All tenement houses.

Q. Pretty thickly populated? A. Yes.

Q. Are they all Americans there or foreigners, Italians and Polish? A. I guess it is mixed, I don't know.

Q. Is all mixed up? A. That is all.

BY MR. VICKERS:

Q. Do you know any John Courtney in that house, 139 Ninth Street, besides yourself? A. That is all.

Q. Has there been any one by that name in

that house? A. Yes.

Q. In the last couple of years? A. But it is quite a while ago.

Q. About how many years ago? A. I guess about eight or ten years ago.

Q. In eight or ten years there has not been any one in that house by that name other than yourself—is that what you mean? A. Yes.

BY MR. SIMPSON:

Q. What sort of a house is that? A. Tenement house.

Q. How many families in it? A. Four.

BY MR. VICKERS:

Q. Two story house, isn't it? A. One, two, three, four in it, yes.

Q. Two story house? A. Three story building, but there is only four tenants in it now, but there could be five.

Q. Two story and basement? A. Three story.

BENJAMIN TOBACK, sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 140 Pavonia Avenue.

Q. How long have you lived there? A. Four years.

Q. Are you in business? A. My father.

Q. Are you with him? A. Yes.

Q. What business? A. Gent's furnishings.

Q. In the same address? A. Yes.

Q. How long has he been there? A. Four years.

Q. At the Commission Government Election on the 16th of October, 1917, did you vote? A. Yes.

Q. When you voted did you sign the poll book? A. Yes.

Q. Do you remember the circumstances under which you signed it, where you signed it? A. Yes.

MR. McCARTER: I object. The whole gist of this indictment is that persons were permitted to vote impersonating others. Any irregularity or peculiarity with reference to the way a man did vote, who had a right to vote, cannot be material in this case.

THE COURT: Don't you think, by reason of the other charge, that a number of people who registered did not vote themselves, it appearing apparently, thus far, from the evidence, that somebody else voted in their names, it would be proper for the jury to consider the evidence, to show evidence of any circumstances that would indicate that the defendants were in any way responsible for that condition? It seems to me to be so.

MR. McCARTER: I cannot see how.

THE COURT: I don't know what the character of the evidence will be, but I don't see why I should overrule it now.

MR. VICKERS: I am not trying to find out what Mr. McCarter thinks I am. This witness is said to have written on one page his name, and somebody else has voted on his name previously.

MR. McCARTER: That is not charged in the indictment.

MR. VICKERS: Yes it is.

THE COURT: I think it is a fact the jury has a right to consider. I will allow the question.

MR. McCARTER: I ask an exception.

(Exception allowed and signed and sealed accordingly.

George G. Tennant, Judge.

Seal.)

Q. (Repeated by stenographer). Do you remember the circumstances under which you signed that and where you signed it? A. Yes.

Q. State to the Court and jury the circumstances under which you signed, and where you signed the poll book, at the time you went to vote? A. I signed my name on a blank page.

Q. What part of the page, the top or bottom? A. Top line.

Q. Top line on a blank page? A. Yes.

Q. When you say that was blank, that being the book laid before you, those two pages, that is, two sides of two pages, do you mean straight across the page blank, or only on one side? A. All of it was blank, there was no writing on both sides.

Q. No writing on either side. A. No.

Q. I call your attention to vote number 118, Toback, Benjamin, 140 Pavonia Avenue, and the signature of Ben Toback, and ask you whether that is your signature, whether you wrote it? A. No sir.

MR. McCARTER: We object to the question and ask that it be stricken out on the same ground.

THE COURT: I will allow it.

MR. McCARTER: I ask an exception.

(Exception allowed and signed and sealed accordingly.
George G. Tennant, Judge.
Seal.)

Q. I call your attention to a page in the same poll book after the name of Less, William, 129, 156 Pavonia Avenue. I will ask you whether by examining this page where the signature of William Less or the name of William Less in the signature column appears, by examination of that you can say whether your name as you wrote it in the registry, in the poll book, at the time you voted, was on that page?

MR. McCARTER: I make the same objection.

THE COURT: I will allow the question.

Q. If you had a magnifying glass, there is a magnifying glass.

THE COURT: I will allow it.

MR. McCARTER: I ask an exception.

(Exception allowed and signed and sealed accordingly.
George G. Tennant, Judge.
Seal.)

A. Yes.

Q. Is that where you on the 16th day of October, 1917, when you voted at that election, signed your name in the poll book? A. Well,

where this signature is, underneath here, that is my handwriting.

Q. Underneath there—. A. Yes.

Q. It appears underneath that; is that right?

A. Yes.

MR. VICKERS: I ask for permission to show it to the jury, giving the jury the benefit of the magnifying glass, if the jury needs it.

THE COURT: I will allow it.

Q. In that book, at the place where you say your signature was then written in there, on the page, or where the signature column is, on the page to the left of that where the name now of William Less appears, you say there was no handwriting, is that right? A. Yes.

Q. Do you know any of the members of this Election Board, these defendants here? A. I know them, just going by, just going by the store, that is about all.

Q. Your store? A. Yes—father's store.

Q. Who was the election officer who directed you to put your name on that page at the time you voted?

MR. McCARTER: I object. It is immaterial.

THE COURT: I will allow it.

MR. McCARTER: I ask an exception.

(Exception allowed and signed and sealed accordingly.

George G. Tennant, Judge.

Seal).

A. Well, there was two or three men in there. I exactly don't know who told me to. There was about three election officers.

Q. As a Board, you mean—acting as a Board? A. Yes, it was a Board.

Q. Which one of the officers, you say you don't remember? A. No, I don't

Q. Who were the men who were in there on the Election Board—can you now tell who the members were who were in there at that time? A. No, I cannot exactly tell, because I was in there around dinner hour, quite busy.

Q. I call your attention to Exhibit S-4, under Pavonia Avenue, number 25, Benjamin Toback, 140 Pavonia Avenue, to the signature column, and ask you whether that is your signature and written by you in the signature column on the registry? A. Yes.

CROSS-EXAMINATION by Mr. Simpson:

Q. Do you know Mr. Hosbach? A. Yes.

Q. Did you see him there when you wrote your name? A. No, he was not, I don't think he was there, I wouldn't swear to it.

Q. You are not sure whether he was there or not? A. No sir.

Q. You cannot even say who it was that told you to write your name there? A. No sir.

Q. But some one in the place told you to write your name in there? A. Yes.

Q. You say at that time they were very busy there? A. Yes.

Q. A number of people in there to vote? A. Yes.

Q. How many would you say? A. About three.

Q. Ahead of you? A. Yes.

Q. Any behind you, were there? A. Not that I know of.

Q. Did you write your name out in full? A. No sir.

Q. How much of it did you write? A. I generally write Ben.

Q. I mean this identification of the signature. You say you can identify that signature which has been erased. Did you write "Ben Toback?" A. Yes.

Q. Since that time you have been in the Prosecutor's office and examined this book, haven't you? A. No sir.

Q. Haven't you seen this book since the day of the election? A. Yes, the Prosecutor has been in my father's store.

Q. You have had a chance to look at this book before to-day, examined it carefully? A. No, not that book.

Q. What book? A. That signature, there was some book in the store there, but a different signature.

Q. Not this book? A. I don't know exactly whether it was that book or not.

Q. Do you identify this space simply because it is at the top of the page, and you know you signed your name at the top of the page? A. No, I know, because it is my handwriting.

Q. That is, you had a chance to see your handwriting under it? A. Yes.

Q. You don't know whether there are other erasures in the book, where other mistakes have been made and other names rubbed out? A. No.

Q. What time of day was it you made this signature? A. Before dinner.

Q. About what time of day was it? A. About one o'clock.

Q. How long were you in there altogether? A. About five minutes.

Q. You wouldn't identify either of these three defendants as having been the person—you can-

not say which of them were there? A. No, I cannot.

Q. You cannot tell? Where was it, you were at the place, I mean the street address? A. 140 Pavonia Avenue.

Q. What kind of a place is that? A. Store, dwelling upstairs.

Q. Was the place there very small you were in, this polling place? A. Yes, it was quite small.

Q. Was it dark or light? A. It was light.

Q. What kind of a pen did you use? A. That is a thing I don't know.

Q. Fountain pen? A. Plain pen.

Q. You say at the time you signed your name, the place where you signed it, was it just the same as I show you here (indicating)? A. Yes.

Q. About the same as the two pages following your signature? A. Yes.

Q. You signed your name up here? (Indicating). A. Yes.

Q. There was nothing here, nothing on the book at all? A. No.

Q. When you signed your name up there, I want to be sure about this, there was nothing written as it now appears, William Leff, 129—Leff, William, 156 Pavonia Avenue, there was nothing of that kind written, was there, on the left? A. Not when I signed.

REDIRECT EXAMINATION by Mr. Vickers.

Q. You said that some one from the Prosecutor's office, I don't know whether you identified the persons, was Mr. McCarthy, the First Assistant Prosecutor, down at your father's store? A. Yes.

Q. Do you recollect that you were shown a book like the poll book, is that right? A. Yes.

Q. Your attention was directed to a signature? A. Yes.

Q. Can you say whether the signature to which your attention was then directed was this signature which you have previously referred to in the same book, which you say was not yours, whether the one to which your attention was directed by Mr. McCarthy, were you asked whether that was your signature? A. Yes.

Q. At that time did Mr. McCarthy turn over in his hand this page and show you the erasure there and the name of William Less? A. No sir.

Q. Until you have now, on the witness stand, seen that page, your attention had never been drawn to it since you signed your name there; is that right? A. No sir.

Q. That is right, is it? A. Yes.

BY THE COURT:

Q. You mean the signature that apparently has been scratched out, which you decipher under some other signature— A. The only signature I saw was what Mr. McCarthy showed me.

Q. That is the one which is not yours? A. A. Yes.

Q. Written in the poll book? A. Yes.

Q. That is the one he showed you? A. Yes.

Q. But the signature you have said you first saw to-day is the one which you say has been shut out, which you can read under some other writing? A. Yes.

Q. You say that you saw that the first time to-day when you took the witness stand? A. Yes.

JOHN KELLETT, sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 201 Second Street,

now.

Q. When did you move there? A. Why, here about two months ago.

Q. Before living at 201 Second Street where did you live? A. I lived at Pavonia Avenue.

Q. What number? A. Right next—

Q. What number? A. I couldn't tell exactly what the number is now.

Q. Did you live at 214 Pavonia? A. I think that was the number.

Q. That was the number? A. I believe that was.

Q. How long did you live at 214 Pavonia Avenue? A. I couldn't exactly say now how long I lived there.

Q. About? A. About three or four months.

Q. Do you remember— A. Two months, anyway.

Q. Do you remember when you lived there, last spring, or last summer, or the fall, or when? A. It was in the winter time I moved from 168 Eighth Street to Pavonia Avenue.

Q. Is that a year ago this winter? A. A year ago this winter.

Q. The Commission Government Election, October 16, 1917, did you vote? A. No sir.

Q. I call your attention to the poll book of the Commission Government Election, the name of John Kellet, voter number 63, from 168 Eighth Street, and the signature of J. Kellett, and ask you whether that is your signature and if you wrote it? A. No sir.

Q. Did you vote at the Presidential Election in 1916? A. Yes.

Q. I call your attention to the signature of John Kellett opposite the registry number 5, John Kellett, 168 Eighth Street, and ask you whether you find that? A. That is my handwriting.

Q. That is your signature? A. Yes.

Q. At the Commission Government Election,

you say you didn't live at 168 Eighth Street, and had been away from there since the winter before? A. Yes.

Q. Do you know any of the members of the Board of Elections? A. No sir, I don't

CROSS-EXAMINATION by Mr. Simpson:

Q. What kind of a house do you live in? A. At the present time?

Q. At the Commission Government Election? A. The Commission Government Election, I wasn't in the city.

Q. Didn't you live there? A. No sir.

Q. Where did you live at the time you registered? A. I didn't register in this last election.

Q. You registered for the Presidential election? A. Presidential election, 168 Eighth Street.

Q. What kind of a house is it? A. A six family house.

Q. A lot of people live in the house? A. Yes.

Q. Is that a block where there are a lot of tenement houses, a lot of people live on that block? A. That is the only tenement house of that size on that street, between Grove and Henderson.

Q. It is a mixed population? A. Yes.

Q. All kinds of people live there? How far is that from the polling place? A. About two blocks.

Q. Do you know Mr. Kane, the Committeeman down there? A. John Kane?

Q. Yes, Committeeman? A. Yes.

Q. Where were you on the day of the Commission Government Election? A. Commission Government Election, I was in the City of Newark.

Q. Living in Newark? A. I was there.

Q. You still live there? A. No; I am living in Jersey City now.

Q. Are you the only man of that name at that address so far as you know? A. Yes.

REDIRECT EXAMINATION by Mr. Vickers:

Q. Do you know Mr. Kane very well? A. I know him personally to speak to.

Q. How often during a week were you accustomed to meet Mr. Kane? A. Well, down on Pavonia Avenue—

Q. How often during the week would you meet him every day? A. I wouldn't meet him every day, no. I might meet him once in a week or once in two weeks, I don't know.

Q. When you say you were not in town at the Commission Government Election in 1917 had you moved away and was your absence known, known to Mr. Kane, for instance? A. I don't know anything about that, whether Mr. Kane knew it or not.

WILLIAM NEALON, Jr., sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. I live now, present address, 7 Wayne Street.

Q. Before that where did you live? A. 143 Eighth Street.

Q. How long had you lived at 143 Eighth Street? A. About two years.

Q. When did you move from there? A. September.

Q. 1917? A. Yes.

Q. Then you did not live at 143 Eighth Street at the Commission Government Election? A. No.

Q. On October 16th, 1917? A. No sir.

Q. Did you vote from the old polling place in the Second District, Second Ward, at that Commission Government Election? A. No sir.

Q. I show you the poll book, S-5, and call your attention to the William Nealon entry, ballot 61, 143 Eighth Street, William Nealon, Jr., ask you whether that is your signature, whether you wrote it? A. No sir.

Q. At 143 Eighth Street, at the time you lived there, who else resided in that house with your—your part of the house? A. My father.

Q. Is that William Nealon, Sr.? A. Yes.

Q. Do you know his handwriting? A. Yes.

Q. I call your attention to number 62—immediately following that of yours, or alleged to be yours, and ask you whether you can say whether or not the signature William Zielan, Sr., is your father's signature? A. No sir.

Q. Is it or not? A. No sir.

Q. It is not? A. No sir.

Q. Do you know whether or not your father voted at the old polling place at the Second District, Second Ward, at the Commission Government Election, October 16th, 1917? A. I don't know.

BY THE COURT:

Q. Did he vote in the new place when you voted—did you vote from the new address? A. No sir, I didn't.

Q. You didn't vote at all? A. No sir.

Q. All right.

BY MR. VICKERS:

Q. Did you vote at the Presidential election in 1916? A. Yes.

Q. Did you register from 143 Eighth Street?

Q. I call your attention to number 10 in the registry of 1916, William Nealon, Jr., marked in red ink, ballot number 61, as indicated in the poll book, and point to the signature column, William Nealon, ask you whether that is your signature and whether you wrote it? A. Yes sir.

Q. I now call your attention to the same page of the book, Nealon, Wm., Sr., number 4, at the same address, and ask you whether that is your father's signature, William Nealon? A. Yes.

Q. That is? Do you know any of these election officers? A. No sir.

Q. Don't know any of them? These three defendants, you don't know them? A. No.

(No Cross-Examination).

JOHN CRIMMINS, sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 139 Ninth Street.

Q. How long have you lived there? A. Since I was born.

Q. Born there?

THE COURT: Always lived there?

THE WITNESS: Yes.

Q. Did you vote at the Commission Government Election, October 16, 1917, in the Second District, Second Ward? A. No sir.

Q. I show you the poll book S-5, and call your attention to the entry under ballot 74, John Crimmins, 139 Ninth Street, John Crimmins, and ask you whether that is your signature and whether you wrote it? A. No sir.

Q. Did you vote at the general Presidential

election? A. Yes.

Q. Registered for it? A. Yes.

Q. I call your attention to the registry of the Presidential election, S-4, the first entry on the page, on Ninth Street, 139, John Courtney, number 1, on the page, in red pencil, number 72— A. That isn't my signature, that is John Courtney.

Q. —number 74, 139 Ninth Street, showing you—drawing your attention to John Crimmins, and ask you whether that is yours? A. That is mine.

Q. That is yours? A. You lived in the same house in which John Courtney lived? A. Yes.

Q. Also Clarence McKenna? A. Yes.

Q. Do you know the election officers, any of them? A. See them, that is all.

Q. To see them? A. That is all.

Q. Don't know them by name? A. No—one of them by name.

Q. Which? A. Looney.

Q. (By the Court). Does he know you? A. Yes.

Q. (By the Court). What does he call you? A. Jack.

Q. (By the Court). How long has he known you? A. I know him since he was born.

Q. (By the Court). Does he live in the same neighborhood with you? A. Yes.

Q. (By the Court). What is his business? A. He is a truck driver.

Q. (By the Court). How intimate has he been with you? A. Not intimate at all, only just see him.

Q. (By the Court). Have you been associated with him at all? A. No sir.

Q. (By the Court). I don't know whether he goes to St. Michael's Church. I go to St. Michael's Church.

BY MR. SIMPSON:

Q. You simply know Looney by name, that is all? You are not associated? A. Never associated.

Q. Don't go to balls, picnics, church services, simply know him, living in the same neighborhood.

Q. What sort of a neighborhood is that, thickly populated? A. Thickly populated.

Q. All kinds of people there? A. All kinds of people.

THE COURT: It has occurred to me in this trial—I want to put it now to both sides, it seems to me that the jury, as we progress with what seems to be a very large number of names, the jury should have the opportunity to see the poll book, where the name of say Mr. X. appears to be signed, and which Mr. X says he did not sign, to compare with the signature in the registry book which he says he did not sign. It is going to be, after the jury retires for deliberation, very difficult for them to remember this great mass of names of witnesses you are calling here, for them to check up and cull out from the books which are in evidence, these names for comparison. If I see clearly, I think it is very important in this case, what reasonable men would do in comparing them.

MR. VICKERS: I was going to suggest in this case, when we get there, we have the opportunity of presenting to the jury the poll books and registry books, all at one time, and let them go over them and examine them before the defense goes in.

THE COURT: The reason I speak of it now is because perhaps you can hit upon some means by which these names may be compared. Perhaps if you confer with each other you may hit upon some method.

MR. VICKERS: The reason we have not done it, because—I think your Honor noted yesterday—in the course of the trial, it takes so long for the jury to examine it. We have taken up a great deal of time, two or three times as much time as this way, I don't think we can do it. I think the State and defense together at the conclusion of the examination can point out the names.

THE COURT: Cannot a list be made of references to the poll book and signature book where the names occur?

MR. McCARTER: We will confer about that.

JAMES JOSEPH CURLEY, sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 66 Pavonia Avenue.

Q. Did you at any time reside at 143 Eighth Street? A. No sir.

MR. VICKERS: I don't think he is the right man. I don't believe this is the gentleman that I want.

Q. What is your occupation? A. Assistant engineer.

Q. Where? A. Jersey City Stock Yards.
Q. At the Commission Government Election where did you live? A. 66 Pavonia Avenue.

MR. VICKERS: They have subpoenaed the wrong man. This is not the man we want. It is Joseph Curley, we have subpoenaed.

Q. Your subpoena shows Joseph Curley? A. Shows Joseph, yes.
Q. You answered it, being James Joseph, you answered? A. Yes.

MR. VICKERS: We will excuse you.

WILLIAM M. SMALL, sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 121 Pavonia Avenue.
Q. What is your business? A. Run a lodging house.
Q. What is the name of it? A. The Holmes Hotel.
Q. Where is it located? A. 121 Pavonia Avenue.
Q. How long have you run it? A. For eight years.
Q. Do you keep a registry of persons inhabiting your hotel from day to day? A. Yes.
Q. And continuously, if they do? A. Yes, I have it right there now. (Witness produces a book).
Q. I ask you if you can tell from memory whether Harry Arrowhill lived at 121 Pavonia Avenue on the 16th of October, 1917?

MR. McCARTER: I object. It is immaterial and not within the charge. They don't claim a false registration here.

MR. VICKERS: We do claim a false voting.

Q. Refer to your book—

THE COURT: This is not now one of the men who is said to have voted when he himself says that he didn't vote, by showing him the signature, but here is the keeper of a lodging house who is asked now to say whether A. B. C. or D. did or didn't live at his lodging house at the time in question. The indictment charges these defendants with permitting men to vote in the place of those who were registered, being other than those who were registered. How can the testimony of this man, assuming that he will say that A. B. C. and D did not live at his place, bind these defendants?

MR. VICKERS: Suppose he died, that somebody voted on his name, that he died—

THE COURT: That A. B. C. or D. died, is one thing, but whether they were living at this lodging house or not, may be—I don't see how it comes within the purpose of the indictment.

MR. VICKERS: It is the same situation as was presented to your Honor in the matter, in the case of the Hill & Newman Company, in which your Honor ruled on this same question, that this man occupying the premises and saying that no one resided there at the time of the election,

and they having permitted a man or men who had occupied those premises to remain there until they had voted at the Presidential election in 1916; the Court and jury, I believe, would take judicial notice, if a man is purported to have voted, who this witness says died, somebody must have voted on his name. If there is some other evidence, for instance, the dissimilarity of signatures, that brings home to the Election Board knowledge of that situation.

THE COURT: You mean under the Election Act, whether the dissimilarity of signatures, which I suppose you will prove—

MR. VICKERS: I am merely illustrating it. Certainly I intend to prove it, but I am illustrating it, as a reason—I will have to argue, if this evidence is to go in, that because of the language of the Election Act, the dissimilarity of signatures, compared with the registry, ought to have, under the Election Act, put the defendants on their inquiry. Then I think they would be required to ask certain questions relating to the same subject matters as contained in the columns in the registry book.

THE COURT: Your theory is that you will hereafter show that the dissimilarity in the signatures of these men, whom this witness is now being asked about, as to whether they lived at such an address—

MR. VICKERS: Yes.

THE COURT: I will hear you, Mr. McCarter.

MR. McCARTER: As I understand this inquiry, he produces the registry of this hotel, which he kept, and tells us whether John Jones was registered there at a certain time. I cannot imagine any circumstances under which that evidence under this indictment can be competent.

THE COURT: I suppose the question would be whether in following the questionaire in the registry book which has been—a man comes up to vote, he is required under the Election Law first to sign his name in the poll book, the District Election Board is thereupon required to take that signature and compare it with the registry. That is the foundamental theory of the Geran Act, the comparison of the signatures. If there is not a similarity in the signature book, it is then the duty of the challenger or watcher or some one to challenge, anybody can do it, any one authorized by the Election Law. If they do not do it it is then the duty of the election officers to do it. And having been challenged, they question him as to these columns in the registry book, as to his age, residence, occupation, whether a tenement house, whether he owns the premises, and such other things as will identify him. Having done that, if A comes up and signs his name, and they find it dissimilar or not alike, they then question A, they would undoubtedly find, unless he were so thoroughly skilled or versed in some iniquitous system, as to answer the questions, they would readily find he was not the person whom he represented himself to be. Therefore, is it not proper evidence to have some one come in in the first instance and say

these men did not live at that place at all? Therefore, if they had done that at that time, they would have immediately checked up this situation and prevented these men from voting.

MR. McCARTER: I also last night studied the act, and have familiarized myself with it, and have studied the language of this indictment. As I understand the theory of this indictment, I want to be corrected if I am wrong, there is no use of any of us wasting time over mistakes—there is nothing with reference to the validity of invalidity of registration in this particular district. The registry is assumed, upon the whole hypothesis of this indictment, to be correct, and the charge against these men is made on the assumption that the registry is correct, and that they permitted people to falsely vote against that registry, putting John Jones in instead of Peter Smith, and without having pursued the formalities required by the Geran Act, following up the questionaires they had obtained on an assumed valid registry to see whether or not he may stand cross-examination. For instance, I present myself at the polls. They don't know me, they say, are assumed to say, "Write your name." I write my name. They look at it, they are struck with the dissimilarity which may be or may not be remarkable. As I understand the act, the duty of the election officers is to take up the registry book which has a lot of detail connected with the person whom I am supposed to be representing, which registry is supposed to be valid, to see if I can answer the same questions in the same way they were an-

swered when I or the person I am impersonating registered. If I can, why, notwithstanding the dissimilarity in the writing, I must be the same man and they will allow me to vote. If I cannot, they will challenge.

Now, it does not seem to me, if that is the theory of this indictment, and as I understand it to be, when the officer in this case neglected and failed knowingly and wilfully to do those things, it doesn't seem to me to be germane or in any way material to this charge, whether or not the registry is valid—it is assured to be valid by the hpothesis—and the crime, if there be any, was wilfully and knowingly, on the assumption of a valid registry permitting an invalid poll. Therefore any evidence this man may give in reference to whether or not Peter Smith lived at his house at the time of the registry is utterly irrelevant to this charge.

THE COURT: I will hear the question.

Q. (Repeated by the stenographer). You cannot remember without looking at your record, can you? A. Yes, I remember that particular man, I had to put him out of the house for bad conduct.

THE COURT: You object to the question?

MR. McCARTER: Yes.

THE COURT: I will allow it.

MR. McCARTER: I ask an exception.

(Exception allowed and signed and

sealed accordingly.

George G. Tennant, Judge.

Seal).

THE COURT: The witness said, "I remember that particular name because I had to put the man out of the house."

MR. SIMPSON: For bad conduct.

THE WITNESS: That particular man, I put out several times, he came back; some time in the summer I had to put him out last.

Q. Last summer? A. Yes.

Q. 1917? A. Yes.

Q. Since the summer of 1917 has he lived at your hotel or been at your hotel? A. No sir, he has visited, but I put him out again, I wouldn't have the man in the house, couldn't have him in the house.

Q. When you say he visited, do you mean you registered him again or booked him because he slept there? A. No sir, didn't register him, didn't stay that night, because I put him out.

Q. As soon as you saw him you put him out? (No answer).

Q. (By the Court). Since the summer of what? A. Summer of 1917.

Q. (By the Court). You put him out of the house in the summer of 1917? A. Well, I put him out last, not long ago, but he came back to get lodging, but I couldn't take him.

Q. (By the Court). When did he lodge there last? A. Some time in the summer last, summer of 1917, I say.

BY MR. VICKERS:

Q. The last time you say this man lodged in your house was in the summer of 1917? A. Yes.

Q. When you say the summer, what months do you mean? A. I don't know exactly, but I could tell you on the register.

Q. Look at it. That is what we are interested in, to know the exact time, exact part of the summer, including the day. A. I don't keep that in my mind.

Q. Look at your book.

(Short Recess).

Q. Look in your book and see if you can find Harry Arrowhill's name.

MR. McCARTER: I object.

THE COURT: I will allow the question.

MR. McCARTER: I ask an exception.

(Exception allowed and signed and sealed accordingly.

George G. Tennant, Judge.

Seal).

A. His name is not here, but this book goes back to July 1st, this book, but I remember him, I think he was put out in some time in May, I am not sure.

Q. That book covers everybody who was in your hotel as a guest, roomer, or who lived there from July 1st, 1917, isn't that right? A. Yes.

Q. It doesn't appear there? A. No. This man used to change his name, he is a noted character, he used to change his name quite often. When I wouldn't be there he would come in, the night clerk, give him another name, to get in the

house.

THE COURT: It may be struck out.

MR. SIMPSON: I object to its being struck out.

THE COURT: Do you want it in?

MR. SIMPSON: Yes.

THE COURT: It may stand.

Q. So far as your registry shows, under the name of Harry Arrowhill, he doesn't appear in your register, which register covers from July 1st, 1917, to date; is that right? A. I am not sure.

Q. Look at the book? A. That particular case, another name—

Q. I didn't ask you that. Answer my question. A. I understand what you say.

Q. Answer it? A. This man—it is a terrible thing to find out—

Q. I am asking whether under the name of Harry Arrowhill he was registered there any time since the first of July, 1917? A. He may not have given his right name.

Q. Look and see whether you find it? A. I may find his name. It is like hen's teeth.

Q. Look and see if you find the hen's teeth? A. I will never find the hen's teeth, hen's haven't got any.

MR. SIMPSON: Put the book in evidence.

A. (Continuing). I would find him in my other book. This book is from July 1st. I might find him in my other book.

Q. Look and see? A. It may take me some time to. I don't know whether I would find him or not. He would change about in the hotel so.

Q. Look for that name? A. It is only a waste of time.

Q. Don't waste ours. A. I ain't going to waste yours. You stop me when you are ready. It may take me some time. I ain't such an educated man either, I didn't go to college much.

MR. SIMPSON: I make the suggestion that you put the book in evidence and let the jury take it out and go over it page by page.

MR. VICKERS: I will consent to it.

THE COURT: The book is admitted in evidence by consent.

Q. On the 16th day of October, 1917, did Martin Hanley live at the Homestead Hotel, 121 Pavonia Avenue, Jersey City? A. Martin Hanley —October—

Q. October 16th, 1917? A. I don't think—that is another man that I put out of the house.

Q. When did you put him out? A. I don't remember, sometime in the summer, early in the summer.

Q. Before the beginning of that book, before July 1st? A. I couldn't say about that, I think so, yes, before this book.

Q. Do all the persons who live in your hotel appear on the registry in that book if they lived in the hotel since July 1st, 1917? A. Yes, y-e-s. Well, you see, the men change around.

Q. I don't care whether they change around or not. Whether they registered by the name of Martin Hanley or some other name, are all the persons who lived there registered? Do you re-

quire it? A. It is impossible for me to keep the whole of the lodging house names or every man that comes in. Some of these men go away and stay away for a time and come back again.

Q. Do they register again? A. Yes, they register, I register the man, comes in the office, I write the name, they don't write their own name.

Q. You register every man who comes there and sleeps? A. Yes, every man.

Q. If he slept there since July 1, 1917, his name appears in this book? A. Yes; certainly.

Q. Did James Burns live at the Homestead Hotel, 121 Pavonia Avenue.

MR. SIMPSON: I make the same objection. I assume the same ruling?

THE COURT: The same ruling.

A. James Burns—I remember the name, but I couldn't say.

Q. Do you know whether he was there on the 16th of October, 1917? A. I don't know.

BY THE COURT:

Q. (By the Court). Can you look at that book and tell me whether Jmaes Burns was stopping at the hotel in October, 1917? A. No sir.

Q. You can't do that? A. No sir.

Q. You cannot tell whether he was registered? A. No sir.

Q. You cannot tell by looking at the book? A. I could if I go over the book.

Q. Are they arranged in the order of date? A. Yes.

Q. Can't you look?

MR. SIMPSON: Here is an entry of October 17th, 1916. See, here are a lot of rooms, with no names on them at all.

Q. Look at October 16, 1917, and see whether James O'Brien was registered at that time? A. James O'Brien?

Q. Burns? A. Oh, Burns. No, he is not. He is not there on that day.

BY MR. VICKERS:

Q. Since October 16, 1917, have you gone over this book and looked for the persons whose names I have already given you, have you done that in the presence of Mr. McCarthy, the First Assistant Prosecutor? A. No sir.

Q. Have you gone over this book and looked for those names in the presence of Mr. McCarthy, the First Assistant Prosecutor? A. Nobody has come to inquire about it. I haven't been notified.

Q. Do you know Mr. McCarthy, the First Assistant Prosecutor? Do you know him? A. I know his face, yes.

Q. Was he down at the Hotel? A. He has been, yes.

Q. Did you and he go over the registry together? A. I don't remember.

MR. SIMPSON: He didn't register.

Q. Did you and he go over the register together and look for these persons whose names thus far called out to you? A. I don't remember. I seem to think so, but I am not sure. I know the gentleman's face, he has been in my house a few times, he has been in my house a few times. What is his name, sir, I know the gentleman has been in my house, but I never knew his name before.

Q. Having identified him as the gentleman who was at your house, did he go there and did he and you together go over this registry, which

I have here in court?

MR. McCARTER: I object, it is irrelevant.

A. Well, I don't remember that. It might be so. I can't mind everything. God knows I can't mind everything.

Q. (By the Court). Mr. Small, I want you to understand. I want you to put your mind on this case and tell us the truth. I want you to answer these questions. Put your mind on these questions and answer them, or I will deal with you.

A. I am doing it, as far as possible.

THE COURT: Officer, stand up here. Pay attention to the Prosecutor and answer these questions.

Q. On the 16th of October, 1917, was Frank Meeker living at your home, the Homestead Hotel, 121 Pavonia Avenue, Jersey City?

MR. McCARTER: I make the same objection.

A. Yes, I think Meeker. I know him, I am personally acquainted with Meeker.

Q. Do you find him there? A. October, 1917—

Q. October 16th. What are you looking under November 3rd, 1917, for? A. I don't know, sure. It is no use to deal rash with me, because I have to take my time. Which is it, here, October 17th, Meeker—

Q. October 16th? A. Well, I thought he was there, but his name is not here now.

Q. (By the Court). If he stayed at your hotel would his name be there? A. Yes.

Q. (By the Court). It ain't there on that day,

sir, October 16th, he should have a room, but I don't see the name there.

Q. Turn to the 15th of October? A. No sir.

Q. Turn to the 16th? A. I seemed to think that he was away at that time.

MR. SIMPSON: I object to this also on the ground that this witness says he was there, and he doesn't need the register to refresh his memory, so the use of it is improper.

THE COURT: I don't know. I will not overrule it. The Jury must pass on it.

A. (Continuing). I think he was away about that time.

Q. Do you know Peter O'Reilly? A. Peter O'Reilly?

Q. Do you know him? A. Yes. You got to give me time. I can't catch on everything in a minute.

Q. Listen to me? A. I am listening, sir, as far as possible.

Q. Do you know Peter O'Reilly. A. I mind him. I remember a man of that name, an old man, which I had there.

Q. Seventy odd years old? A. Yes.

Q. On the 16th of October, 1917, did he live at your hotel, the Homestead Hotel, 121 Pavonia Avenue, Jersey City?

MR. McCARTER: I make the same objection.

THE COURT: The same ruling.

MR. McCARTER: I ask an exception.

(Exception allowed and signed and

sealed accordingly.

George G. Tennant, Judge.

Seal).

A. No, I remember a man, he used to stay there, but I learn that that man is dead.

Q. Don't you know as a matter of fact he died at the City Hospital in Jersey City? A. I hear that.

MR. McCARTER: I object. This witness cannot possibly know that.

THE COURT: I will sustain the objection—unless you know you saw him dead.

Q. (By the Court). Did you see him dead? A. Not that day.

Q. (By the Court). Did you see him dead? A. Did I see him dead? No sir.

Q. Do you know whether he is dead or not? Have you seen him? A. No, I don't know, sir, only what I hear.

THE COURT: I will sustain the objection.

Q. How long since he lived at 121 Pavonia Avenue? A. It must be back in the fall. I couldn't tell you that.

Q. Is it a month or a century? A. Not a century, no sir. Oh, no. It is not a year. I remember the man. I know it was in the spring, I think, He stayed there in the spring, last winter, not this winter, but last winter. I know in the spring. I know the man complained enough, that he stayed—

Q. What? A. I remember that he stayed at my hotel, at my lodging house, last winter, not this winter, and along, I think, in the spring. I

think so, I am not sure. See? I can't keep all those things in my mind.

Q. What happened along in the spring? A. I don't know.

Q. Do you know where— A. A good many things happened.

Q. —where he went from your hotel? A. I remember him going, see, the man was taken away, I think, sick. He was sick. I remember now getting the ambulance myself.

Q. You remember that the Jersey City Hospital ambulance came to your hotel? A. Yes, when he was dead.

Q. Of course, he was dead. When was he taken away? A. I don't know exactly the date, I couldn't tell you.

Q. Was it winter or spring or summer or fall? A. I couldn't tell you that. I would find out if you give me time, by the book.

Q. What did you mean by saying "Along in the spring, he was taken, I remember now, the ambulance came?" A. Yes.

Q. Do you remember that or don't you? A. Yes, I do remember the ambulance coming.

Q. Was it along in the spring as you have sworn to? A. I am not sure about it.

Q. How long had you known Peter O'Reilly? A. I will give you all the information I can possibly—

Q. (By the Court). How long had you known him? A. I know him I think for seven or eight or ten months, something like that. I remember the man coming in and out, in the room, had number 4 room, on the top floor, Peter O'Reilly.

Q. Do you know James McCabe? A. McCabe, I did know a man by that name. McCabe, McCabe, yes.

Q. Did he live there on the 16th of October, 1917? A. I couldn't.

MR. McCARTER: I make the same objection.

THE COURT: Same ruling.

A. I couldn't say.

Q. Refer to your book and see whether he was registered there? A. I know the man all right. I know he used to have 41; McCabe, there you are.

MR. SIMPSON: He is registered on that day, James McCabe, 41. Fifteen cents, what does that mean?

THE WITNESS: Yes, fifteen cents.

MR. HUDSPETH: No Christian name, —just "McCabe?"

MR. SIMPSON: None of them have Christian names.

Q. Do you know John Cash? A. John Cass?

Q. Cash? A. The name seems to be familiar, sir, but I couldn't—

Q. Was he registered at your hotel on the 16th of October, 1917?

MR. McCARTER: I make the same objection.

THE COURT: Same ruling.

MR. McCARTER: I ask an exception.

(Exception allowed and signed and sealed accordingly.

George G. Tennant, Judge.

Seal).

A. No, he didn't register there on that day.

Q. Do you know Anthony Miller? A. Anthony Miller, Miller, Miller; no, I don't remember him.

Q. Is he registered on the 16th of October, 1917, at the Homestead Hotel? A. I don't know him.

Q. Look and see?

MR. McCARTER: I make the same objection.

THE COURT: Same ruling. The same ruling will apply. You will have your exception to this line of testimony.

A. No.

Q. Nathan Brown, was he registered at your house on the 16th of October, 1917? A. Nathan Brown?

Q. Yes. A. No.

Q. Do you know Mr. Nathan Brown? A. I don't know him, no sir; don't remember him now.

Q. James Moulds, was he registered on the 16th day of October? A. Moulds, I know the man, but—no, no sir.

CROSS-EXAMINATION by Mr. Simpson:

Q. What sort of a hospice did you keep on the 16th of October? A. I can't—

Q. What sort of a hospice did you keep on the 16th of October?

MR. HUDSPETH: May we ask what that is?

MR. SIMPSON: Hospice.

A. I don't understand what that is.

Q. That is ancient English for hotel, what kind of a hotel did you keep? A. It is a lodging house.

Q. You said the name of Cash was familiar to you? You do a cash business? A. Cash—

Q. All pay cash? A. All pay cash.

Q. You are near the Erie Railroad terminal? A. Didn't all pay, sometimes we would trust a man and he would get away.

Q. He would leave you? A. Yes.

Q. It is near the Erie Railroad Terminal? A. Yes.

Q. Many of your guests arrive on the fast freight? A. Some.

Q. A great many of them do? A. No, I think a number lives around there.

MR. HUDSPETH: I object. It is hearsay.

A. (Continuing). They live around there, stay there, some of them.

Q. Most of them are men of irregular habits? A. Yes.

Q. They use different names. If you have trouble with a man and you leave word not to let, for instance, John Jones in, Jones come in and gives another name? A. Yes, that has happened.

Q. They have all kinds of names? A. Yes.

Q. And you ask them for their name? A. Yes.

Q. If you don't know the man you put down whatever name he gives you? A. Yes, certainly.

Q. I notice there are blanks, like 6, 28, 40; what does that signify? A. Those men don't come in.

Q. Empty rooms? A. Empty beds.

Q. This side are beds. Those, the rooms. These beds are all in one big room? A. No, about seven beds in a room. And then we have

fifteen single rooms.

Q. What do you get for your rooms? A. Twenty or twenty-five cents a night.

Q. What for the beds? A. Fifteen cents for the beds.

Q. You haven't any suites there at all? A. Swedes?

Q. Suites? A. What do you mean, candy?

Q. I mean like a sitting room, parlor, private bath, and bedroom? Nothing like that? A. No.

MR. VICKERS: No bath at all?

A. We have baths, yes, two baths.

Q. You have no recollection outside of your books, have you? A. No sir, I have not. A lot of working men, you know, coming and going, of course.

Q. But you did know some of these men personally, the first name—you knew the old man, O'Reilly? A. Yes.

Q. Some of the others? A. Yes.

Q. This man, the first man you named to us who was that?

MR. VICKERS. Arrahill.

A. I know him too well.

Q. You had to put him out. What was the matter with him? A. Very bad character, very low, profane language, get drunk, sometimes spring a leak, get dirty, filthy, in every way.

Q. You put him out? A. Yes.

Q. When he came back he would sometimes give another name? A. Yes, sometimes. He did do that a few times. They got to know him.

Q. A great deal of your trade is transient, men who would come for a night or two and go away? A. No, the majority of them were steady lodgers.

Q. I notice you wear a uniform. Is it the Salvation Army? A. I am a Salvation Army man myself.

Q. That is not a Salvation Army hotel? A. No.

Q. It is volunteer? A. No, I run it on my own account.

Q. It is your own private business? A. Yes, for eight years now.

Q. When a man stays there for a week at a time does he pay for the week? A. Sometimes they pay for the week in advance.

Q. Do you register him every night then? A. Every night, yes.

Q. Even if he pays for a month, or for a whole week, you wrote his name in Tuesday, Wednesday, Thursday— A. Yes.

Q. What is the purpose of that? What do you do that for? A. Because the man is staying there, I bring his name over, he is paid for, to show every night.

Q. (By the Court). You designate in your book any bed and room that is occupied each night, don't you? A. Beg pardon?

Q. (By the Court). You make your entry in the book, a bed and the room that is occupied; isn't that what you do? A. Yes.

Q. (By the Court). Each night? A. Yes.

Q. (By the Court). That is what your register is? A. Yes.

Q. When Mr. McCarthy was at your hotel, Judge McCarthy, Mr. Vickers has pointed out, this handsome gentleman asked you if he was down at your hotel. When was he at your hotel? A. Now, that is a thing—

Q. You don't remember? A. No.

Q. He was there on business, to get information? A. Yes.

Q. When? A. As far as I know—don't know. I guess he didn't come to rob us.

Q. You don't know when that was you went over the books with Mr. McCarthy? Do you know how long ago it was? A. No, I don't remember the date exactly, but I remember—

Q. Did you go all through the book, or on one page? A. Didn't go all through the book, I don't think. I am not sure.

Q. What kind of a building is this,—a one or two or three story building? A. Four story.

Q. Right next to where the Erie tracks cross Pavonia Avenue? A. Right along side, as far as the corner there.

Q. Where the tracks go over Pavonia Avenue, the railroad tracks? That is all.

REDIRECT EXAMINATION by Mr. Vickers:

Q. Was Mr. McCarthy there on three different occasions? A. I think so.

Q. Have you any memory on that at all? A. I seen him being there two or three times.

Q. On that occasion did you and he have this book and go over it? A. No, I don't remember that, really, I don't.

Q. Would you remember if a man like Mr. McCarthy came down there, not to take a bed in your lodging house, and told you who he was when he came there—he told you who he was, didn't he? A. I don't remember that he did. I don't know myself the name. I didn't know he was Mr. McCarthy.

Q. He talked to you about people being there? A. Yes.

Q. Wouldn't you remember? A. I remember the man, but I don't remember, he didn't give me his name, that I know of.

BY MR. VICKERS:

Q. Do you remember that you were waked up

on one occasion when Mr. McCarthy came there, you had been asleep and you were waked up?

MR. McCARTER: I object. It is entirely irrelevant.

A. I am waked up. I don't remember that special time. I know I am waked up too often. I don't remember that time.

THE COURT: He has a right to pursue the inquiry, to get his mind to the question he is after. I will allow it to direct his attention to any specific matter.

MR. VICKERS: I ask that the register be marked in evidence.

(The hotel register is marked Exhibit S-6 in evidence).

CLARENCE McKENNA, a witness produced on behalf of the State, being sworn, testified as follows:

DIRECT EXAMINATION by Mr. Vickers:

Q. Where do you live? A. 139 Ninth Street —I did live there.

Q. When did you last live at 139 Ninth Street? A. Why, up until Christmas morning.

Q. This last Christmas? A. Last Christmas morning.

Q. Your mother still resides there? A. Yes.

Q. You lived there on the 16th of October, 1917? A. Yes.

Q. At the time of the Commission Government Election how long had you lived at 139 Ninth Street? A. For the past eight or nine years.

Q. Lived there with your mother? A. Right.

Q. Did you vote at the Commission Government Election, October 16, 1917? A. No sir.

Q. I show you Exhibit S-5 and call your attention to the entry under Ninth Street, voter—vote number 73—McKenna, Clarence, 139 Ninth Street, Clarence McKenna in the signature column and ask you whether that is your signature and whether you wrote it? A. No sir.

Q. Did you vote at the general election? A. Yes.

Q. The Presidential election? A. Yes.

Q. 1916? A. Yes.

Q. I call your attention to the signature copy registry of that election in 1916, under Ninth Street, after the entry number three, McKenna, Clarence, in red pencil, 73 as the vote, 139 Ninth Street, direct your attention particularly to the signature in the signature column, and ask you if that is your signature, you made at that time. A. Yes.

Q. Did you sign your name, Clarence J. Mc-McKenna? A. Not all the time.

Q. But you did on that occasion? A. Yes.

Q. That is your name, Clarence J. McKenna? A. That is my name.

Q. Do you know any of these election officers, these defendants? A. Yes.

Q. Whom do you know? A. Kelly and Looney.

Q. How long have you known Looney? A. I couldn't say.

Q. About how long? A. I couldn't say.

Q. Five years, ten years? A. I should judge a year and a little over, I don't know.

Q. (By the Court). How well have you known him? Know him to speak to? A. Just to say hello.

Q. (By the Court). Does he know you? A. I couldn't say whether he does or not. I suppose

he does because he says, "Hello" back.

Q. (By the Court). Does he? A. Yes.

Q. (By the Court). Does he call you by name? A. I couldn't say whether he does or not.

Q. (By the Court). Have you talked to him? A. Not long.

Q. (By the Court). When you have talked to him, did he call you by name? A. I couldn't say.

Q. (By the Court). Where did you talk to him? A. I couldn't say.

Q. (By the Court). How many times have you talked to him? A. I couldn't say.

Q. (By the Court). Why not? A. Because I wouldn't take any chance of guessing.

Q. (By the Court). We don't want any guess. A. Well, I couldn't judge my mind.

Q. (By the Court). You couldn't jog your mind? A. No sir.

Q. (By the Court). Why? A. Not on that case.

Q Do you know any of the other election officers? A. Mr. Kelly.

Q. How long have you known Kelly? A. Quite a number of years.

Q. Tell us what you mean by that. A. For about six or seven years, I should judge.

Q. Do you know his first name? A. Johnnie.

Q. Does he know your first name? A. Sir?

Q. Does he know your first name? A. Yes.

Q. Do you call him Johnnie? A. Not all the time, no.

Q. What does he call you? A. Mack.

Q. Is that what you are familiarly known by, by your friends and associates—Mack? A. Yes.

Q. Do you know Mr. Unger? A. No.

Q. Did you go to the polling place to vote on the 16th of October, 1917? A. Yes.

Q. What time of day? A. Twenty minutes to six at night.

Q. Did you go in the polling place? A. No.

Q. Whom did you see? A. I couldn't say who it was.

Q. Why didn't you go in? A. Because I was told that somebody had voted for me.

Q. You don't know who it was told you? A. No sir.

Q. You were not interested to find out whether it was so or not, you say you didn't go inside to find out? A. Didn't go inside, no sir.

Q. Do you know Mr. Kane, the Committeeman in that ward? A. What say?

Q. Do you know Mr. Kane, the Committeeman in that ward? A. No sir. Oh, Jack Kane?

Q. Yes. A. Yes, I know Mr. Kane.

Q. Did you see him there that day? A. No sir.

CROSS-EXAMINATION by Mr. Simpson:

Q. Do you know Mr. Hosbach? A. Yes.

Q. How well do you know him? A. Going in and out the store, say "Hello."

Q. Do business with him in the store? A. What say?

Q. Do business with him in the store? A. I did.

Q. You went in to buy from him, you knew him, saw him, he knew who you were? A. Yes.

Q. For how long a period of time had you known him? A. For the past twelve or thirteen years.

Q. When you came up to vote was there a crowd outside the polling place? A. No sir, no sir.

Q. How many men were there? A. There was only one.

Q. He saw you come in there, he said, "Don't go in there, somebody has voted for you?" A. Yes.

Q. (By the Court). Who? Do you mean Mr. Hosbach? A. No.

Q. Did you think I meant Mr. Hosbach was outside? A. No.

Q. I didn't mean it. I meant this man that spoke to you. Will you describe the man that spoke to you? A. I couldn't very well describe him.

Q. He told you not to go in, your name had been voted? A. Yes.

Q. Did he say he had sent somebody in to vote? A. No.

Q. He said it had been voted on? A. It had been voted on.

Q. You had no conversation with the Election Board about it? A. No sir.

Q. With any of them? A. No.

Q. Didn't go in to ask them if anybody had voted on your name? A. No.

Q. Didn't call their attention to the fact? A. No sir.

Q. You went away? A. Went away.

Q. As far as you know, the Election Board didn't know? A. What do you mean?

Q. You didn't go in to the Election Board and say, "My name has been voted on?" A. No.

Q. As soon as this man talked to you, you went away? A. Yes.

Q. Where do you live? A. 139 Ninth Street.

Q. What kind of a neighborhood is that? A. Right across from the wharves.

Q. Populated neighborhood? A. It is, quite, mostly all Polish people around there.

Q. Foreign neighborhood? A. Yes.

Q. Where did you work that day? A. Public Service.

Q. What time did you get off? A. Got off quarter after five.

Q. You got to the polling place what time? A. About twenty to six.

Q. You saw no one outside you knew? A. No.

BY MR. VICKERS:

Q. Did you have the opportunity to see inside whether Mr. Hosbach was there? A. No sir.

Q. Do you know that Mr. Hosbach was an election officer? A. I couldn't say.

Q. Did you know at that time whether he was? A. I didn't know whether he was or not.

Q. Did you know whether Mr. Looney was? A. No.

Q. Did you know whether Mr. Kelly was? A. No.

Q. You didn't go inside to find out? A. I didn't go inside.

Q. —whether it was true that some one had voted on your name or not? A. No.

R. MARTIN HOSBACH, recalled.

DIRECT EXAMINATION by Mr. Vickers:

Q. While you were serving as a member of the Election Board in the Second District, Second Ward, of Jersey City, on the 16th of October, 1917, were any affidavits or affirmations taken or administered on the challenge of any voter where there was a dissimilarity or question regarding the signature of the person appearing, and the signature appearing on the signature copy book of the last general election? A. Not to my knowledge while I was there.

Q. Who on the Election Board numbered the ballots at the time of canvassing the vote? A. You mean into the poll book?

Q. On the ballot itself. Who numbered the ballot itself, the paper ballot that was cast, from

1 to 161, or whatever the number was? A. The number was on the ballot.

Q. In stringing the ballot, when they did the stringing of the ballot, after the ballot was taken from the box? A. I understand what you mean.

Q. Somebody must have, or should have, numbered it. A. Mr. Looney marked them.

Q. During the canvassing of the vote what was your function? A. Read them off as they were taken from the ballot box.

BY THE COURT:

Q. You acted as judge? A. According to the scheme, yes, that distinction.

Q. Took the ballot out? A. Read it.

Q. Having another man looking over your shoulder, and passed it to a man who stuck a needle through it and strung it? A. Yes.

BY MR. VICKERS:

Q. And numbered it? A. Yes.

Q. Who were the talliers? Who tallied? A. Mr. Kelly and Mr. Unger.

CROSS-EXAMINATION by Mr. Simpson:

Q. You acted as clerk, didn't you, in this Board? A. Yes.

Q. It was your business to compare the signatures as clerk, wasn't it? A. I couldn't do both at one time.

Q. Was it your business as clerk, when you entered a man's name on the book, to take the registry, after he had made his signature, after you had told the voter to make his signature—you had possession of the poll book? A. Yes.

Q. Wasn't it your business to take it after he signed his name and compare it with the registry? A. I gave that to the other man.

MR. VICKERS: I object. It is based on an unwarranted assumption of fact and conclusion of law,—calls for a conclusion of law.

MR. SIMPSON: That is not so. He is an election officer, he is assumed to know what his duties are. I asked this man, who is without peril, having turned State's evidence—

MR. VICKERS: I object to that statement.

MR. SIMPSON: Then I will get it from the witness. But the question is proper, to ask him as to his conduct and his conception of his duties.

THE COURT: You may ask him what he did.

Q. When you had control of this poll book, all these signatures in blue ink, you didn't determine the man—after the man made his signature, which you said he did make, you didn't take the signature and compare it with the registry book, did you? A. I passed it over to Kelly or Unger, who was sitting on the other side of the table, they checked it off with the corresponding signature.

MR. SIMPSON: I ask that it be stricken out as not responsive.

Q. Did you or not do what I asked you? A. No, I didn't, because I couldn't do it.

MR. SIMPSON: I ask that that be struck out.

THE COURT: I will not strike it out.

Q. You didn't to it? A. No. I couldn't do two things at one time.

MR. SIMPSON: I ask that that be struck out.

THE COURT: I will not strike it out.

Q. I am not asking for your opinion, I am asking what you did. You were not writing in this book all the time, were you? A. No.

Q. When you were not writing in this book, when somebody else had control of the poll book, did you compare the voter's signature as made in the Commission government Election, with the signature in the register? A. No.

Q. You never compared one signature that whole day? A. Because I was on the other side of the table.

MR. SIMPSON: I ask that that be struck out as not responsive to the question.

Q. You never compared one signature? Did you ever compare a signature? A. I wasn't taking care of that end of it.

Q. (By the Court). Say whether you did or not. A. No.

Q. Although you were there all day? A. Yes.

Q. So, many people came in to vote, although you yourself entered up some names in the book, although you saw him make the signature in the book as a voter, you never compared one of those signatures that whole day, of these 164 votes; is that a fact? A. No.

Q. You are out on parole? You are not on bail? A. Yes, on bail.

Q. You are on bail? A. Yes.

Q. You have been in conference with the

Prosecutor's office? You don't expect to be tried yourself? A. I don't know.

MR. VICKERS: I object.

THE COURT: I will allow it.

Q. You are trying to shift any blame there might be, on these three defendants, to get out yourself? A. I have nothing to be afraid of—to say what is right.

Q. Yes. You expect to get out of this without a trial?

MR. VICKERS: I object. It is immaterial—

THE COURT: It is cross-examination.

MR. VICKERS: It is not cross-examination. I didn't ask him any such thing.

THE COURT: I think it is reasonable cross-examination to pass upon the witness's credibility.

MR. VICKERS: What the man expects?

THE COURT: Yes. What he expects may affect his testimony.

Q. (By stenographer). You expect to get out of this without a trial? A. I don't know.

Q. You don't think you will be tried, do you? A. I don't know, I can't answer that.

Q. After being a witness? A. I don't know anything—I don't know enough about the law.

Q. But you hope for the best, I suppose?

MR. VICKERS: I object. It is incompetent.

THE COURT: I will allow it.

(No answer).

Q. You knew this man that was just on the stand—McNamara? A. McKenna?

Q. Yes. A. Yes.

Q. Was in your shop, did business yith you? A. Yes.

Q. Bought? A. Yes.

Q. He is down here as voting—on this book— you say the highest number when you came back from lunch was 72; he is down as 73. How does it happen, after you came back, and this man here walked in there, voted, you knew him, you knew the man who was voting was not McKenna, and yet you let him vote?

MR. VICKERS: I object. It contains an unwarranted assumption, and is a misstatement of the testimony. The witness testified there were 72 or 75 votes. I ask that we go back to his testimony if there is any doubt about it.

MR. SIMPSON: You don't remember the testimony. I was very careful to have this witness say what was the highest number. He said 72 was the highest number. I submit it is not a legal objection; it is simply for the purpose of trying to get a confusion into this record, because there cannot be any doubt in anybody's mind. I asked this man over and over again what was the highest number when he came back, and he said 72.

MR. VICKERS: I refer to the record.

(Stenographer reads, from this witness's previous testimony, on cross-examination,

by Mr. Simpson, as follows:

"Q. When you came back from lunch —I don't mean to repeat, but I want to get this fixed in my own mind—when you came back at half past one, the highest numbered vote when you came back was seventy-two?

"A. Seventy-two, yes.")

MR. VICKERS: I now renew my objection. That is not fairly putting the testimony that the witness gave when he said 72 or 75 was the highest number; "that was the highest number you saw?" was asked him by Mr. McCarthy. It seems to me he is entitled to all of his testimony, the substance of it, not one answer, put in the form of a contradiction.

Q. (Rpeated by stenographer). He is down here as voting—on this book—you say the highest number when you came back from lunch was 72; he is down as 73. How does it happen, after you came back, and this man here walked in there, voted, you knew him, you knew the man who was voting was not McKenna, and yet you let him vote?

MR. VICKERS: Isn't that question unfair?

THE COURT: It has been ruled on.

MR. SIMPSON: I will withdraw the question.

Q. You have sworn under oath, the last time I asked you about this subject, that when you came back from lunch and looked at the book,

the highest number was 72. It now appears that a man voted on the name of Clarence McKenna, number 73; you knew Clarence McKenna, you must have known that the man that voted was not Clarence McKenna. How does it happen that you allowed this man to vote under the name of Clarence McKenna? A. I didn't allow it.

Q. He voted after you got back from lunch, didn't he? A. He came in about half past five, quarter to six, nearly time to close.

Q. Seventy-three?

MR. VICKERS: He has not said that.

Q. I am not talking about McKenna. I am talking about the man who voted under the name of McKenna, whose vote is number seventy-two. A. He couldn't have voted under McKenna, if it wasn't McKenna. I wouldn't have let him vote, because I knew McKenna.

Q. This fellow's vote is seventy-two—you said was the highest number. A. I said seventy-three or seventy-five, I was not positive.

Q. The last thing you said it was seventy-two. Were you positive then? A. No.

Q. Why did you swear to it? A. I didn't swear to it.

Q. Didn't you answer, as read by the stenographer, that seventy-two was the highest number when you came back?

MR. VICKERS: I object. What was the highest number he saw?

THE COURT: I will allow the present question.

Q. (Repeated by the stenographer). Didn't you answer, as read by the stenographer, that seventy-two was the highest number when you

came back? A. I said yesterday it was seventy-two, seventy-three or seventy-five. That is all I can remember.

Q. Here are number eighty-two, James Smith; eighty-five, Thomas Fleming; eighty-six, Henry Minsch; eighty-seven, John Wright; eighty-eight, Peter Fox; and eighty-nine, James Harrison; were you present when those signatures were made? A. I don't know that, I couldn't say.

Q. Were you present when— A. I don't know.

Q. When you came from lunch you say seventy-five was the highest number. Here is eighty-three to eighty-nine. Were you there when those signatures were made? A. I couldn't remember those names if I didn't know the men.

Q. Was anybody voting when you came in? A. No.

Q. How long did you wait before anybody came in? A. I didn't wait very long.

Q. How long did you stay when you came back? A. All afternoon.

Q. You were present all afternoon during the vote, when seventy-five was the highest number, until you went to supper? A. Yes.

Q. What was the highest number after supper A. I don't remember.

Q. Didn't you notice? A. I don't know.

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

Q. Had anybody voted during the afternoon? A. Yes.

Q. How many? A. Quite a few.

Q. Fifty? A. I don't know. I didn't take records.

Q. Ten? A. I didn't take records.

Q. Five? A. I didn't take records.

Q. Did five vote? A. I can't answer you.

Q. You mean you won't say whether as many as five voted? A. More than five.

Q. How many more than five? A. I can't

say.

Q. Twenty more? A. I can't swear. It was more than five. That is a sure thing.

Q. Thirty? A. I can't say.

Q. Ten, more or less? A. Over ten, surely.

Q. How much over ten? A. I didn't keep any track of how many came in.

Q. Do you mean to say under oath you don't remember how many men came in, approximately, in the afternoon; you cannot tell whether it was ten or fifty? A. It was not fifty, I am sure.

Q. Do you mean it was more or less? A. Less than fifty.

Q. What was the highest number when you went to supper? A. I don't know.

Q. Why didn't you look? A. I didn't have any cause to.

Q. You looked before you went to dinner? A. Yes.

Q. Why didn't you look before you went to supper? A. I had no reason to.

Q. What was the reason you looked before you went to lunch? A. I had no reason.

Q. You looked? A. Yes.

Q. You were the Republican member of this Board? A. Yes.

Q. You say you didn't keep any check on anybody? A. No.

Q. You knew nothing about it? A. No.

Q. You didn't know how many men voted in the afternoon? A. No.

Q. You never compared the signatures? A. No.

Q. You can't tell me the highest number when you went to supper? A. No.

Q. Can you tell us the highest number when you came back from supper? A. It was very near closing time.

Q. Can you tell the highest number? A. No.

Q. You are not concealing anything here? A.

No.

Q. Telling us all you know? A. Yes.

Q. Did you sit on one side of the table? A. Yes.

Q. Who alongside of you? A. Nobody alongside of me. Sometimes Looney and sometimes Kelly opposite me.

Q. How many sides had the table? A. Tnree; one side against the side of the store.

Q. What side did you sit on, the right hand side of the table as you came in? A. On the back of the table, going to the polling booth.

Q. Who was at your right hand? A. Nobody at my right hand, because that was up against the wall.

Q. Your left hand? A. Either Looney or Kelly.

Q. How much of the time was Unger there? A. Unger was there nearly all day, except dinner and supper.

Q. How much of the time was Kelly opposite you? A. A good deal of the day. He was in and out, same as I was.

Q. Did you put any votes in the box? A. Did I?—no. Mr. Kelly or Mr. Looney done most of that.

Q. Did you give any ballots to the voters? A. Yes.

Q. How many ballots did you give out? A. I can't recall exactly.

Q. Twenty? A. No, it was over twenty.

Q. Twenty-five? A. Over that.

Q. You are a little bit hazy. Can't you give us an idea how many ballots you gave out? A. I can't swear to anything, I am not positive.

Q. You can't tell us of a signature you compared? A. No.

Q. Did you get any instructions from the city clerk as to your duties in comparing signatures? A. No.

Q. You have testified there was no oaths or affirmations made. Were there any challenges? A. Not to my knowledge.

Q. Were there any challengers there? A. Not while I was there.

Q. Nobody challenged any votes? A. Not while I was there.

Q. There was no occasion for any oath or affirmation? A. Not while I was there.

BY THE COURT:

Q. Were there any watchers there? A. I didn't see any.

Q. Any challengers? A. I didn't see any.

Q. All day? A. All day, no sir.

BY MR. SIMPSON:

Q. How much time in hours do you think you put in? You went there at seven? A. Six.

Q. In the morning. Closed your polls what time? A. Seven o'clock.

Q. Thirteen hours. You were away at meals how much time? A. An hour each time.

Q. That would leave you eleven hours? Was there any time when you were away when you went out for cigarettes? How much time do you think you were away out of that eleven hours? A. Fifteen minutes.

Q. You were there altogether about ten hours and a half steady, weren't you? A. About ten hours steady.

Q. As far as you know, there was nothing wrong, you knew? A. No.

BY THE COURT:

Q. You said after the voter signed his name in the book you passed the book to somebody. To whom? A. Mr. Unger or Mr. Kelly; he checked it back.

Q. Why did you pass the book over to them? A. For comparison of signature.

Q. What did they compare the signature with? A. With the registration of the general election, 1916.

Q. Did they have the registry book on their side of the table? A. Yes.

Q. Is that why you passed the book over to them? A. Yes.

Q. Did they do that? A. Yes.

Q. You saw them do that? A. Yes, checked it back and marked it with a red or blue pencil.

Q. After they found the signature was O. K.— A. All right.

Q. —then you— A. Gave them the ballot.

Q. —gave the man the ballot? A. Yes.

Q. Then he went in the booth and marked his ballot and came out? A. And I told him to put it in the box.

Q. Who put the ballot in the box? A. The voter would put it in himself.

BY MR. HUDSPETH:

Q. Who did you see take the registry?

THE COURT: Kelly and Looney.

A. I beg pardon, Unger and Kelly.

BY THE COURT:

Q. Did they sit at the side of the table from you? A. To the left of me.

Q. How far away from you? A. Unger sat opposite me.

Q. How far? A. I guess it is five feet, two widths.

Q. How wide is that compared with this table? A. A little wider than that; an ordinary

kitchen table, about five feet.

Q. Did you sit at the side or end? A. At that end of it.

Q. The side or end of it? A. They were put longways.

Q. You sat at one end? A. At this side, yes.

Q. Where the ballot box was? A. Yes.

BY MR. HUDSPETH:

Q. I understood you to say you saw one of them use a blue pencil? A. Blue or red, I wouldn't swear what it was, they were checking back with, red or blue pencil.

Q. While making the comparison of the signature? A. Yes.

Q. Is that "O.K" in blue pencil it? A. Yes.

Q. The ballot was given to the voter? A. Yes.

Q. You saw that? A. Yes.

Q. On more than one occasion? A. Yes.

BY MR. SIMPSON:

Q. You know Herman Tamke? A. Yes.

Q. How long have you known him? A. Five or six years.

Q. Know him very well? A. Yes.

Q. Couldn't be deceived as to his identity? A. No.

Q. He is down here as voting number 87. Were you there when a man voted as Herman Tamke, number 87? A. I didn't see Mr. Tamke at the place.

Q. Do you know Henry Tamke? A. That is the one I refer to.

Q. Herman I was talking about. A. I don't know Herman.

Q. I asked you about Herman. Do you know Herman? A. I don't know Herman, no.

Q. Do you know Henry? A. Henry?

Q. How long have you known Henry? A. I know Henry six years. I don't know Herman at all.

Q. You knew him very well on the day of this election? A. Yes.

Q. Here is a man down here as having voted under his name, number 159, 133 Pavonia Avenue, Henry Tamke. Did you stop that man from voting under the name of Tamke? A. He didn't come in. Mr. Tamke didn't come in.

Q. But some man came in there while you were there, number 159, under the name of Henry Tamke. A. Nobody came in by that name.

Q. You would have known it was not Henry Tamke if some man came in and impersonated him? A. Yes.

Q. Couldn't deceive you on that. (No answer).

BY THE COURT:

Q. At what hour would you say, from what you saw that day in the course of that election, and as near as you can say, was it that ballot 159 was cast? A. I couldn't say.

Q. You couldn't say—what was the total number of ballots cast that day? Do you know that?

MR. SIMPSON: He has testified 164.

Q. Do you know now? A. 164 or 171, something like that. I couldn't remember now positively. Something around that.

Q. Do you know whether there were a number of ballots cast towards the end, the close of the election, the closing of the polls? A. I didn't take that much note, because I only took the interest at dinner time.

Q. I am trying to see if you can direct your mind towards getting any idea before the jury as

to the approximate time ballot 159 was cast. That apparently would be one of the last eight or ten ballots cast? A. It may have been cast when I was to supper.

Q. That was towards the close of the election? A. It must have been that, because I went to supper at fifteen minutes to six.

MR. VICKERS: I think there were 161, was the correct figure.

MR. SIMPSON: There were three rejected ballots.

THE COURT: What is the correct number?

MR. McCARTHY: 161.

Q. Then ballot 159 was within three of the last ballot? A. Yes.

Q. Were you present during the casting of the last eight or nine ballots? A. There was none cast when I came back from supper. I got back about five minutes to seven.

Q. There were none cast after that? A. No sir.

Q. Until the polls were closed? A. No.

BY MR. HUDSPETH:

Q. You got back at five minutes to seven? A. Yes.

Q. After that there were none cast? A. No.

BY MR. VICKERS:

Q. What time did you go to supper? A. About ten minutes to six, five minutes to six, something around that.

Q. I call your attention to Exhibit S-5, the poll book, ballot 95, which has your signature, you have identified; in the same color ink apparently, in the column of "Signature compared," is an O.K. Is there any other place in that book where you O.K'd. any other signature entered by you? Look it over.

MR. SIMPSON: It is in blue ink.

MR. VICKERS: In blue ink. It appears so to me.

A. No, don't see it.

Q. (By the Court). You mean in all the rest of them, except where it says O.K., the signatures are not marked at all as having been compared? A. According to the O.K.'s.

Q. (By Mr. Vickers). With respect to your own signature you O.K.'d. it? A. Yes.

Q. (By Mr. Vickers). As appears there. (No answer).

MR. SIMPSON: What is the signature he O.K.s.?

MR. VICKERS: It is his own vote—compared with his handwriting.

Q. Referring to the same poll book, to the first page, under which there is writing, beginning with Boat, ballot number 60, can you tell in whose handwriting the entries are in the column under "Names of Voters"? A. Looks like Mr. Unger's writing.

MR. HUDSPETH: What page is that?

MR. VICKERS: The first one, ballot No. 60.

THE COURT: Do you now propose to go through the book?

MR. VICKERS: Yes.

Q. Turn to the first page, under the column, Names of Voters, all appears to be in writing, that page being headed by number of voter 82, I ask you in whose handwriting the writing on that page is? A. Looks like Mr. Kelly's.

MR. SIMPSON: I object. This man has shown no qualification to testify as a chirographic expert.

THE COURT: You may cross-examine him.

BY MR. SIMPSON:

Q. You have made no special study of penmanship? A. Not very much, no.

Q. Have you studied Mr. Kelly's handwriting? A. I have seen enough of it to recognize it that day.

Q. You have familiarized yourself with it sufficiently to tell it from mine? A. I couldn't tell yours until I see yours.

Q. You feel qualified to discuss generalizations and characteristics of handwriting? A. I don't know. I can't answer that.

MR. SIMPSON: I submit this man has shown no qualification, having seen a man write one day; he is not familiar with his handwriting.

THE COURT: I think it is a jury question. It does not require any expert. Go on.

BY MR. VICKERS:

Q. Turn to the first page, on which there appears to be handwriting, under the column of Names of Voters, and being headed by Voter No. 5, Looney, William. Did you see who wrote that? Do you know who wrote it? A. Mostly Mr. Unger's writing. That is Mr. Looney's writing. (Indicating).

Q. Ballot—what is the next number—130—is Looney's writing? A. Looney's writing, yes.

Q. Number 31, can you tell? A. Looks like Mr. Unger's writing.

Q. Number 61, next following on that same page?

MR. SIMPSON: If you want to save time there will be no question about handwriting. When these defendants go on the stand they will admit, each one will admit, he wrote this and that.

MR. VICKERS: All right.

Q. You have—and from your knowledge of what took place during the day, you have said, I believe, that you wrote nothing in this book except what appears in the blue or purple ink? A. One occasion, that is all, one name, that is all, in black.

Q. Can you pick it out? A. I can, yes. (Witness indicates the name of James Evers, Jr.)

Q. Being voter 136, Evers, James, Junior, 476 Henderson Street. That is the only one? A. That is all outside of the rest.

Q. (By the Court). What was it, with reference to that one? A. It was written in black ink because my fountain pen ran dry.

Q. (By the Court). Who wrote it? A. I did—just the ordinary ink, from the bottle on the

desk.

Q. (By the Court). Why did you write the name of the voter in the poll book at all? A. I only wrote his name. I didn't sign his name. That is the clerk's work to do.

Q. (By the Court). That is, you acted as clerk when you wrote his name in the poll book? A. And those other names.

Q. (By the Court). When he came in you asked him his name? A. Yes.

Q. (By the Court). That is the only time you did it at all or in black ink? A. No, I wrote it on one occasion with blue ink.

Q. But you didn't write any signatures in the signature column, did you, in blue or black in? A. No.

Q. Where, in any case, and in the case that has been pointed out to you, where the signature appears in blue ink, you say that in your presence that was done with your pen? A. Yes.

BY MR. SIMPSON:

Q. Do you remember Evers' signature very clearly—making it? A. Yes.

Q. Anything peculiar about it that remains in your mind? A. No.

Q. Nothing at all? Just like the other signatures? A. No.

Q. Anything peculiar about the first name or the second name as written or the number? A. No.

Q. Just ordinary. Don't you think it is peculiar there should be an alteration in that number? It now appears to be 136? Has it been altered from 137? A. That may be an error.

Q. There is nothing peculiar in the number? A. In the number, but not the name.

Q. I asked you the number. I didn't ask you the name. A. I can't tell you anything about

it.

Q. You said there was nothing peculiar in the number. Do you think there is? A. Yes, the number has been changed.

Q. It is in Unger's handwriting? A. No, it isn't Unger's handwriting. It is my own.

Q. Are these in your handwriting, 81, 82, 83, 84, 85, 86, 87, 88, 89? A. No.

Q. Isn't that exactly the same writing as yours? A. No, it is not.

Q. How did you come to write Evers' name? A. He came in, I asked him his name, and put it down.

Q. You wrote three or four names? A. Over that.

Q. How many did you write? A. It must be at least fourteen or fifteen.

Q. Do you say there were some watchers that day, some of the time? A. I don't know. I didn't notice any.

Q. There were men in there other than the Election Board? A. There were not many in there.

Q. How many? A. All the time?

Q. How many were there all the time? A. Mr. Lillis, the man that owned the place—was not all the time around; Mr. Lillis's son was in and out there. Mr. Kane was in and out once in awhile. That was all.

Q. You don't know which they were—watchers, or they were not watchers? A. No.

Q. Did you receive any instructions from the city clerk about comparing signatures? A. No.

Q. Yes? A. No.

Q. As I understand, you compared your own signature—O.K'd it? A. Yes.

Q. Why did you compare it with the register —did you want to make sure you were yourself? A. No sir, not exactly.

Q. Why did you? A. Just marked it O.K., that was all.

Q. Why did you compare it? You say you compared your signature in the poll book, as I understand you, with the signature in the registry book of 1916, to see— A. I didn't have to compare it.

Q. You did it. You have sworn you did. Did you or didn't you? Or did you mark it O.K.? A. I just marked it O.K.

Q. You didn't compare it then? A. No.

Q. Here are two O.K.'s.; did you O.K. either of those? A. No.

Q. This man, Evers, Senior? A. Yes.

Q. You didn't O.K. this man, this one you wrote? A. No.

Q. The O.K. would only be put on when there was some doubt? A. When it was correct. There was no doubt.

Q. Why is it in some cases it is marked O. K., in others, not? A. That was only negligence on the Board's part.

Q. If they made the O.K. in one case and not another, you think it was negligence? A. Yes.

Q. Isn't the O.K. that it had been compared, and the absence of the mark would show it had not been compared? A. Yes, it will show that.

Q. You O.K'd. yourself, and it had not been marked? A. I was sure of them.

Q. You mean by that your name was on the registry. That is what you mean. I don't think there is any doubt. You say somebody checked it off with red or blue pencil. A. Red or blue.

Q. Checked what? A. Checked the registry book.

Q. That they found the name in it? A. That is the signature, and they had compared it with that book.

BY MR. VICKERS:

Q. When you speak of checking it with the pencil, do you refer to the figures which appear in the circles here, and from the testimony in this case appear to be the numbers in each case, of the ballot, which appears on the poll book to correspond to have been given the voter, the person whose name appears? A. I don't remember that.

Q. Is that what you mean?

MR. McCARTER: That is leading.

THE COURT: It is leading.

MR. VICKERS: Both of us have examined on it.

Q. (By the Court). What does the red mark mean? A. Check, that the voter had signed the registry and the signature had been made.

Q. (By the Court). These are the numbers? A. The different numbers, yes. That is supposed to be the number of the ballot, I believe.

Q. (By the Court). The red number is the number of the ballot handed the voter as he came in to vote? A. I don't know whether that day. Yes, it must have been that day, on primary day. I don't know whether it was that day or not.

Q. (By Mr. Vickers). When you speak of checking in red or blue, do you refer to that, or do you refer to what appears on the book I show you to be a check mark? A. Yes, they were marked, check mark.

Q. Is that what you refer to ? A. Yes, that is what I refer to.

MR. VICKERS: With the reservation

WILLIAM F. LOONEY—Direct

of witnesses that the Court has sent for on capias we close. And there is one other witness, by reason of the testimony of Mr. Small, if the witness appears, we will ask the privilege of recalling him. With that reservation, we rest.

MR. SIMPSON: That we don't consent to. The case must be made out before the defendants are called upon to answer. We want to know everything we are accused of before we go to answer before this jury. We do not consent to the reservation.

THE COURT: If the other witnesses come in, I do not see how you will be injured. I will permit them to be put on.

MR. SIMPSON: We are simply insisting upon what we conceive to be our rights. That is your case then?

MR. HUDSPETH: That is our case.

(Mr. Simpson opens to the Jury, for the defense).

WILLIAM F. LOONEY, one of the defendants, being sworn, testified as follows:

DIRECT EXAMINATION by Mr. Simpson:

Q. How old are you? A. Twenty-nine.

Q. Where do you live? A. 143 Eighth Street, Jersey City.

Q. How long have you lived in Jersey City? A. Twenty-nine years.

Q. All your life? A. All my life.

Q. What is your business? A. Truck driver usually.

Q. What did you earn as truck driver? A.

Well, at times, I earned eighteen, nineteen, according to what overtime I made.

Q. Did you act as election officer at the Commission Government Election in the Second District of the Second Ward on the 16th of October, 1917? A. Yes.

Q. Was that your first experience at the regular election? A. Yes, that was.

Q. How long had you been an election officer? A. Well, one at the primary, and—at the primary election.

Q. The primary was the first one you were at —this was the first regular election? A. And the special election.

Q. Yes. It was an election, and not a primary? A. Yes.

Q. What instructions did you get as to your duties as an election officer?

MR. HUDSPETH: I object. It is immaterial.

MR. SIMPSON: Wilfulness depends on knowledge.

MR. HUDSPETH: I will withdraw the objection.

A. I got no instructions at all. I only used to ask the judge of elections what I would do.

Q. Who was judge? A. Unger was judge.

Q. What did he tell you your duties were? A. Told me my duty was to be one of the clerks of the Board.

Q. What did you have to do as clerk of the Board? A. Compare signatures like, and so forth.

Q. Did you, in that election, have many votes cast there? A. There was quite a number of votes.

Q. 161, isn't that the record of votes cast there? One hundred and sixty-one votes cast? That is your name signed on the return? A. Yes.

Q. Isn't it your name? A. Yes, that is my name.

Q. You were the last man that signed? A. Yes.

Q. While you were working during the day of the election what did you do,—write in the book? A. I wrote at times, of course, I didn't understand.

Q. What did you write? A. Yes, I wrote.

Q. You wrote in the book? A. Yes.

Q. What else did you do beside write in the book? A. I helped all the men, helped one another out.

Q. Were you busy at times? A. Sometimes we were, sometimes we were not.

Q. What did you do at lunch time? A. At lunch time we were pretty busy, at the time I was there.

Q. What time did you go to lunch? A. Between half past one or so.

Q. What time did you get to the polling place? A. Six o'clock.

Q. What time did you go to lunch? A. About half past one I went to lunch.

Q. How long were you away? A. I should judge about three—maybe half an hour, between three-quarters and half an hour.

Q. How long did you stay there? A. I stood there until the closing of the polls.

Q. Didn't you go for supper? A. No.

Q. Stayed right there? A. Yes.

Q. At any time while you were there were there any votes challenged by the challengers or watchers? A. No sir, there was no challenge.

Q. By any watcher who was there there was no challenge of any kind? A. No sir.

Q. (By the Court). Were there challengers

or watchers there? A. There were challengers there.

Q. (By the Court). They interposed no challenges? A. No sir.

Q. At any time during the day did you allow any person to vote whom you knew had no right to vote? A. No sir, I did not.

Q. Did you allow any person to vote whom you suspected had no right to vote? A. No sir.

Q. Did you think that every person whose ballot you had anything to do with had a right to vote? A. Yes, I did.

Q. Who was the person who seemed to be at the head of the Board—who was directing things? A. The fact we were all helping one another out, but Mr. Unger, he was judge of the Board, he was explaining to us.

Q. Who was the Republican judge? A. Republican judge—Kelly was the first man to him.

Q. Who was the Republican judge? Was there a Republican judge? A. Republican judge?

Q. Only one judge? A. Only one judge.

Q. Two clerks. Who was the other man? A. He was the—

Q. You don't even know his title? A. Well, yes, I know his title.

Q. What was it? A. I can't remember it just now.

Q. (By the Court). Clerk? A. No.

Q. (By the Court). Stringer? A. Two clerks.

Q. Supposed to be two clerks and judge—what was the fourth man? A. Inspector.

Q. (By the Court). Who was the inspector? A. Mr. Kelly was inspector.

Q. What would be the method of conducting—what was the method—if I came in and said "I am John ones and live at 182 Ninth Street, what would be done? A. Well, we look over the books.

Q. What book? A. Poll books.

Q. Poll books? A. Yes, registering book.

Q. Register book? A. Yes.

Q. What did you look over that for? A. To see if his name was on there.

Q. After, if you found he lived at 182 Ninth Street, you would accept his vote? A. Well, we would—

Q. Unless you had some suspicion of it? A. Some suspicion of it.

Q. —he looked funny, or something of that kind? A. Yes.

Q. It has been testified here that a number of persons voted—I cannot remember all of the names, a number of them, a man votes, giving the names Fox, and so on; did you know that the people who came in were not voters and were any of these fake people or phony people? A. No sir, I did not.

Q. There is evidence here, a signature, where a signature is erased, erase the place where the man says he signed his name in blank and what does appear, if you look at it with a glass, that there is such a name underneath, and on top is a name, "William Leff." Were you present in the polling place when Mr. Toback called and signed that book? A. I guess I was.

Q. When he signed the book? A. Yes.

Q. What happened after he signed the book? A. I don't know what happened after he signed the book.

Q. Do you remember him being there? A. Yes.

Q. You had nothing to do with the erasure? A. No sir.

Q. You didn't see that name written over it? A. No.

Q. Did you know that anybody had done that? A. No sir.

Q. Did anybody call it to your attention? A.

No sir.

Q. Is that name, William Leff, in your handwriting? A. No sir.

Q. It is not? A. No sir.

Q. What compensation did you get as an election officer? A. (No answer).

THE COURT: When you pointed you meant the first column, where the election officer filled in the name, where the voters come in?

MR. SIMPSON: Yes; 129, William Leff, 129, 156 Pavonia Avenue.

Q. What compensation did you get as an election officer?

MR. HUDSPETH: I object, it is immaterial.

THE COURT: I don't understand you—

MR. HUDSPETH: I will withdraw the objection.

MR. SIMPSON: I will withdraw the question.

CROSS-EXAMINATION by Mr. Vickers:

Q. How much did you get as an election officer? A. I got something like twenty-five, something, I guess it was.

Q. (By the Court). How much? A. Twenty-five something, I couldn't answer how much it was now. I couldn't exactly say.

Q. How much did you get a day, do you know? A. I guess ten dollars, one day, five dollars another day, I couldn't say.

Q. For an election, for election day, it is—
A. Ten dollars, I guess, special.

Q. For this Commission Government, how much did you get paid from the City Clerk of Jersey City? A. Ten dollars I got for that day.

Q. When the election was opened in the morning, votes came in, you had the names written down in the poll book, and then compared that name with the signature copy of the registry of 1916, isn't that so? A. Yes, would, and other times I was at the books myself, tried to compare. I always asked the man next to me, "How does this signature look?" He says, "All right." I says, "You can vote."

Q. As soon as you received the vote you did that? A. Yes.

Q. Began with number 1 vote? A. I can't recollect any vote at all, but any vote that did come in at the time I was at the books.

Q. While you were there no vote was received from anybody until the poll book was there and the signature copy book, is that right? A. Yes.

Q. Who entered your name in the poll book when you voted? A. I couldn't say.

Q. I call your attention to Exhibit S-5, on the page under the heading of 143 Eighth Street, in the column residence of voters, number 5, Looney, William, and draw your attention to the signature column, and ask you whether that is your signature? A. Yes sir.

Q. Made by you? A. Yes.

Q. Who put the O.K. in the Signature Compared column? A. I cannot recollect who was the one put it in there now at present.

Q. Did you do it? A. No sir, I did not.

Q. Who wrote the name, Looney, William, in the Name Column—name of voter? A. I can't recollect.

Q. You don't know? A. I can't remember?
Q. You don't know the handwriting? A. No

sir.

Q. Who wrote the next name below that, Curley, Joseph, in the column, Names of Voters? A. I couldn't say.

Q. It is yours? A. No sir.

Q. Look at it carefully? A. Well, I ain't sure. I could not say that is my signature or not.

Q. I didn't ask you if it is your signature. Of course it isn't your signature, "Joseph Curley," wouldn't be your signature. Did you write that, Joseph Curley, in that column? A. That is what I am saying.

Q. What are you saying? A. I ain't positive it is my signature.

Q. (By the Court). Can't you tell whether it is your writing or not? A. No, I cannot, at times. I cannot tell my writing.

Q. Can you find any of your writing in there, in that book? A. The only writing I can find there is up here (indicating).

Q. The only writing you can find is the writing which shows that Looney, William, voted as vote number 5, where in the signature column appears the name William F. Looney, you say that is your signature, is that right? A. Yes, this signature here (indicating).

Q. Being the first signature on that page, in the signature column. Outside of that, you say on that page you can recognize no other writing as your writing? A. No sir.

Q. Is that what you say? A. No sir.

Q. Examine the rest of the book and see if anywhere in that book you find any of your writing? A. (Witness looks through the book). No sir, I can't find any.

Q. You have gone through that poll book, S-5, page by page and have examined on each page the writing in the column, "Names of Voters," "Residence of Voters," and nowhere in that book can you recognize any of your handwriting except

the signature which appears, which you have testified to is your own; is that right? A. All I know is the signature, that is all I know.

Q. What you mean is— A. I can't identify the signature.

Q. You can't find any other writing in that book that is yours? A. No sir, outside of my own.

Q. You remember as a fact, you did during part of this election act as a clerk? A. Yes.

Q. Writing in the names of certain voters, that is what you do remember, don't you? A. Yes.

Q. When you say writing in the names of certain voters, you don't mean writing there, in the signature column, but writing them in the column for "Names of Voters"; that is what you mean, don't you? A. Yes.

Q. You didn't write in there, over here, in the signature column? A. No.

Q. Except your own; is that right? A. Yes.

Q. That is the way your Board operated; isn't that so—part of the time you wrote names in and part of the time other members of the Board wrote names in, and then you acted as comparing signatures, and somebody else acted as comparing signatures, that is right? A. Yes.

Q. Part of the time— A. There was a lot of times I just looked at the book. I didn't undestand it and looked from one book to another.

Q. When you say you looked from one book to another, you looked from the book which is before you now, S-5, then to the book S-4, which I now show you; that is what you mean? A. Yes.

Q. The registry, the signature copy book of 1916? A. 1916, yes.

Q. That is what you mean? A. Yes.

Q. You did that when you did it for the purpose of comparing signatures made by the person coming in to vote and made in the poll book

to see whether it compared with the signature which was in the registry, in the registry of 1916; is that right? A. I didn't get you.

Q. (Repeated by stenographer). You did that when you did it for the purpose of comparing the signature made by the person coming in to vote and made in the poll book to see whether it compared with the signature which was in the registry of 1916; is that right? A. Yes, I tried to do all I could.

Q. Speak louder. A. I tried to do all I could.

Q. Isn't that what you did? A. I tried to do all I could.

Q. Among other things which you tried to do, you tried to compare the signature of the person who came in to vote in the poll book with the signature that appeared in the registry? A. Yes, I tried to do all I could on that.

Q. That was part of the work which you say on that day you did do; is that right? A. Yes,

Q. Can you give any explanation as to why it is that you cannot identify any of your handwriting in the poll book except your signature?

MR. SIMPSON: I object. It is not proper cross-examination. What evidential value has an explanation of the fact?

THE COURT: It goes to his credibility.

MR. SIMPSON: His explanation?

MR. VICKERS: Certainly. He may have an explanation. I don't know.

THE COURT: Explanation of what?

MR. VICKERS: Why he can't do it.

THE COURT: Do what?

MR. VICKERS: He said he wrote in this book, he says he cannot find it.

Q. (By the Court). You mean to say you did write in that book, but you now cannot say, except in one instance, where your own signature was made? A. Yes, that is the only—

Q. (By the Court). You cannot say where? A. Yes.

THE COURT: I will permit the question.

Q. (By the Court). Why can't you tell? A. I can't tell, I can't remember now.

Q. (By the Court). Look in the book and see? A. I cannot look in the book, make out. A fellow can't write his hand always the same. There is one signature there I can figure that is my own. When I am writing anybody else's I can't figure whose it can be from anybody else's signature.

BY MR. VICKERS:

Q. When you did compare signatures, as you have explained, looking from one book which is before you now, to the book on the table here, S-5, the signature copy book, did you mark the poll book in any way to indicate that you had compared signatures? A. No sir, I did not.

Q. Didn't you O.K. it? A. I didn't O.K. it, no sir.

Q. Are you well acquainted in that district of the Second District of the Second Ward? A. No sir, I am not.

Q. How long have you lived there? A. Twenty-nine years.

Q. All your life? A. Yes sir.

Q. But you are not well acquainted? A. No sir. I don't make it a practice to get acquainted with anybody. I keep to myself.

Q. Do you remember any voter that came in that day to vote, whom you knew? A. Yes, I knew a couple.

Q. A couple. Suppose you name us one? A. Well, I know a namesake of mine, Patrick Looney.

Q. Patrick Looney; where does he live? A. I think he lives around Ninth Street now. I couldn't exactly say the number.

Q. Did you see him come in that day? A. Yes.

Q. Who recorded his vote? A. I couldn't say who recorded his vote.

Q. You remember him coming in, don't you? A. I remember that, but I couldn't—

Q. Do you know who compared his signature with the name here, if anybody did? A. No, I didn't pay any attention to it at the time.

Q. Is he the only man who—this namesake of yours—the only one who voted on that day while you were there whom you knew? A. Well, there was a man by the name McGettrick.

Q. Where does he live? A. 127 Pavonia Avenue, I think it is.

Q. Do you know that he does live on Pavonia Avenue? A. Yes.

(Mr. Vickers looks through the poll book).

Q. Did he vote that day? A. No, he didn't vote that day.

Q. You said he came in? A. I ain't sure he voted, he came in.

Q. He came in but you are not sure whether he voted? A. No sir. I couldn't say he voted. I met him and another young man by name James Gillen.

Q. Where does Gillen live? A. I think 187.

Q. 187? A. 187, something like that.

Q. 187. James Gillen. Do you remember who took his vote? A. No sir, I don't.

Q. James Gillen, 187 Pavonia Avenue, number 6. Mr. McGittrick came in with him. O. K., you don't know who put the O.K. in that poll book after the signature of Mr. Gillen, do you? A. No sir.

Q. I call your attention to the poll book, and on the page beginning with number 2, Sheerley, Morris, 150 Pavonia Avenue, I call your attention to the "Signature Compared" column, and twelve or thirteen O.K.'s successively in that column. Have you any recollection or knowledge as to who put those O.K.'s in there? A. No sir, I haven't.

Q. At the time Mr. Gillen came in to vote, you don't know whether you compared his signature or whether somebody else did? A. I can tell you whether I compared the signature.

Q. That is what I want to find out. Tell us whether you did or not? A. No sir, I did not.

Q. You did not? A. No sir.

Q. Tell this Court and jury how by looking at that page, you determined whether or not you compared the signature? A. I didn't compare the signature.

Q. Tell us how you find that out by looking at that book, on the page where you have looked?

MR. SIMPSON: I object. It is not proper cross-examination.

THE COURT: I will allow it.

MR. SIMPSON: A man has a right to say " I know," without saying how he knows it.

THE COURT: He says he is not able

to state. I think it is proper cross-examination.

MR. SIMPSON: I ask an exception.

(Exception allowed and signed and sealed accordingly.
George G. Tennant, Judge.
Seal).

A. I didn't compare this signature.

BY THE COURT:

Q. What? A. I didn't compare this signature.
Q. You didn't what? A. I didn't prepare that signature.
Q. You didn't prepare it? A. Yes.
Q. That is not the question. You didn't understand the question.

BY MR. VICKERS:

Q. Did you understand me to ask you whether you had prepared the signature? A. Well, I can't answer—
Q. Did you understand me—

MR. SIMPSON: He may not know the difference between prepare and compare.

Q. Did you understand me to ask you whether you had prepared it? A. I didn't understand it. I thought I did, but I didn't.
Q. I am trying to straighten you out. A. I know.
Q. What did you understand me to ask you? A. I thought you said I prepared the signature.
Q. You said, "I will tell you whether I did or

not''; is that right? A. Yes.

Q. Then you looked at the book and then you said, ''No, I did not?'' A. Yes.

Q. Is that right? A. Yes.

Q. Now I want you to tell this Court and jury how you found out from that book that you didn't prepare the signature?

THE COURT: ''Prepared''?

MR. VICKERS: ''Prepared,'' yes. That means, writing it.

MR. SIMPSON: I object. This man may be ignorant, or he may think that compare and prepare mean the same. You are dealing with a truck driver.

BY THE COURT:

Q. Did you look to see whether the signatures were the same—do you know what I mean when I say one signature is the same as another? A. I did, yes.

Q. Answer my question, will you—do you know what I mean when I say did you look to see whether this signature is the same as that signature—that is, compare, isn't it? A. Yes.

Q. That is comparing the signature. Now, did you take that book and compare it or see whether it was the same as the signature of the same name in another book? A. Yes, I took this, I took the book, I looked at it, after I rotten down.

Q. After the voter wrote it down? A. Before he wrote it down, took the book, looked at it, whether or not it looked like his handwriting to me.

Q. Before he wrote it down? A. I looked at it, says, ''His name is all right.''

Q. Tell me what you mean. What did you look at in that book to see whether it was the same? A. Looked at his name there to see the name in the other book.

Q. Show me where you looked, where you found the other name? What was the name you looked for? A. That is the name he signed it in.

Q. Name what? A. He signed it.

Q. What, whose name? A. The name he is talking about. Is that the idea?

Q. Whose name? A. The name, what I was talking about.

Q. (By Mr. Hudspeth). That column where you made the party sign his name—

MR. McCARTER: One at a time.

THE COURT: Go on, Mr. Vickers.

MR. SIMPSON: My objection came in. They have no right to say because a man misuses a word, that he meant that he committed forgery.

BY MR. VICKERS:

Q. When you said you understood me to ask you whether you had prepared that name, what did you mean by "preparing"? A. After the man wrote his name down and I signed the name in the book here, I looked it over and I thought, that was what I thought was preparing.

Q. Then you mean you saw whether that was like something in this other book? A. Yes.

Q. That is what we call "comparing." A. I ain't no expert at that.

Q. I understand.

MR. SIMPSON: He means "preparing."

Q. You mean you compared it, you put that one alongside this one to see if they were alike? A. When a man wrote his name down—

Q. In order that you may understand me, that is what I call "comparing." Now, I am going to ask you again to tell the Court and jury how you could tell by looking at the book which is before you, the poll book, whether or not you had compared the signature referred to, referring to the signature of Mr. Gillen? A. What do you mean by "comparing"?

Q. You said, "I will tell you whether I did or not," then you looked at this book before you, the poll book, and you said, "No." I am trying to find out from you what it was that you looked at that poll book for, and afterwards, how you made up your mind to answer "No"? A. Well, when James Gillen came in I looked at the entry in the book.

Q. The one before you? A. No, the poll book—yes, the poll book.

Q. That is the poll book. A. Yes.

Q. You looked where James Gillen wrote his name? A. Yes. Then I went to—

Q. —to see if this was the one who registered? A. Yes.

Q. You looked at the name he is supposed to have written in the registry? A. Yes.

Q. They looked alike, and you said "O.K."? A. That I thought it was all right.

Q. Is that what you mean? A. Yes.

Q. Do you remember that because you know Mr. Gillen, or do you know it from looking at the poll book that is before you? A. I don't know him personally, just that he came in at that time, see?

Q. Did you know it by looking at the poll book—that is what I want to know? A. Yes, I remember looking at it, comparing the signature, yes.

Q. Is there in that page in the poll book before you any other name written that you can tell whether you looked at that name in the registry book? A. John Kane, I—

Q. What? A. "John Kane."

Q. John Kane. Vote number 4, right? (No answer).

Q. You having—let us go back a minute. Do you now say that when Mr. James Gillen did come in and he wrote his name in this poll book, that you went over to the registry and looked at the name written in the registry, saw it was O.K., as you thought— A. Yes.

Q. Yes. Then what did you mean when you answered a few minutes ago, after looking at that poll book, you did prepare it or compare it, whatever you thought, what did you mean? A. I didn't say I didn't prepare it.

Q. Don't you remember you answered just a few minutes ago, "I will tell you," and you looked at the book and you said "No." A. I said that James Gillen—

Q. James Gillen— A. I prepared the signatures. I thought that was what you meant.

Q. What was it you meant when you said no, after having testified, "I will tell you," and then looked at the poll book, what did you mean by saying "No?" A. Why, I didn't understand what you meant.

Q. Do you remember that a little while ago I was asking you to look on that poll book, to find some other persons who you could remember as coming in there, you picked out the name of James Gillen, and you said "No." I said, "Did you compare the signature," went on to some other questions, you said, "I will tell you"; then after looking at the poll book you answered "No." I am trying to find out, in the light of your present testimony that you say you did compare, what you meant by saying no. A. I meant that one

signature looked like enough to me, one signature looked the same to me.

Q. You did examine the two signatures? A. Yes.

Q. Do you say you did the same thing with regard to John Kane's signature? A. Yes, I do.

Q. You do? Do you remember what time of day Mr. Gillen came in? A. No sir, I don't.

Q. Do you remember whether it was in the morning or afternoon? A. No sir, I don't.

Q. By calling your attention to the fact that the vote number of the voter is fixed, in the case of Mr. Gillen, as appears by the poll book, does that refresh your memory at all as to when, what time of day, Mr. Gillen came in? A. No, I cannot say what time of day Mr. Gillen came in.

Q. Do you know Mr. Schoenberg? A. No sir, I don't know Mr. Schoenberg.

Q. Neither Morris nor Philip Schoenberg? A. No sir.

Q. Don't knew them at all? A. No sir.

Q. Do you know Mr. Adolph Schoenberg? A. No sir.

Q. The man that keeps the gent's furnishing store? A. No sir.

Q. You saw that gentleman here on the witness stand, Adolph Schoenberg, yesterday, did you? Saw him on the witness stand here yesterday? A. I don't know who was on the witness stand.

Q. You were here in Court and saw him right on the witness stand? Isn't that so? A. I couldn't say who I seen.

Q. You can't? A. No sir. I can't remember.

Q. Do you remember the gentleman who said he conducted a gent's furnishing store, that he had known you all your life? Do you remember that at all? A. No sir, I don't.

Q. Don't remember it? A. No sir.

Q. Do you know who I mean when I say Mr.

Adolph Schoenberg? A. No sir, I don't.

Q. How do you know you don't know him? A. I don't know him.

Q. You don't know who I mean, but you don't know him? A. I don't know him, no sir. I don't know him.

MR. SIMPSON: He doesn't know him. What more do you want?

Q. Do you know that across the street from the polling place is a gent's furnishing store? A. Well, I ain't positive.

Q. What? A. I wouldn't say that neither.

Q. What is the number of the polling place? A. I couldn't say the number of it.

Q. Don't you know the number of the polling place? A. No sir.

Q. Do you know what street it is on? A. I know the street.

Q. What? A. Pavonia Avenue.

Q. Between what streets? A. Provost and Henderson.

Q. Do you know whether it is in the middle of the block or on the corner, or near the corner? A. It is more to Provost Street than it is to Henderson Street.

Q. Whose place is it? A. Lillis's.

Q. Tinsmith's shop? A. Yes.

Q. How far from that do you live? A. I live about—well, pretty near two blocks from it.

Q. Two blocks? A. That is, around the corner. I live on Eighth Street.

Q. You have lived in that neighborhood all your life? A. Yes.

Q. You don't know whether exactly opposite the polling place there is a gent's furnishing store, do you? A. No sir, I don't.

Q. When a voter came in and gave his name and address and you went over to the signature

copy book did you make any comparison as to whether the name in the signature copy book was the same as the name given on the poll book? A. What name was that?

Q. For instance, if a man came in, gave his name as Jacob Kane, of 129 Pavonia Avenue, would you look to see whether in the registry book there was a John Kane, 129 Pavonia Avenue? A. Yes, I would.

Q. If you were looking. And the same thing if John Kane came in and gave his address as 129 Pavonia Avenue, would you look to see whether the same address was in the signature copy book? A. John Kane, yes.

Q. With respect to John Kane, you say, you having remembered it, did you note that in the signature copy book the address was given as 165 Pavonia Avenue? Did you note that? A. No sir, I didn't note that.

Q. Didn't notice that? A. No, I didn't notice it.

Q. John Kane is a young fellow about thirty years old? A. Something like that, yes?

Q. Do you know where he works? A. No sir, I don't know where he works.

Q. You don't know he works for the county? A. I don't, no sir.

Q. Do you know whether this man, John Kane, is Committeeman in the Ward? A. Yes, I know he is Committeeman.

Q. Did you have any conversation with him that morning, or did Mr. Kane say anything to the members of the Board there about acting in harmony? A. No sir.

Q. Was anything said by the members of the Board about acting in harmony? A. No sir, with ourselves, just; I was kind of new on the Board, I asked them, I said, "I am kind of new on this Board, tell me what to do, show me what to do." That is all I know. That is the only

thing we had between us.

Q. Do you know Mr. Francis J. Donahue, Sr.? A. No sir.

Q. Did you see him here yesterday testifying? A. I couldn't say.

Q. You don't remember whether you saw him here in Court testifying? A. No sir.

MR. SIMPSON: I object. It is an unfair assumption of fact. The man says, "I don't know any such person." If he does not know him how can he tell whether he saw him here yesterday.

Q. Did you see here in Court yesterday a man who gave his name as Francis J. Donahue, Sr., sit here and testify? A. I might have heard his name, never looked at him.

Q. Do you remember such a man giving his testimony here yesterday? A. No.

Q. You don't remember him? A. No.

Q. You don't remember a man testifying yesterday he had known you fifteen years—this man who gave his name as Francis J. Donahue, Sr.? A. No.

Q. You don't remember that? A. No.

Q. You didn't remember any such testimony? A. No.

Q. You were here all day yesterday when the testimony was being given? A. I was here, yes.

Q. Do you know Mr. Francis J. Donahue, Jr.? A. No sir.

Q. Don't know him either? Do you remember whether or not you were present when vote number 10 was taken on the name of Francis J. Donahue, 149 Ninth Street, the name in the signature, signed Franck—do you remember whether you were present? A. I can't tell you that.

Q. You cannot tell? A. I don't know whether I was or not. I told you I went out a

couple of times. Out to the toilet, I went to the toilet in the hallway, outside the door.

Q. How often during the morning? A. I took a dose of salts that night before that.

Q. When did it begin to work? A. Around ten o'clock or so.

Q. But you opened the polling place at seven o'clock? A. Six o'clock.

Q. Six o'clock? A. Six.

Q. You don't recall whether up to the time your tenth vote was taken you saw a man come in and vote on that name which appears in the signature column as Franck Donahue? A. No sir, I don't.

Q. On the opening of the polls who became the clerk, who was the clerk? Who wrote the names in the book? A. Why, I couldn't say who did now, who wrote the names in the book.

Q. Who was the judge? A. Unger was judge.

Q. Who was the inspector? A. Kelly was the inspector.

Q. What were you when the polls opened? A. I was the clerk.

Q. Exactly when the polls opened you were the clerk? A. Yes.

Q. And as the clerk what was the first thing you did? A. Well, I said to Mr. Unger, "I am new at this, I don't understand it. You help me out on this."

Q. After that what did you do? A. I didn't —just took his instructions. Watched him what he done.

Q. When the first voter came in? A. I watched him, whatever they done, I done.

Q. When the first voter came in what did you do? A. What did I do?

Q. Yes. A. I just watched. Seen how it was written down.

Q. How it was what? A. Written down.

Q. Who did the writing down? A. Mr. Un-

ger, I guess, was the king-pin, I think so, I ain't sure, I ain't sure who it was. I think it was Mr. Unger.

Q. You remember all about what you said to Mr. Unger; do you mean you don't know who showed you what to do? A. Mr. Unger may have writ, as I say, he may have writ it down.

Q. Do you remember? A. I can't remember now, I don't remember, because I know he was telling me how the thing was going on, but I can't remember who it was.

Q. You were a member of this Board during the primary election, weren't you? A. Yes, I was.

Q. And during the registry before the primary were you a member? A. No sir, I was not.

Q. Were you on registry day, after the primary, were you a member of the Board? A. Yes.

Q. Then you were at the Commission Government Election a member of the Board? A. Yes.

Q. When you said to Mr. Unger, "I am new at this," do you mean you didn't know what ought to be done when a man came in and offered himself to vote? A. No sir, I didn't know what to do.

Q. Didn't know. What had been your duties at the primary election? A. What had been my duties?

Q. What were you doing? What were you actually doing at the primary election? A. I was supposed to be a clerk.

Q. That meant at the primary election you had to know how to put the names down, get his signature? A. Yes, but I didn't understand it.

Q. Did you learn it at the primary election? A. No, I did not.

Q. Who taught you at the primary election what to do? A. Mr. Unger, the Board, all.

Q. Who taught you? A. Who taught me?

Q. Who showed you what to do? A. Didn't show me what to do, I just asked him what was to be done.

MR. SIMPSON: I object. The question contains an unwarranted assumption of fact. Nobody showed him.

THE COURT: I will overrule the objection.

Q. When you asked what was to be done at the primary election, you being clerk, were you told what was to be done at the primary election? A. When we got together.

Q. Just please answer my question. A. I am answering your question.

Q. Were you told what to do? A. When we got together we picked one another out. We got picked out—

Q. You got picked out as clerk? A. Yes.

Q. Having been picked out as clerk were you told what to do? A. I was told I was clerk.

Q. Did you act as clerk? A. I did.

Q. Did you write the names of persons who came there to vote at the primary election? A. No sir.

Q. Didn't write any of them? A. No.

Q. What did you do as clerk? A. I watched what was going on.

Q. Watched somebody else do it? A. I told them I was new at the Board, I wanted to find out.

Q. If Mr. Unger had told you at the primary election what to do why did you tell him at the Commission Government Election that you were new at it? A. Well, that was different, a different election.

Q. Different? A. Yes.

Q. What was the difference about it to your

mind? A. Well, I didn't understand either one of them.

Q. That is why you said they were different, because you didn't understand either one? A. No.

Q. During the Presidential election in 1916, you didn't serve, did you? A. No sir.

Q. Do you remember the time of your appointment? A. I think around 1916.

Q. What was it? A. Or 1917.

Q. You were not an election officer at the Presidential election in 1916? A. No sir, I was not.

Q. You were afterwards appointed and you became an officer for the primary election in 1917, is that right? A. No, I was not on the election.

Q. Were you an election officer at the general election? A. I was not at the general election.

Q. 1917? A. I was not at this last general election, all I was on was the primary and special election.

Q. You didn't serve as a member of the Board at the general election? A. No sir.

Q. Were you? A. Resigned.

MR. SIMPSON: I object. It is immaterial what happened after this alleged crime.

MR. VICKERS: It would depend upon what he did whether it is material. If he fled it is material.

MR. SIMPSON: Ask him that.

THE COURT: You may ask him that.

Q. Did you go away after October 16th, 1917?

A. Yes, I went away.

Q. When? A. I guess it was about three or four—maybe about a week after or so, I couldn't say.

Q. A week afterward. When did you get back? A. When did I get back? About eight weeks ago, nine weeks ago.

Q. Where were you in the meantime? A. I was up in Bridgeport.

Q. Bridgeport, Connecticut? A. Yes.

Q. Did you go away alone?

MR. SIMPSON: I object. It is immaterial and irrelevant; his flight may be evidential, but his manner; if he went away to escape prosecution it is one thing—

MR. VICKERS: That is what I want to find out. I think I have a right to ask him who he went with.

THE COURT: He has a right to find out what his motive was. It is for the jury to say. I will allow it.

MR. SIMPSON: I ask an exception.

(Exception allowed and signed and sealed accordingly.

George G. Tennant, Judge.

Seal.)

Q. Who did you go away with? A. Went away with myself.

Q. Did anybody go away with himself, with you? A. Nobody went with me.

Q. Nobody went with you? A. No sir.

Q. Can you fix the time when you came back? A. No sir, I couldn't exactly say.

Q. Can you tell whether it was before or after

Christmas? A. Well, I come Christmas, Christmas I come back.

Q. Christmas? A. Something like Christmas.

Q. Something like Christmas? A. Yes.

Q. Do you know Mr. James Egan? A. No sir, I don't.

Q. Did you see the gentleman who was on the witness stand here yesterday, under the name of James Egan, who testified? A. I cannot recognize him.

Q. Can't recollect whether you saw a gentleman yesterday on the witness stand? A. No sir.

Q. —who was here under that name? A. No sir.

Q. Do you remember a gentleman on the witness stand here by the name of James Egan saying he knew you twelve or thirteen years? (No answer).

MR. SIMPSON: Is that the man who said his name was Tommie?

THE COURT: Egan says this man calls him Jim and he called him Tommie.

Q. Do you remember him being on the stand? A. I don't remember him.

Q. Do you remember him being on the witness stand here? A. I can't remember it now. I cannot place him.

Q. You don't mean that, you don't mean you don't remember there was a man in that chair who said he knew you and he called you Tommie?

MR. SIMPSON: No, he doesn't say that. He doesn't say he does not remember him, he says "I don't place him."

THE COURT: That is not at all proper. You may ask him that question.

Q. (By the Court). Do you remember a witness who was on the stand yesterday, who referred to you, said he had known you twelve or thirteen years, and who said here as you sat there, he called you—you called him Jimmie and he called you Tommie? Do you remember that man yesterday? A. I can't place him.

Q. Do you remember he was there in that witness chair? A. I can't place him.

Q. Do you know Mr. John Crimmins, 139 Ninth Street? A. No sir, I don't.

Q. Do you remember Mr. John Crimmins being here in the witness chair yesterday, or a man who gave his name as John Crimmins and who said he didn't vote at this special election, and who said that he had known you ever since you were born?

MR. SIMPSON: Crimmins was on this morning. You don't even remember it.

MR. VICKERS: I am willing to admit it. I would have to fix my memory on it, but I can say that he was not.

MR. McCARTER: I think Crimmins didn't testify that way that he knows him, he testified that he knows him by name, he only knew Looney by name.

MR. VICKERS: My note is that he had known Looney since he was born. I will withdraw the question and change it.

Q. Do you remember a man who came on the stand to-day and said his name was John Crimmins and he lived at 139 Ninth Street, and he didn't vote at the Commission Government Election, October 16th, 1917, although his name appears on the poll book—do you remember that

name? A. Yes, I remember him.

Q. You remember him A. Yes.

Q. Do you remember that man, the man who said you called him Jack— A. I didn't call him Jack.

Q. Do you remember the man? A. I remember him, yes.

Q. Do you know him? A. No sir, I don't.

Q. He is the man who says he has known you since you were born. You now say you don't know him? A. No, I don't know him.

Q. I call your attention to Exhibit S-5, the poll book, and ask you whether you remember a man who under voter's number 74, John Crimmins, 139 Ninth Street, voted and signed the poll book in the signature column? A. I couldn't say, no sir.

Q. When did you plead to this indictment?

MR. SIMPSON: That is a matter of record. I will admit it.

MR. VICKERS: I want to test his memory on other things.

Q. Do you remember being brought here to plead guilty or not guilty, and giving bail? A. Yes.

Q. When was it? A. I couldn't say now.

Q. When? A. About five weeks ago.

Q. About five weeks ago? A. Something like that, I wouldn't say for sure, four or five weeks ago.

Q. How long ago was Christmas, if you remember? A. About eight or ten—ten weeks.

Q. You think Christmas was ten weeks ago? A. Eight or ten weeks.

Q. What? A. Eight or ten weeks, ain't it?

Q. Eight. A. No, no, since Christmas.

Q. You are thinking of Thanksgiving, aren't

you? A. Yes.

Q. How long ago do you think Christmas was? A. It is only a couple of weeks ago, ain't it?

Q. If you came back around about Christmas, from Connecticut, do you remember when you pleaded after you came back, whether you were arraigned on this indictment after you came back from Connecticut, or after you came back, around Christmas? A. I can't—I couldn't say—I can't remember.

Q. You can't remember? A. No.

Q. Between the 16th of October, 1917, and Christmas, did you see Mr. Kelly, the defendant here? A. Did I see Mr. Kelly?

Q. Yes? A. Yes, I seen him.

Q. Where? A. Why, in different places.

Q. Where? A. Why, Pavonia Avenue, I seen him once, and I seen him up in Bridgeport another time.

Q. Mr. Kelly was in Bridgeport? A. Yes.

Q. He went there with you? A. No sir.

Q. He came there before or after you? A. I don't know whether he came before or after me. I couldn't say that.

Q. How long were you in Bridgeport before you saw Mr. Kelly? A. Well, a couple of days I was there before I seen him.

Q. When did you go to Bridgeport? A. I couldn't say exactly when, when it was I went to Bridgeport.

Q. How many days after the Commission Government Election in October? A. Oh, that was about a week or so after that.

Q. Do you remember whether Mr. Kelly came from Bridgeport before or after you did? A. I come away, I think, before him. I ain't sure, I couldn't say as to that.

———

LOUIS UNGER, sworn on behalf of the defense, testified as follows:

DIRECT EXAMINATION by Mr. Simpson:

Q. Where do you live? A. 313 Ninth Street, Jersey City.

Q. How long have you lived there, in Jersey City, in that district? A. All my life.

Q. How old are you? A. Thirty years old.

Q. What is your business? A. I am clerk of the Public Service Railroad Company.

Q. I am going to read to you from the registry book of the Second District, Second Ward, purporting to be the names of people who were on that registry list at the election of 1916. Will you tell me if you know any of these people personally: Bartolemew Burns, James Egan, John Kenny, Henry Arahill, Martin Hanley, Scriven Thomas, Morris Sigel, Isaac Sigel, Patrick Moran, Samuel Leff, James Gillen, Frank Anuszewski, Louis Bonkalski, Abraham Schwartz, Adolph Schoenberg, Andrew Barabas, Louis Chicone, Benjamin Toback, Michael Collins, Louis Tamke, James Burns, and so on, showing all the different nationalities. Do you know any of these people personally I read to you? A. Yes, quite a few of them.

Q. Personally? A. Personally, yes.

Q. Do you know all of them? A. No sir, I don't.

Q. All of these Polish people? A. No, I didn't know all, I can't.

Q. These people, Irish names, German names, all mixed up, some you know and some you don't know? A. Yes.

Q. When did you become a member of this Board of Election? A. 1912.

Q. You were familiar more or less with the election. Were you an officer of past Commis-

sion Government Elections? A. Yes.

Q. Both Commission Government and primary? A. Yes.

Q. The first Commission Government election? A. Yes.

Q. At that time did you have a registry book or poll book? A. I don't recall it.

Q. Isn't it a fact you didn't have any poll book?

MR. HUDSPETH: I object. It is leading.

MR. SIMPSON: It has to do with his knowledge, if he had conducted one election without a poll book it will show that he acted honestly if he conducted this second election in the same way as they had been although the statute had been changed without his knowledge.

MR. HUDSPETH: I will withdraw the objection.

Q. State whether or not at that original Commission Government Election there was any poll book or registry, according to your best recollection? A. My best recollection, I don't think there was.

Q. How was that Commission Government Election conducted, the first one?

MR. HUDSPETH: I object. It is immaterial.

Q. —in the way of voting.

MR. HUDSPETH: I object. It is incompetent, immaterial and irrelevant.

MR. SIMPSON: To show the knowledge of this man to the jury, what his experience was, at previous elections?

MR. HUDSPETH: I will withdraw the objection.

THE COURT: I will allow the question.

Q. How would a voter come in and vote, in what manner? A. We asked him his name, referred to the registry book.

Q. I am not referring to the last one, but the first one, where there was no registry book, no poll book, the first Commission Government Election? A. His name would be entered in the book.

Q. He would vote? A. He would vote, yes.

Q. Come down to this election, this special election, the Commission Government Election—

Q. (By Mr. McCarthy). You say there were no poll books?

MR. SIMPSON: A poll book, but no registry book.

THE WITNESS: Yes.

Q. Coming to this election, you were a member of that Board? A. Yes.

Q. What was your position? A. Judge.

Q. What did you do as judge? Did you also enter yourself names in the book? A. Yes.

Q. What would be your method when a man came in, for instance, and said,—take under the head of "Voters," is that your handwriting, under the head "Votes," 82, 83, 84? A. Nothing there in my handwriting.

Q. That is not your handwriting? A. No.

Q. Can you show me, look through it and see

anything in your handwriting, for instance, this is the poll book which Mr. McCarthy says he saw, these signatures here, James J. Evers, 136, 476 Henderson Street. Is that your handwriting? A. Yes.

Q. Hosbach said it was his. Is it yours? A. Yes.

Q. Does this alteration remind you, change to 136 from 137? A. Yes.

Q. And you are sure it is in your handwriting? A. Yes.

Q. Let us take this. Let us see what happened. When he said he was James J. Evers, did you know him personally? A. Yes.

Q. You knew him personally? A. Yes.

Q. Did you know where he lived? A. Yes.

Q. It was not necessary for you to compare his signature? A. We compared anyhow.

Q. You mean you looked in the book to see if it was there? A. Yes, that is the idea.

Q. If he was registered at the last election— A. See if he was entitled to vote.

Q. Could he vote unless he had been registered at the last election? A. No.

Q. When a man came in whom you knew, he gave you his name, and you knew he was the man, what was the modus operandi? A. We would look in the registry book, see if he was registered.

Q. If he was would you take his vote? A. Yes.

Q. Knowing the man, you would not compare the signature? A. Yes, we would compare it anyhow to see if he was there.

Q. Are you one of these prepare, repair, compare fellows, too? A. No sir.

Q. I am talking about compare. Did you look to see if the registry was the same or did you simply look to see if the man was the same? A. If I knew the gentleman I would not.

Q. Simply wanted to find out if the name was written? A. Yes.

Q. You were not concerned with the character of his handwriting? A. No.

Q. Did you know many of these people who came in to vote personally? A. I know a few.

Q. How many of the 161 did you know? A. I should judge about fifteen or so.

Q. Could you tell how many of these are in your handwriting, how many of the names? A. I could by looking through the book.

Q. That you will probably be asked on cross-examination. Here is an entry here, a man named Toback, says he signed his name. It appears as if his name had been rubbed out, William Less written in there. Did you write in Less' name, do you remember—is that your writing William Less? A. No sir.

Q. Did you know anything about the erasing of the name of Toback and the writing of that name on top of it? A. No sir, I don't.

Q. Did you have any conversation with Toback about writing his name, or tell him to write his name here? A. I don't know who Toback is.

Q. You saw him in Court here. This man who says his name is Benjamin Toback, that he wrote his name in this place, where it shows it is erased, you heard that? A. Yes.

Q. Did you see him in the polling place, have any conversation with him? A. No, I did not.

Q. Did you tell him to write his name and afterward erase it? A. No.

Q. Do you know anything about that being done? A. No.

Q. Were you away from the polling place? A. From half past twelve until quarter after one.

Q. When did you go away again? A. I didn't go away at all.

Q. Didn't go for supper? A. No.

Q. You had served in that district before that

time? A. Yes.

Q. What was your busy hour, lunch hour, or the night hour? A. Both.

Q. It is a workman's district? A. Yes.

Q. It is the sort of a district described to the jury here as a cosmopolitan or common people? A. Yes, all common people.

Q. Polish, Italian, Americans, all kinds of people.

Q. What were you? A. Hebrew.

Q. Hebrew? A. Hebrew birth.

Q. You wouldn't have friends among the Polacks any more than the Irish and Germans? A. No sir.

Q. Whatever friends you would have would be of your own kind? A. Surely.

Q. When you opened the polling place you opened at six o'clock? A. Yes.

Q. When you opened the polling place did you have a box? A. Yes.

Q. The box was there? A. Yes.

Q. Was the poll book there? A. No sir.

Q. Was the registry list there? A. Yes.

Q. When did the poll book arrive? A. About 9.30.

Q. Did you have any instructions from the city clerk as to what you were to do at this election whether you would have to use a registry list or not? A. No sir.

Q. It has been testified here, you heard the testimony of a number of people that although their names appear in that book, as written in by somebody—James Smith, Fleming, Minch, Wright Turner, Fox, Coursen, and others, it has been shown they didn't vote in that election on October 16, 1917, but somebody else impersonated them and falsely and fraudulently voted. Did you know that anybody cast a vote there who was not entitled to cast a vote there? A. No sir.

Q. Did you have your suspicions aroused that

anybody was attempting to vote as a repeater? A. No sir.

Q. —or trying to put in a vote there who was not entitled to vote without a legal right to do it? A. No sir.

Q. Did anybody call your attention to anything suspicious about it? A. No sir.

Q. You say you only knew about fifteen personally— A. Yes.

Q. —of those that came. Did you know anything about these people being stopped outside the polling place—there were two people who were stopped, they testified, told not to go in, they had been voted on. Did you know anything about that? A. No sir, I did not.

Q. I notice in looking at the registry here, under Pavonia Avenue, there are a number of little red marks, such as for instance, Egan, 16, in red pencil, Thomas, 44, Moran, 96, Less, 27, who made those marks? A. I don't know.

Q. Do you know what they mean? A. No sir.

Q. Did they mean the number of the vote in the poll book, or is that a mark made after the registry left your hands? A. Yes, made after it left my hands.

Q. You didn't make those? A. No sir.

Q. That registry has been altered in some way? A. It has.

MR. SIMPSON: What is the fact about that? Is that made in the Prosecutor's office?

MR. VICKERS: No sir. It has been testified here it was done there.

Q. Do you say this was not done at the election? A. No sir, not to my knowledge.

Q. I mean doesn't it seem apparent or plaus-

ible, you having checked up the vote on the registry, James Egan comes in and says, "I am James Egan," you look at the registry and find James Egan, is it probable that the man who looked up James Egan would mark, put the mark 16, in the poll book? A. It would appear that way as far as my recollection, without knowing, goes, to put that number down.

Q. Did you do it? A. No sir, I did not.

Q. You don't know of it being done? A. No sir.

Q. These blue pencil marks, do you know what they mean? A. Yes.

Q. What are those? A. Signature compared.

Q. What do you mean by "compared"? Are you one of these repair, compare fellows? You don't mean you made a careful examination of the signature, or looked to see if that was on the same line, or one-eighth of one-millionth of one degree below the line?

MR. VICKERS: I object. That is not required by the law.

MR. SIMPSON: I will withdraw the question.

Q. What do you mean by compare? A. What I mean, by looking up to see if the man was entitled to vote.

Q. How would you find it out? A. If the name appeared in the registry book.

Q. John Smith— A. John Smith or John Jones.

Q. From such an address? A. Yes.

Q. Such a business? A. Yes.

Q. So old? A. Yes.

Q. Then he would be entitled to vote? A. Yes.

Q. You don't pretend to be an expert on handwriting, do you? A. No sir, I don't.

Q. Where did you live with reference to this primary place where this election was held? How near it did you live? A. About ten or twelve blocks.

Q. Where was it? A. 313 Ninth Street.

Q. Where was the primary held? A. 141 Pavonia Avenue.

Q. Where is 313? A. Down near the foot of it.

Q. Near what cross streets? A. Between Coles and Monmouth.

Q. This primary, this election place, was down on Pavonia, near Provost? A. Provost and Henderson.

Q. What time did you close the polls? A. Seven o'clock.

Q. Then did you count the vote and sign the return? A. Yes.

Q. There has been some testimony here that you were in Mr. McCarthy's office, and that you admitted making some signatures, and that when Mr. McCarthy asked about what you did there you either didn't answer, or you said, "I don't know." Was there any such conversation in his office? A. There was several in his office. He asked me did I make any entries.

Q. How did you come to go there? A. I was here. He told me to come to his office.

Q. Were you here to plead? A. We were summoned here to answer why we shouldn't be removed.

Q. Something to do with the election law? A. Yes.

Q. He met you and asked you to go downstairs? A. Yes.

Q. You went down? A. Yes.

Q. What was said down there? A. Mr. McCarthy asked me a number of questions.

Q. Not what Mr. McCarthy asked you. Give us his language, what did he say to you? A. He

said I made a few entries in the book.

Q. Did he have that book there? A. Yes.

Q. Point it out, which book? A. The poll book.

Q. This one (indicating)? A. Yes.

Q. Tell the jury how it was? A. (Witness opens the book).

Q. On his desk? A. Yes.

Q. Was he sitting at his desk? A. Yes.

Q. Where were you? A. Right alongside of him, to his right.

Q. Where was Hosbach? A. Standing over in the corner.

Q. Was Mr. McCarthy angry or excited? A. No, no.

Q. Quiet? A. Yes.

Q. Show us what he did? A. He pointed to a few names, on the entry side, and asked me was this my handwriting, and I said yes.

Q. Did he point to any signature of voters, say you made these signatures? A. Yes, he insinuated he made it, I denied it.

Q. You did deny it? A. Yes.

Q. Did Hosbach go out of the room? A. Yes.

Q. Was there any further conversation before Hosbach went out of the room? A. No.

Q. How long did you stay with Mr. McCarthy? A. About fifteen minutes—about five minutes after Mr. Hosbach went out.

Q. What did you do during the five minutes? A. He was called into the next room.

Q. He was called? A. Yes.

Q. Leaving you in the room? A. Yes.

Q. Mr. Hosbach says he has met you afterward and you told him you had hired me, he remonstrated with you for hiring me, told you if you were innocent to stand your ground. Do you remember any such conversation? A. Yes.

Q. What was said? A. Well, I told him that I was innocent, I am standing my ground.

Q. What did he say to you about hiring a lawyer,—did he say you should not, he didn't have to hire a lawyer? A. He passed some remark like that.

Q. What did he say? Did he say he was taken care of by the Prosecutor's office, you could be, or what? A. I just can't recall the words, but he did state I had no business to hire a lawyer, for the simple reason I was not guilty, I should go see Mr. McCarthy.

Q. You should go to Mr. McCarthy and tell him you were not guilty? A. Yes.

Q. You preferred to stand trial? A. Yes.

Q. During this whole election did you know that somebody on the outside had the contents of the registry, was sending people in, pretending to be John Brown, living on a boat, or boat captain, was allowed to vote under that name; did you know anything of that kind that was going on? A. No sir.

Q. Did you supect it was going on? A. No, I didn't.

Q. There has been some talk here about some one having said that the Board should work in harmony. Do you remember anything about that? A. No sir, I don't.

Q. This witness Looney was on the stand, he says you instructed him. Did you have any difficulty in getting it into his skull at all? A. Yes, I didn't think I could get it into his skull at all.

Q. What did you tell him? A. I told him to take the book and check it. He didn't seem to catch on, I had to do it myself.

Q. He manifested the same mental celerity he did here to-day? A. Yes.

Q. What did he do, did what he did amount to much? A. Nothing, to amount to much.

Q. Just helped out? A. Yes, just helped out.

Q. In doing the judge's work and the clerk's? A. The clerk's, yes.

Q. What would the judge do? A. Take care of the ballots, hand the ballots to the voter, supervise the whole doings of the Board.

Q. Mr. Hosbach says the highest numbered ballots, according to his testimony, when he went to lunch, was 72—35, and when he came back, 72. What time did he go to lunch? A. About half past eleven.

Q. What time did he get back? A. About quarter to one.

Q. During that time was it busy during that hour? A. Yes, very busy.

Q. You lived quite some distance from Schoenberg's, where this man Schoenberg testified his store is? A. Yes.

Q. You had no occasion to be around the neighborhood of his store except once or twice a year when you were in the polling place? A. That is right.

Q. He claims to know you; is that a fact? A. I don't know exactly the location of the store.

Q. The man himself, he claims to know you, and he claims you know him intimately. Is that a fact? A. No sir, it is not.

Q. How long did you live at that twelve or thirteen blocks from his store, had lived there, in October, 1916? A. Yes, I did.

Q. How long had you lived there in October, 1916? A. Up to that time I lived there about eight months.

Q. Where before that? A. 168 Coles Street.

Q. Near what? A. Near Ninth Street, one block from my present address.

Q. There is something in the testimony here about your brother-in-law voted, or was voted in that place. Did anybody come into vote on your brother-in-law's name while you were there? A. No sir.

Q. When were you out to lunch? A. About half past twelve.

Q. Until what time? A. Quarter after one.

Q. You were out at the same time Hosback was out? A. Hosbach came back about fifteen minutes, came back about quarter of one, I had gone fifteen minutes when he came back.

Q. There is another man named Hotkiss, Hotchkiss, did you know Hotchkiss, this young man, did you know him by name? A. No sir.

Q. He said he knew who you were, knew you by sight, you know his name,—did anybody fraudulently vote in so far as you know, under his name, while you were there? A. No sir.

Q. Did you go out at all during the afternoon to get cigarettes or anything? A. No sir.

Q. You were there all the time? A. Yes.

Q. When you say you had compared the signatures, I understand you simply looked at the registry book to see if the name was actually there, where he was entitled to vote? A. Yes.

Q. You didn't pretend to make a comparison of the signatures? A. No sir, not at all.

Q. Was there anything that aroused your suspicions that day at all? A. No sir.

Q. Was there much interest in that election? A. Not at all, seemed to be very quiet.

Q. What is the usual vote cast in that polling place?

MR. HUDSPETH: I object. It is immaterial.

MR. SIMPSON: I think it is important. If it is very small, if a small number voted, they wouldn't think there was anything suspicious.

THE COURT: I will overrule the question.

MR. SIMPSON: I ask an exception.

(Exception allowed and signed and sealed accordingly.

George G. Tennant, Judge.

Seal.)

CROSS-EXAMINATION by Mr. Vickers:

Q. When on the morning of the 16th of October you opened that polling place had you the ballot box there? A. Yes.

Q. Had you the official ballots? A. Yes.

Q. Had you tally sheets? A. Yes.

Q. Had you the signature copy of the registry of the general election of 1916? A. Yes.

Q. Had you the poll book? A. No sir.

Q. When did the poll book arrive? A. About 9.30.

Q. Did you accept any votes before the poll book arrived? A. Yes.

Q. How did you record them? (No answer).

Q. (By the Court). If votes were cast, and you didn't have the poll book, then the question is, how did you record these votes? A. Just give me the time to think.

THE COURT: Think about it.

A. There were a few voters that did come around before we had the poll book, we told them to come around later, which they did.

Q. Did you accept any votes before you had the poll book? A. No sir.

Q. Why did you say a moment ago you did?

MR. SIMPSON: I object. He has stated to the contrary. It is a misstatement of the testimony. He didn't say he accepted votes before he had the poll book.

THE COURT: I will allow the question.

A. I had in my mind something else.

Q. What did you have in your mind? A. I was thinking of another election.

Q. Another election? A. Yes.

Q. Why, when I said to you, on the morning of October 16th, 1917, did you have the ballot box when you opened the polling place, and did you have the official ballot, and did you have the official tally sheets, and did you have the signature copy book of the general election of 1916, and you said yes to each of those questions; and then when I asked you whether you had the poll book, you said no, and then when I asked you when you had received it and you said about 9.30, and I asked you whether you had received any votes before you got the poll book, and you said yes; you then meant another election, didn't you? A. I did, in that particular instance.

Q. Did you mean another election when I asked you about the ballot box? A. No sir.

Q. Did you mean another election when I asked you about the official ballots? A. No sir.

Q. Did you mean another election when I asked you about the tally sheets? A. No sir.

Q. Did you mean another election when I asked you about the signature copy book of the general election of 1916? A. No.

Q. Did you mean another election when I asked you about the poll book? A. No.

Q. Did you mean another election when you said you had received that poll book at 9.30 A. M.? A. No sir.

Q. Did you mean another election when I asked you if you received votes between the time—before you received the poll book? Yes or no? A. Yes.

MR. SIMPSON: I object to Mr. Vickers asking for a categorical answer.

THE COURT: He has answered it.

Q. What election did you mean? A. The primary election.

MR. SIMPSON: I object. It is not cross-examination. He is being interrogated about the conduct of this election, his conduct at another election cannot be inquired into.

THE COURT: I will allow it.

MR. SIMPSON: I ask an exception.

(Exception allowed and signed and sealed accordingly.
George G. Tennant, Judge.
Seal.)

Q. Is that why it took you so long to find out what you meant by saying that you received votes before you got the official poll book? A. I didn't quite get that question.

Q. Is that what took you so long to remember that it was another election you referred to in answer to my question as to how you recorded the votes before you got the official poll book? A. Yes.

Q. Now, then, did you, on October 16th, 1917, receive any votes before you got the official poll book? A. I didn't quite catch you.

Q. (Repeated by stenographer). Did you on October 16th, 1917, receive any votes before you got the official poll book? A. No sir.

Q. You were not handicapped at all in the matter of properly receiving the votes before you got the official poll book, were you? A. No sir.

Q. Do you know Mr. Martin Cannon, of 484 Grove Street? A. No sir.

Q. I call your attention to the official poll book, to the page on which Mr. Martin Cannon's name appears, at the head of page 44, Grove Street, number of voter, 1, and I ask you in whose handwriting the name of Martin Cannon is, in the voter's name column? A. That is in my handwriting.

Q. In yours? A. Yes.

Q. Do you recall—having your attention directed now in this book—do you recall Mr. Cannon coming in there? A. I don't recall the gentleman coming in.

Q. Did the man who came in giving the name Martin Cannon, 484 Grove Street sign Martin Cannon in the signature colum? A. Yes.

Q. Did you O.K. it? A. Yes.

Q. And at that time were you instructing Mr. Looney in the duties of clerk when you entered up that name? A. At that time?

Q. Yes? A. I don't recall.

Q. Is it true or not true that Mr. Looney got from you the instructions as to what to do as clerk of that Election Board? A. Yes, it is true.

Q. As appears from the official poll book, Mr. Martin Cannon cast the first vote in that election; isn't that so? A. Yes.

Q. When you O.K.'d the signature in "Signature Compared" column, that means that you had turned to the signature copy of the registry for the purpose of comparison, isn't that so? A. To see if his name was registered, if he was entitled to vote.

Q. Mr. Simpson has asked you whether at the first Commission Government election in Jersey City whether you had registries to guide you in the matter of voting, you said to the best of your recollection you had not; isn't that right? A. I think Mr. Simpson asked me if we had a poll book.

Q. He did, but did you understand him to

mean poll book or registry? A. Poll book.

Q. When you said you did not have a poll book, did you mean you did not have a poll book? A. Yes.

Q. Didn't you have a poll book? A. As far as my knowledge is concerned, we had not.

MR. VICKERS: You didn't mean that, did you?

MR. SIMPSON: No, I meant registry book.

Q. Mr. Simpson meant registry book, I am perfectly satisfied it should go in the record in that shape.

Q. After the first Commission Government Election—before this one—you had another Commission Government Election, didn't you? A. Yes.

Q. You were a member of the Board at that election? A. No.

Q. Is that right? A. No.

Q. Haven't you remained a member of the Board since 1912? A. I didn't serve on the Board at that time.

Q. Where were you in May, 1916? A. I couldn't be excused from my business.

Q. You didn't serve at all? A. No.

Q. Did you serve in the general election, 1916? A. No sir.

Q. A member of the Board? A. No sir.

Q. Didn't serve. Did you serve during the primary, 1916? A. Yes.

Q. You served during the primary, 1917? A. Yes.

Q. The general election, 1917? A. No sir.

Q. You didn't serve after the 16th of October, 1917? A. No sir.

Q. Turning to the first page of this poll book,

in writing, under the column "Names of Voters," and beginning with the name of James Maloney, voter number 60, I ask you whether the writing on that page is not in your handwriting? A. Yes.

Q. The whole first page? There are three names? A. Two of them are mine.

Q. Which two are yours? A. The first and last.

Q. Voter 60, voter 145, are yours? A. Yes.

Q. Whose handwriting is voter 115, Harry Schwartz? A. I don't know.

Q. Aren't you acquainted with the handwriting of the members of the Board? A. No sir, I don't know it.

Q. Do you know Mr. James Maloney? A. No sir.

Q. When you O.K'd. the signature of Martin Cannon, I think you have testified that you had compared it? A. No sir.

Q. What did you mean? A. The name appeared in the registry book.

Q. You had compared it with the registry, is that right? A. I didn't compare it at all, just merely to see if his name appeared in the registry book, if it did, why, we let him vote.

Q. Did you, in this instance, of Mr. Martin Cannon, look up the registry yourself? A. Yes.

Q. You O.K'd. it? A. Yes.

Q. That was so in every case in which you entered the name of the voter? A. Yes.

Q. Turning back to Mr. James Maloney, I ask you why you didn't O.K. it? A. For the simple reason during the rush we probably omitted it, if we did omit it.

Q. Are you guessing or do you remember? A. I don't know whether I did or not, as far as I remember.

Q. Are you guessing with reference to Cannan, or did you? A. If I looked at it?

Q. See it? A. I omitted there.

Q. You were guessing then, when you said in the rush, weren't you? A. I didn't say "I guessed."

Q. I am not asking you whether you said you guessed, but whether you guessed when you said, in the rush I omitted? A. No sir, I didn't.

Q. Do you know whether Mr. Maloney came in the rush or not? A. I don't know who Mr. Maloney is.

Q. How about Cudack, why didn't you O.K. him? A. Same reason.

Q. Same reason? A. Same reason, yes.

Q. Turn to the next page, there are a lot of voters registered, recorded, under the letter B, Boats, beginning with James Smith, voter 82, I ask you whether you know in whose handwriting that is? A. No sir, I don't.

Q. Numbered from 82, all down the page, you don't know them? A. No.

MR. McCARTHY: The last number?

MR. VICKERS: 89.

Q. 82 to 89. I call your attention to the page, the next page, under the name of William Looney, at the head, vote number 5, I ask you whether the name William Looney is written in your handwriting? A. Yes.

Q. I ask you to point out by name and number any other names on that page in your handwriting? (Witness does so).

Q. Voter 31? A. 31.

Q. Stanislaw Less? A. Yes.

(Witness indicates another name).

Q. William Nealon, Jr., that is 61 and 62? A. 63—

Q. 63— A. Right down to 137, next.

Q. 137? A. And 152.

Q. 152? A. Yes.

Q. And on the page, number 30, is that name in your handwriting? A. No sir.

Q. Do you know in whose handwriting that is? A. No sir.

Q. 90 is not in your handwriting? A. No sir.

Q. Do you know in whose handwriting it is? A. No.

Q. 104 is not? A. No.

Q. 104, 132, and 134, on that page, are in blue ink? A. Yes.

Q. Do you remember whether or not Mr. Hosbach did write with a fountain pen with blue ink in it? A. Yes.

Q. That is the fact? A. Yes.

Q. 137, you said was yours? A. Yes.

Q. With reference to the name, William Looney, there appears an O.K. in the Signature Compared'' column. Did you put it there? A. Yes.

Q. What did you put it there for? A. I know he was all right.

Q. With respect to Stanislaw Less, there is no O.K. How do you explain that? A. That applies to the other cases, the same reason, of the other names.

Q. On that page, in no other instance except in the case of Looney, where you put an O.K. in the signature column, is there any other name O.K'd. by you; is that right? A. Yes. I had other duties to perform beside that.

MR. McCARTER: Do you claim, under this indictment, there is any significance in the failure to O.K.?

MR. VICKERS: If I am permitted to answer it, I certainly do.

Q. Going to the next page in the poll book, the

page having the name of Martin Cannon, that signature, as you have already testified to, was made in your presence and O.K'd. by you; is that right? A. Yes.

Q. What other names, under the head of "Names of Voters," are written on that page by you? A. Number 11, 64, 146, 148, 149, 150, 151, 153.

Q. On that page, with the exception of number 95 and 128, which entries appear in blue ink, every other name is written in there by you in the column "Names of Voters," is that right? A. Yes.

Q. With the exception of number 11, Joseph Cranford, 494 Grove Street, no other entry is O. K'd, by you except Cannon, already referred to, is that so? A. Yes.

Q. What is your explanation with respect to that? A. Same as the other.

Q. That you were busy with other duties? A. Yes.

Q. Did you know Mr. John J. Murphy? A. No.

Q. Do you know Mr. Thomas J. Lyons? A. No.

Q. John J. Egan? A. No sir.

Q. Herman Hotkiss? A. No.

Q. Michael J. Kenny? A. No sir.

Q. Charles Murphy? A. No.

Q. Michael Olwell? A. No sir.

Q. By the way, Mr. Michael Olwell, is in as written by you as Michael Olwell? A. Yes.

Q. As written in the signature column it is Olewell? A. Yes.

MR. SIMPSON: I object to that statement. The writing speaks for itself. I object to his characterizing a written document. It is for the jury to say whether it is written that way or not. I object to the

question on the ground that he has no right to state the contents of a written paper, to put his own construction on it.

THE COURT: He has not finished the question.

Q. At the time of receiving that vote, and seeing whether a person was registered and entitled to vote, did you examine the signature that the voter made here in the book in your presence, if he made it? A. Didn't examine it. I just see him sign his name there.

Q. Did you examine it after he signed it? A. No, I didn't examine it.

Q. You didn't? A. No sir.

Q. In comparing, as you have said, the poll book with the registry, did you look to see whether the names were spelled the same? A. No sir.

Q. In order to tell whether or not a man was entitled to vote, how could you tell it unless you looked to see whether he spelled his name in the same way? A. Why, his name was not down in the poll book until we found out if the name appeared in the registry book.

Q. Let us see what you did. You didn't put the name in the poll book until you had satisfied your self that he was entitled to vote? A. Yes.

Q. That is it? A. Yes.

Q. No doubt about that? A. No sir.

Q. Then with respect to Mr. Hotchkiss—

BY THE COURT:

Q. Make that clear to him. He means you didn't write his name in the first column at all? A. No sir.

Q. Until after he had satisfied you he was entitled to vote? A. Yes.

Q. Did you put his name then in that column, the fourth column—did you let him sign his name in the fourth column? A. Made no entry in the poll book until we were satisfied his name appeared in the registry book.

Q. You first saw he was registered before you put his name down? A. Sure.

Q. When he came in you didn't write his name until you looked in the registry book first to see if he was registered? A. Yes.

BY MR. VICKERS:

Q. When you then put the name in the poll book you didn't put it in there until you had satisfied yourself whether the name that the voter gave was the same as the name on the registry; is that true? A. Yes.

Q. That is true? A. Yes.

Q. When Mr. Hotchkiss came in and gave his name as Hotchkiss, you turned to the registry, that name being in your writing— A. Yes.

Q. —you found in the registry to be Hotkiss. Did you satisfy yourself from that that he was entitled, duly qualified voter? A. Yes.

Q. You did? A. Yes.

Q. Having satisfied yourself that he was a duly qualified voter by looking in the registry book and found there Herman Hotkiss, you apparently wrote his name in the poll book Hotchkiss? A. Yes.

Q. Is that right? A. Yes.

Q. From whom did you get the spelling? Hotchkiss? A. From the way be pronounced his name.

Q. And it didn't arouse any suspicion in your mind that in the registry the man's name was Hotkiss, and the man came in and pronounced it Hotchkiss? A. No sir.

Q. And then if he signed this poll book

Hotchkiss, that didn't arouse any suspicion in your mind, either, did it? A. No sir, not at all.

Q. Turning to the next page, in which there are a lot of names entered for voting, beginning with vote number 33, Evers, James, Sr., 476 Henderson Street, I ask you whether that name is in your handwriting? A. Yes.

Q. What other names on the page are in your handwriting? A. 35, 65, 66, 67, 68, 69, 136.

Q. All of the names on that page with the exception of 99 and 126 are in your handwriting? A. Yes.

Q. And 126 is in blue ink, in the handwriting of Mr. Hosbach; is that right? A. Yes.

Q. Do you know in whose handwriting number 91 is? A. No sir.

Q. The name James Murphy, 489 Henderson Street. You don't know who wrote that in there? A. No sir.

Q. Why did you O.K. the signature of Mr. James Evers, Sr., number 33? A. Because his name appeared in the registry book.

Q. That is why you O.K'd. it? A. Yes.

Q. Why didn't you O.K. the name of James Evers, Jr., 136? A. Same reason as the others.

Q. You got busy that time? A. Yes.

Q. And except Mr. Angelo Calabrese, who was the next voter after Mr. James Evers, Sr., and bearing your O.K., you O.K'd. none of the other names in that book that you entered, when they presented themselves to vote, is that right? A. Yes.

Q. Turning to the next page on which there are voters' names entered, beginning with vote number 10, Francis J. Donahue, Jr., 149 Ninth Street, I ask you whether the entry of Mr. Donahue's name there is in your handwriting? A. Yes.

Q. Do you know Mr. Donahue? A. No sir.

Q. When you looked up Mr. Donahue to see

whether he was entitled to vote or not, did you look to see whether he was entitled to vote, did you look to see whether Francis Donahue, Sr., who signed his name Frank Donahue in a rather small handwriting, and without the c, F-r-a-n-k, not F-r-a-n-c-k, as appears in the poll book; did that arouse your suspicion at all? A. No sir.

Q. As to whether he was a duly qualified voter? A. No.

Q. You didn't O.K. his signature comparison column? A. No.

Q. In the poll book? A. No sir.

Q. On that page are all of the entries in your handwriting except 131? A. Yes.

Q. 131 is in the handwriting of Mr. Hosbach in blue ink? A. Yes.

Q. On the entire page there are no signature comparison O.K.'s? A. Yes.

MR. SIMPSON: Including the blue ones.

MR. VICKERS: Including the blue ones, yes.

Q. While you were taking the names of the persons who presented themselves to vote, you always satisfied yourself that the man was entitled to vote, isn't that so? A. Yes.

Q. You always personally went to the signature copy book to satisfy yourself? A. No sir, I did not.

Q. How did you do it? A. I had the poll book, Mr. Looney had the registry book.

Q. Then you never made any attempt at any time to compare the signatures that had been written in your presence by a man who presented himself to vote? A. No sir, we never compared signatures.

Q. I am not talking about what "we" did. Do

you mean Looney didn't, Kelly didn't, nobody did in that Board? A. I didn't.

Q. You didn't? A. No sir.

Q. Do you know whether Kelly did? A. No.

Q. Do you know whether Looney did? A. No sir.

Q. Did they ever, in your presence? A. No, they did not.

Q. So you paid no attention whatever to the signature copy book, so far as the signatures were concerned, to see whether the signatures agreed with the signatures of the persons presenting themselves to vote, and appearing in the poll book; is that right? A. For the simple reason—

Q. If you please, tell me first, yes or no? A. No sir.

Q. Now give your explanation? A. For the simple reason Mr. McCarthy came in the polling place, notified the Board, if the voter admitted the signature was his, to allow him to vote, we must allow him to vote.

Q. What time did Mr. McCarthy come to the polling place? A. That I couldn't say.

Q. About what time? A. That I couldn't say.

Q. Morning or afternoon? A. I think right before noon.

Q. You and Mr. McCarthy had quite a conversation at that time? A. No sir, we did not.

Q. By the way—

Q. (By Mr. McCarthy). Was that October 16th? A. Yes.

MR. McCARTHY: Around noon.

THE WITNESS: Before noon.

Q. Did Mr. McCarthy at that time take this poll book and examine it? A. Yes.

Q. Did he turn to the page B, under Boatmen,

and examine it and say anything about it? A. He turned to some page.

Q. Do you remember what page? A. No sir, I don't.

Q. You don't remember it? A. No sir.

Q. But you do remember, you say now, he said to you if a man said, "That is my signature," you were obliged to take his vote? A. Yes.

Q. That is what Mr. McCarthy told you? A. Yes.

Q. When he said, "If a man says 'that is my my signature,' " to what was he referring, so far as you could tell? A. The signature in the registry book.

Q. From what Mr. McCarthy said, no matter what a man said in the poll book in your presence, if he said, "That is my signature in the registry book," the Board had to take his vote; is that so? A. Yes.

Q. There is no doubt in your mind about that? A. None at all.

Q. Well, Mr. McCarthy having told you that, did you ask anybody, any of these voters, whether the signatures in the signature book were their signatures, or was his signature? A. If a gentleman came in and said his name was so and so, and it appeared in the registry book we would have to allow him to vote.

Q. I am not asking you, speculatively, but what you actually did, if a man came in, as you have said, and said what you have said he said, did you actually then ask any man who presented himself to vote, whether his signature on the registry book was actually his signature? A. Yes.

Q. You did? A. Yes.

Q. Then you did compare signatures, didn't you? A. No sir, we didn't.

Q. You did not? A. No sir.

Q. For what purpose did you call the voter's attention to the signature in the registry book?

A. If he came in, gave his name, we looked in the registry book to see if it was there. If it was there we allowed him to vote.

Q. You have just said after Mr. McCarthy came there you asked voters who presented themselves whether the signatures in the registry book were theirs. Did you do that or didn't you? A. I didn't have to do it.

Q. Did you do it? A. No sir.

Q. What did you mean a minute ago when you said you did? A. I don't recall saying I did.

Q. Let us get it straight then? A. After Mr. Carthy came down there and told you if a voter presented himself and said that was his signature in the registry book that you had to take his vote; that understanding that, you did not ask any person who did present himself thereafter whether the signature in the registry book was his? A. No sir, we did not.

Q. You did not? A. No sir.

Q. For instance, with reference to the persons on the page which is before you, beginning with number 10, all of which entries were made by you except Francis J. Donahue, Jr., did you know Mr. Francis Donahue, Jr.? No sir.

Q. John Murphy? A. No.

Q. McKenna? A. No.

Q. Do you know Crimmins John? A. No.

Q. Cornelius Kelly? A. No.

Q. Patrick Arrahill? A. No.

Q. Joseph Cohen? A. No sir.

Q. Thomas Rolls? A. No.

Q. Patrick Looney? A. No sir.

Q. Do you know whether or not all of those votes, except the first, being number 10, were received after the noon hour on that day? A. No sir, I don't.

Q. Do you know whether or not number 144 was received after the noon hour? A. Accord-

ing to the number, it was.

Q. Do you remember where you stood when you came back from lunch? A. I didn't stand, I sat down at the table.

Q. Do you remember where you stayed with reference to the count of the votes? A. No sir, I don't.

Q. But you know that 144 was after the noon hour? A. Yes.

Q. Not having known Mr. Patrick Looney, he coming in to vote, Mr. McCarthy having told you that if a man said the signature was his in the signature book, why didn't you ask Mr. Looney whether it was his signature in the signature book? A. For the simple reason his name appeared in the signature book, the name he had signed, and we allowed him to vote.

Q. It didn't make any difference to you, what Mr. McCarthy had said to you with reference to a man owning his signature in the signature book, did it. Yes or no? A. No sir.

Q. You knew Mr. McCarthy was Assistant Prosecutor of the Pleas? A. Yes.

Q. And that he was finding fault at that time with the method in which you were conducting that election, didn't you? A. No sir, I didn't.

Q. Did you think he was commending or criticising your manner when he was dealing with that poll book? A. I didn't know what his mind was.

Q. You didn't know his mind. He didn't express it, did he? A. No.

Q. He didn't say to you, turning to the voters' signatures, tell you they were all written in one hand, they were fakes, or something to that effect, did he? A. Not to my knowledge.

Q. Do you remember any such thing happening? A. No sir.

Q. Did he make any criticism at all with regard to the way the names appeared there? A.

Not that I know of.

MR. SIMPSON: I object. It calls for a conclusion. I have no objection to the conversation, but the question calls for a conclusion.

THE COURT: I will allow the question.

Q. Calling your attention to the next page, on which names appear to have been entered in the poll book, beginning with number two, Schoenberg, Morris, 152 Pavonia Avenue, I ask you if it is in your handwriting? A. Yes.

Q. Going down that page, to what number are the entries yours, successively? A. 17, inclusive.

Q. 17, inclusive? Those numbers are 2, 3, 4, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17? A. Yes.

Q. They are all in Pavonia Avenue? A. Yes.

Q. All of those names have opposite them, in the signature compared column an O.K.? A. Yes.

Q. Did you put the O.K. there, in those seventeen successive names, on the last page which I have referred to you, in which all of the writing is yours, except 131? A. That has been answered in my previous answer.

Q. Answer it again?

MR. SIMPSON: Please don't frighten him.

A. I had other duties to perform.

Q. That same answer? A. Yes.

Q. At the time you were checking these seventeen successive names on that one page, other duties you had to perform interferred, is that right? A. Yes.

Q. That is your answer, is it? A. Yes.

Q. But when number 10, came in and when

the name of Mr. Donahue who came here and swore he did not sign it, and that came after number 9, which is on the poll book, which you now say you did O.K. something came up that made you so busy you couldn't O.K. Mr. Donahue's name, is that right? A. That is right.

Q. That is right? A. Yes.

Q. Now then, with respect to any of the others that have been referred to and where you didn't put the O. K., there is no other explanation that you can give, except that your duties as an election officer there at the time, you became very busy, so that you did not have time to put the O. K. in the signature compared, is that right? A. Yes.

Q. You said, I believe, you didn't know Mr. Morris Schoenberg? A. No sir.

Q. Don't know him at all? A. No.

Q. Do you know Philip Schoenberg? A. No.

Q. You don't know Adolph Schoenberg? A. No.

Q. Adolph Schoenberg, you remember him here, being on the witness stand? A. I remember a gentleman answering that name.

Q. Do you remember him here on the stand— A. Yes.

Q. You remember him as the gentleman who said he had known all of the members of the Board since they had been born? A. I am not accountable for what he said.

Q. I didn't ask you that. Do you remember him as the man who testified here that he had known all of the members of the Board since they had been born? A. Yes.

Q. You remember it? A. Yes.

Q. That is the gentleman you say you don't know? A. Yes.

Q. Did you ever live at 141 Pavonia Avenue? A. Yes.

Q. That is almost exactly across the street

from Mr. Schoenberg's store, is it not? A. I don't know, sir.

Q. Well, you have testified here that you occasionally went in Mr. Schoenberg's store, didn't you? A. I did not, no sir.

Q. I beg your pardon. I thought you did. That was another witness.

Q. Do you know the gent's furnishing store practically across the street from the polling place? A. There is a gent's furnishing right across the street, who conducts it, I don't know.

Q. What was the number of the polling place? A. 141.

Q. In that same house you used to live? A. Yes.

Q. You say you don't know who the man is who conducts the gent's furnishing store just across the way from the polling place? A. No sir.

Q. How long did you live at 141? A. Two years.

Q. When? A. 1910 to 1912.

Q. That was in 1912, when you became an election officer? A. Yes.

Q. I call your attention to the same page which had the seventeen names in your handwriting, do you know in whose handwriting, 18, 19, 20, 21, 22, 23, 24, 25, and 26, are? A. No sir.

Q. You don't know that? A. No.

Q. Do you know anything about the taking of the votes, ballots, excepting those which are 13, 14, 15, 16, 17, then going on, 18, 19, 20, 21, 22, 23, 24, 25, 26, all on the same page, all living in the same street—A. Yes.

Q. Successively. You know about it? A. Yes.

Q. Were you there at that time? A. Yes.

Q. You were there, and you know that these voters came in, that all lived on the same street, and they got successively numbered ballots, and

were named in your presence there? A. Yes—

Q. You don't know who entered that in this book, do you? A. Yes, I can tell you why.

Q. You mean you do or you don't know who entered it? A. I don't know who entered it. I can tell you why they are consecutively.

Q. Why? A. For the simple reason that two-thirds of the voters are from Pavonia Avenue.

Q. Why would that be the reason why they were consecutive? A. Yes.

Q. That being your reason, will you tell us why they had not come in exactly consecutively, and without interruption, on Pavonia Avenue, just preceding these numbers? A. Because they didn't come in consecutively then.

Q. That is the reason, is it? A. Yes.

Q. Remembering that so nicely, will you now turn your memory to the actual receiving of the votes, and tell us who wrote in this book the names of the persons that presented themselves for the consecutively numbered ballots, who wrote it in? A. I don't understand that.

Q. Who wrote it in, 18 to 26? A. I don't know who wrote that in.

Q. You know it is not yours? A. Yes.

Q. You know it is not Hosbach's handwriting? A. Yes.

Q. Do you know Mr. Looney's handwriting? A. Yes.

Q. Mr. Kelly's handwriting? A. No.

Q. You are the man who trained Looney? A. Yes.

Q. Do you know whether this was part of the training you gave him on that day? A. No.

Q. He was clerk, wasn't he? A. Yes.

Q. You are not able to tell this Court and jury, whether those one, two, three, four—nine consecutive names there that you remembered about, and were present when the persons presented themselves, were written by the clerk you

were instructing? A. Yes.

Q. Is that right? A. Yes.

Q. You cannot tell us can you? A. No sir, I cannot tell you.

Q. Having been presented, do you know whether you did anything or anybody else did anything to find out whether the persons presenting themselves for the eight consecutive ballots, were entitled to vote? A. I don't recall.

Q. You don't recall that. It appears that there is no O. K. after them, doesn't it? A. Yes.

Q. And there follows immediately the thirteen persons who voted and whose vote you did O. K.? A. Yes.

Q. Right? A. Yes.

Q. Do you remember what time of day it was that you stopped off and ceased entering these at 17, and somebody else began entering at 18? A. No sir.

Q. You don't remember? A. No.

Q. You don't remember whether it was morning or afternoon? A. From the numbers it must have been in the morning.

Q. Do you remember whether it was before or after Mr. McCarthy came in and gave you the advice which you say he gave you regarding the signature book? A. I can't say.

Q. Do you remember whether that was one of the pages in the book Mr. McCarthy referred to when he came in there? A. No sir.

(Short Recess).

Q. Turning to the next following page in the poll book, beginning with number 27, Samuel Leuf—in the column of names of voters, I ask you whether you know in whose handwriting that name is? A. No sir.

Q. Going down that column, what name—numbers, did you write? A. 32, 34, 36, 49, 50, 51, 52, 53.

Q. Likewise, with respect to those names, you

have called the numbers of, none of them are O. K'd. in the signature compared column? A. Yes.

Q. Do you know the persons named on that page—David Blatt, Thomas Hill— A. Yes, I knew quite a few in there.

Q. Which ones do you know? A. I know David Blatt, Samuel Lett, the first ones there—

Q. You didn't write his name? A. No, I didn't write his name.

Q. Did he vote while you were there? A. Not that I can recall.

Q. That you can recall,—but you know him? A. Oh, yes.

Q. Do you know whether his name is Leuf, or Leff? A. I don't know how he spells his name.

Q. You notice in the signature column it is Leff? A. I presume that is the way he spells it, then.

Q. I ask you whether you notice it? A. I do now.

Q. With respect to 32, 34, 36, you know Mr. Blatt? A. Yes.

Q. Mr. Page? A. No.

Q. Mr. Hill? A. No.

Q. Do you know Colangelo, number 49? A. Yes.

Q. Do you know Matthew Cullen? A. Yes.

Q. Stickley Sulger? A. No sir.

Q. Do you know Charles McShane? A. No sir.

Q. Charles J. Spillane? A. No sir.

Q. With respect to the persons whom you did and didn't know ,there is no O.K. in the signature compared column? A. No sir.

Q. Turning to the next page, beginning vote number 54, which of those names is in your handwriting? A. All down including 76.

Q. From 54 to 76? A. Yes.

Q. 81? A. No sir—yes, that is mine too.

Q. 81 is in your handwriting? A. Yes sir.

Q. How about 86, Herman Tamke, do you know in whose handwriting that name is? A. 87—no, I don't.

Q. Do you know Mr. Tamke? A. No sir, I don't.

Q. He was here on the witness stand yesterday? A. I seen a gentleman who answered that name, yes.

Q. You know him to be a grocer down there? A. No sir.

THE COURT: 167 Pavonia Avenue?

MR. VICKERS: Yes.

Q. I am mistaken when I refer to Mr. Herman Tamke as a grocer, Mr. Herman Tamke is the Erie Railroad watchman. Does that change your answer? A. No sir.

Q. Do you know Mr. Herman Tamke, who lives twelve doors away from where you lived? A. No.

Q. Do you know Louis Tamke, who lived at the same address, 167 Pavonia Avenue? A. No.

MR. SIMPSON: I object unless it is in evidence that he lives there. Reading from the book does not put him there, unless you have evidence that he lives there.

THE COURT: I don't think there was any evidence about that name before. There was something about Henry Tamke, the grocer.

MR. VICKERS: Henry and Herman. Herman is the railroad man.

Q. You having been present during the receiv-

ing of all the votes down there, on that page, having entered the persons who came and presented themselves to vote, up to Mr. Herman Tamke's name, I ask you have any recollection whether you were present at the time Mr. Herman Tamke presented himself to vote, if he did present himself to vote? A. That I couldn't say.

Q. You know that is not Mr. Hosbach's handwriting, don't you? A. I wouldn't swear to that, only it is not in the same ink he has been usually using. I wouldn't take an oath that is not his handwriting.

Q. In whose handwriting is 92? A. I don't know.

Q. 93? A. Idon't know.

Q. Do you know about the others, down that page? A. Outside the blue ink there, it designated it is Hosbach.

Q. That is Hosbach? A. Yes.

Q. After the name, just after Mr. Tamke's, all of that page is yours? A. Yes.

Q. Below that, you know nothing about it except that so far as the blue ink indicates that Mr. Hosbach wrote that, is that right? A. Yes.

Q. On that page, none of the signatures are O.K'd.? A. Yes.

Q. Turning to the next page, beginning with vote number 103, I ask you what name you entered there? A. 103, 113, 114, 116, 117, 118, 119, 120, 122, 123.

Q. Now, then, the entries which appear next below 103, being 5, 6, 7, 8, 9, 10, 11, 12, appear to be all in one and the same handwriting. Do you know who wrote those? A. No sir, I don't.

Q. And except as you have given the ones which you wrote, and the three which appear in blue ink in that page, you don't know anything about the others, do you? A. No sir.

Q. On the poll book is the entry Toback, in your handwriting? A. Yes sir.

Q. Do you know Mr. Toback? A. No sir.

Q. Do you know Mr. Samuel Toback in that district? A. No sir.

Q. Do you know the store right across from where you lived at 140 Pavonia Avenue? A. What kind of a store?

Q. Is there a store just exactly across the way from 141 where you used to live? A. Yes, four or five stores there.

Q. What are the stores there? A. Two or three candy stores, dry goods store, and there is a plumber.

Q. Do you know any of the persons who keep those stores? A. No sir.

Q. None of them at all? A. No sir.

Q. What did you do with respect to Benjamin Toback, whose name is entered here by you under vote 118, 140 Pavonia Avenue, to satisfy yourself that he was entitled to vote? A. His name appeared in the registry book.

Q. That was the gentleman who appeared on the witness stand here in this case, and who said that his name was Benjamin Toback, and that the signature in the registry which I show you was his, and who said he presented himself to vote, and that he wrote on the page which I show you here, at your suggestion, his name—

MR. SIMPSON: I object. He does not say he wrote it at his suggestion. Toback says he doesn't know who suggested it.

MR. VICKERS: That may be right.

MR. SIMPSON: I am right.

MR. VICKERS: I will concede this once, you are right.

Q. (Continuing). And that at the suggestion

of the person who was directing his voting in the Election Board he wrote his name there, Benjamin Toback, on the poll book at the place which I now point out to you, and that there was then no entry in the column of the names of voters. I ask you whether any such thing happened at any time while you were there, and whether any person was permitted to write his name in the poll book, there not having first been made an entry of his name and address, with the number of his ballot, before he was permitted to sign his name? A. I know of no such incident.

Q. You are willing to swear it never did happen to your knowledge while you were there? A. Yes.

Q. Are you able to state whether or not there does appear on that page which is before you the name Benjamin Toback, written beneath the signature of William Leff? A. No sir.

Q. You are not able to tell, are you? A. No.

Q. You can't see it, can you? A. No sir.

MR. SIMPSON: Neither can I without a magnifying glass.

MR. VICKERS: I am going to get one.

Q. I ask you to use the magnifying glass, if necessary and tell the Court and jury whether you are able to see the name of Benjamin Toback under the name of William Leff? A. No, I cannot.

Q. You are not? A. No sir.

Q. Turn to the same page, beginning with the name William Less ballot 129, I ask you which of the entries are in your handwriting, asking you to give them by ballot numbers? A. 135, 138, 139, 140, 142, 147—I don't know the number of it.

Q. Is the entry James J. Moran, yours? A. No sir.

Q. It is not yours? A. No sir. 154, 155, 56, 57, 58, 59 and 60.

Q. Now let us see; on that page every entry is yours except the first three which are in blue ink? A. Yes sir.

Q. 141, which is Morris Dohrman? A. Yes.

Q. That is your brother-in-law? A. Yes.

Q. And James J. Moran, which has no ballot number? A. Yes sir.

Q. That is all? A. That is all.

Q. Now then, among those, and being number 159, appears the name of Henry Tamke, at 133 Pavonia Avenue; and you wrote that in there, didn't you? A. Yes sir.

Q. And that person who presented himself to vote there signed the poll book here on the page where it appears, the name of Henry Tamke, in your presence? A. Yes.

Q. And you approved his right to vote, didn't you? A. Yes.

Q. Do you know the grocery store of Henry Tamke? A. No sir.

Q. Don't know it at all? A. No sir.

Q. You don't know that there is a grocery store of Mr. Tamke? A. 133 Pavonia Avenue, no sir.

Q. That is the number, Mr. McCarthy, isn't it, of the grocery store?

MR. McCARTHY: 167.

Q. Now then, Mr. Unger, at the time that you had your conversation with Mr. McCarthy, and referring to this book which is before you and to the name of Henry Tamke, and to that man, the grocer, did you not tell Mr. McCarthy, the first Assistant Prosecutor, that you knew Mr. Henry Tamke, the grocer? A. No sir.

Q. At that same time that I am referring to did you not tell Mr. McCarthy that you knew Mr.

Schoenberg? A. No sir.

Q. And did you not tell him that you knew Mr. Hotchkiss? A. No sir.

Q. No doubt in your mind about that either? A. No sir.

MR. McCARTER: Is Mr. McCarthy, under the Election Act, an officer to these Boards?

THE COURT: Go on.

MR. VICKERS: Mr. McCarter, I am quite surprised at you.

THE COURT: Do not waste any unnecessary time. Go on.

BY THE COURT:

Q. Mr. Henry Tamke, the man that testified here yesterday, do you know him? A. No sir.

Q. Were you here when he testified here yesterday, or this morning? A. Yesterday afternoon there is a gentleman answered to that name, but I don't know of him.

Q. You heard him say that he had known you for ten years and had known Looney for twenty-five years, and Hosbach for five years? A. He said something like that.

Q. And he lived at 133 Pavonia Avenue since 1869? A. He lived there?

Q. That is what he said, that is what he said? A. Yes, that is what he said.

Q. You heard him say that? A. Yes.

Q. You say you don't know him? A. No, I don't know him.

BY MR. VICKERS:

Q. Mr. Unger, do you remember Mr. Charles Clark, who was a witness on the stand here yesterday, the man with the deformed hand and one finger? A. Yes sir.

Q. Do you remember whether he voted at the Commission Government Election the 16th of October? A. That I couldn't say without the aid of the book?

Q. I mean without the aid of the book? A. No sir; I have no recollection.

Q. Calling your attention to vote 26, under Pavonia Avenue(I ask you whether you have any recollection of that? A. No sir, I have not.

Q. Well, now, during the entire morning of this primary election you were present in that polling place, weren't you? A. Yes.

Q. And up to the time that Mr. McCarthy came there, around about noon, you were there? A. Yes sir.

Q. And in fact up to half past twelve? A. Yes sir.

Q. And do you remember Mr. Clark coming at the registry for the general election in 1916, and registering there by your assistance?

MR. SIMPSON: I object to it as irrelevant and immaterial, and not being tried for anything done at the registry of the general election. We are being tried for what was done at the Commission Government Election. Whether Mr. Clark appeared or did not appear and registered for the Presidential election has no bearing here.

THE COURT: I do not know what the purpose is.

MR. SIMPSON: The purpose was that

he was assisted to write with a wounded hand, which has nothing to do at all with the issue here.

MR. VICKERS: Trying to identify the person.

THE COURT: I think I will allow it.

MR. SIMPSON: Ask an exception.

THE COURT: It is cross-examination and I think I will not overrule it.

(Question repeated by stenographer).

A. Yes sir; with the aid of this writing I can.

Q. Yes? A. Yes.

Q. That is merely a mistake on your part writing on there, "Charles Ross"? A. Yes.

Q. You look back here to Nick Ross, which is Charles Clark's boss, and instead of writing "Charles Clark" you wrote Charles Ross, "assisted by L. Unger." A. Yes.

Q. That is your entry, isn't it? A. Yes.

Q. Now if any person presented himself on October 16, 1917, to vote on the name of Charles Ross, from 165 Pavonia Avenue, and you were there, and before that name was put down on the poll book the registry of 1916 was referred to, you wouldn't let any man vote who was able to sign as the signature appears here, purporting to be a man whom you assisted to register because of his crippled hand, would you? A. No sir.

Q. Never happened in your presence, did it? A. No sir.

Q. And that ballot is number 26, and according to the ballot number was cast before the luncheon recess on that day; is that right? A. I couldn't say.

Q. Well, how far will your recollection assist you as to how high the numbers ran up to half past twelve on that day when you went out? A. I have no recollection of the numbers.

Q. You have testified to certain of them here; you went as far as eighteen, and said, according to the number, that must have happened in the morning. Now I want to know how much further there you will go towards 26 to say whether it happened in the morning before you went to lunch? A. That I couldn't say.

Q. You won't say? You won't go beyond 18? A. No sir.

BY THE COURT:

Q. Can you say whose writing the name of Charles Clark is that appears in the fourth column?

MR. VICKERS: He has testified to it already, your Honor, that he does not know.

Q. Doesn't know whose writing it is at all? A. No sir.

Q. Either in the second column, which is the duty of the election officer, or in the column where the voter signs? A. No sir.

BY MR. VICKERS:

Q. Now then, I ask you whether at the time you had the conversation with Mr. McCarthy, at the office of the Prosecutor of the Pleas, you did not tell him the following: that Kane told the Board before they started that the Board should act in harmony? A. Have no recollection.

Q. Will you say you did not? A. No sir.

Q. You won't say you did not? A. I say I did not say it.

Q. Oh, you will say you did not? A. Yes sir.
Q. Although you have no recollection of the subject you will swear you did not? A. Yes sir.
Q. That is right. Did you tell Mr. McCarthy that you saw Kane take a list of registered voters and go outside and from time to time send men in to vote on other people's names? A. No sir, I did not.
Q. Nor nothing to that effect? A. No sir.
Q. Did you tell Mr. McCarthy that you wrote the names in the poll book of Hotchkiss, Schoenberg, and Henry Tamke, and that you knew them all well? A. I told Mr. McCarthy I made the entries. I did not tell him I knew them.
Q. And when you told him that you wrote the entries of Hotchkiss, Schoenberg and Henry Tamke, did you say to him that you knew them all well? A. No sir.
Q. Well, the fact is that you did write the entries of Hotchkiss, Schoenberg and Henry Tamke; that is true? A. Well, I wouldn't swear without the aid of the book.
Q. Don't you remember? A. No sir.

MR. SIMPSON: I object to that question on the ground it is ambiguous. He says the entries, and that doesn't indicate whether he means the signature purporting to have been made by the voter, or the name of the voter which should be made by the election officer.

THE COURT: Suppose you make it clear, Colonel.

MR. VICKERS: I am using the witness' language as I recall it.

Q. When you say that you told Mr. McCarthy that you made the entries what did you mean that

you did make? A. I made the entries of the names that he pointed out to me and I told him that I didn't know them, but what the names were I can't recall just now.

Q. What did you mean when you say that you made the entries? What did you mean then? A. Well, the entries of the voters.

Q. You meant in the column of "Names of Voters"? A. Yes.

Q. Well now, when I asked you the question whether you told Mr. McCarthy that you wrote the names of Hotchkiss, Schoenberg and Henry Tamke yourself, you said, " I told Mr. McCarthy I made the entries," did you mean that you told Mr. McCarthy that you made the entries of the names of Hotchkiss, Schoenberg and Henry Tamke? A. I told him I made the names what he mentioned then. What they are now I cannot recall.

Q. So that when you answered that question before you did not mean to swear that you had told Mr. McCarthy that you made the entries of the names of Hotchkiss, Schoenberg and Henry Tamke, did you?

Q. You did not mean to swear to that as a matter of recollection, did you? A. No sir.

Q. Now do you recall that since you have been under cross-examination here that you have identified as your handwriting, the names, the entries by Hotchkiss, Schoenberg and Henry Tamke? A. I do not recall it.

Q. Don't recall it? A. No sir.

BY THE COURT:

Q. He does not mean now the entry as if you had signed where they ought to have signed, but the entry in the second column where the election officer enters those names? A. Yes, on the left hand side.

Q. Is that your handwriting? A. I will if Mr. Vickers shows it to me.

BY MR. VICKERS:

Q. I show you 149, Herman Hotchkiss. Did you write it (indicating book). A. Yes, that is mine.

Q. So that if that is what Mr. McCarthy pointed out to you you do say that you told him that you wrote the entries? A. Yes sir.

Q. Is that right? A. Yes.

Q. And the entries of both of the Schoenbergs, this 2 and 3, Morris and Philip, you wrote? A. Yes.

Q. And Henry Tamke, I have just shown you and you wrote that, didn't you? A. I don't recall, I don't remember.

Q. Unless you remember it I do not want you to state. You did just swear you wrote Henry Tamke, didn't you? A. Yes sir.

Q. So that you say that you told Mr. McCarthy that you made the entries, he pointing out to you Hotchkiss, Schoenberg and Henry Tamke, but you say that you did not tell him at the same time that you knew them all well? A. I am not quite sure whether those are the names which you repeated are the names Mr. McCarthy called off to me.

Q. Well, do you remember whether Mr. McCarthy did ask you whether you wrote in that poll book the name of Hotchkiss, Schoenberg and Henry Tamke? A. No, I do not.

Q. You do not remember. A. No sir.

Q. Well, then, did you say to Mr. McCarthy with respect to the names that he did point out to you and that you did say were in your handwriting, that you knew them all well? A. No sir, I did not.

Q. You did not? A. No sir.

Q. Well, what names did McCarthy point out to you? A. I don't recall.

Q. Well, how do you know you didn't know them? A. I knew at the time that he spoke to me, at the time of the incident.

Q. You do? A. Yes sir.

Q. How do you know that you did not know the men that he pointed out to you? A. My memory was fresh then.

Q. Your memory was fresh? A. I say the incident then was fresh.

Q. How do you know, if you don't remember the names—how do you know that you did not know the men?

MR. SIMPSON: I object, on the ground that it is perfectly clear that at the time that Mr. McCarthy and this witness had the conversation, he then said, "I do not know these men," and he remembers now that he said that. Of what moment does it become how he explained that he doesn't remember now the names of the men that he did not identify then?

THE COURT: It is reasonable cross-examination.

MR. VICKERS: The witness may be able to answer it.

(Question repeated by stenographer).

A. I did at the time. I told Mr. McCarthy.

Q. Did what A. I did know at the time the names that he mentioned.

Q. Well, do you remember Mr. McCarthy asking you whether you did or did not know the persons? A. Yes sir.

Q. Whatever the names were that Mr. McCarthy asked you about you told them you did

not know them? A. No sir.

Q. No doubt in your mind about that? A. No sir.

Q. None whatever? A. No sir.

Q. But you do not remember which names he asked you about, do you? A. No sir.

Q. And with respect to every person that Mr. McCarthy asked you about in that poll book, you told him that you did not know the persons; is that so? A. Yes sir.

Q. Did he ask you about Morris Dohrman, your brother-in-law? A. No sir.

Q. Did not ask you about it? A. No sir.

Q. Did you, with reference to the entry of Morris Dohrman in the poll book, did you at that time when you were talking to Mr. McCarthy, tell Mr. McCarthy that Morris Dohrman was your brother-in-law, and that he moved from the address given in the poll book, and that he did not vote? A. No sir.

Q. Is it a fact that Mr. Dohrman did move from the address given in the poll book?

MR. SIMPSON: When?

A. I don't know.

MR. SIMPSON: I object unless he fixes a time. It may not be relevant unless the time is fixed.

MR. VICKERS: I withdraw the question.

Q. Is it a fact that at the time you were talking with Mr.McCarthy, and also at the time of the Commission Government Election Mr. Dohrman had moved from the address which was given in the poll book? A. Yes, he had moved.

Q. That is the truth, isn't it? A. He had moved previous to the Commission Government

Election.

Q. And it is a fact that he is your brother-in-law? A. Yes sir.

Q. And you did not know anything about his voting, did you? A. No sir.

Q. So that if you had answered Mr. McCarthy as to whether or not he voted at that time, you would have known he had no right to vote, wouldn't you? A. Yes sir.

Q. And so far as you knew when you were talking to Mr. McCarthy he did not vote? A. As far as I knew, yes sir.

Q. As far as you know? A. Yes.

Q. But you say that he did not ask you anything about him? Is that right? A. Yes sir.

Q. That is what you say? A. Yes sir.

Q. Isn't any doubt in your mind about it? A. No sir, no doubt at all.

Q. Mr. Hosbach has said that Mr. McCarthy asked you, "Why did you do this; why did you permit people to vote?" Was anything like that asked you by Mr. McCarthy?

MR. SIMPSON: I object on the ground that there is no such testimony. Mr. Hosbach's testimony was that Mr. McCarthy said to this man, "Why did you write these names?" And the man answered, "I don't know." There was no testimony by Mr. Hosbach that Mr. McCarthy had said, "Why did you permit people to vote who had no right to vote?"

MR. VICKERS: I withdraw the question.

Q. Mr. Hosbach says that Mr. McCarthy said to you, "Why did you write these names?" and that you said, "I don't know." Did any such thing occur? A. No sir.

Q. Did Mr. McCarthy ask you? A. Not to my knowledge.

Q. Will you swear he did not? A. Yes sir.

Q. Did you say anything to Mr. McCarthy about the registry, the 1916 registry which you were using at this October 16th election? A. No sir.

Q. Didn't you say to Mr. McCarthy at the same time that the registry, referring to this registry which you were using, itself, was rotten? A. No sir.

Q. You did not say that? A. No sir.

Q. Nor anything to that effect? A. No sir.

Q. Did you say to Mr. McCarthy at this time, referring to the October 16th election, that not a hundred honest votes were cast at that election, meaning in the Second District of the Second Ward where you were an election officer? A. No sir.

Q. Nor did you say anything to that effect? A. No sir.

Q. Or Mr. McCarthy did not ask you, did he? A. No sir.

Q. And you did not tell him anything about how many votes were cast or how many were not cast? A. No sir.

Q. And Mr. McCarthy did not ask you about how many were cast? A. No sir.

Q. Or whether they were honest or not? A. No sir.

Q. That is all.

MR. SIMPSON: I haven't any redirect.

JOHN P. KELLY, sworn.

DIRECT EXAMINATION by Mr. Simpson:

Q. How old are you? A. Twenty-one.

Q. Where do you live? A. 151 Pavonia Ave-

nue, Jersey City.

Q. Were you one of the election officers on this Board, Second District, Second Ward, October 16, 1917? A. Yes sir.

Q. Was this your first election? A. Why, no I was on Commission Election before that, in May.

Q. In May; was that your first election? A. Yes.

Q. Outside of those two experiences you knew nothing about elections? A. No sir.

Q. Now, on this day what time did the polls open? A. Six o'clock.

Q. What time did they close? A. Seven.

Q. How long were the polls open before you got your poll book? A. Oh, about three hours and a half.

Q. Before you got the book? A. Yes sir.

Q. Did any people come in to vote before you got the poll book? A. Not that I know of. I didn't see any.

Q. There were not votes taken before you got the poll book? A. No sir.

Q. What were your duties, that is, what did you do? A. Well, I was told I was inspector to take charge of the coupons that were torn off the ballots and string them.

Q. Had nothing to do with entering the names of voters? A. Well, in case there were—like in lunch hour, if the men went away and left the other three there, why give a hand out.

Q. How could he go— Oh, I see what you mean, there would be three there left when you went away to lunch?

MR. VICKERS: I object. He didn't say that.

MR. SIMPSON: What does he say?

MR. VICKERS: He doesn't say what he says he does.

MR. SIMPSON: Tell me. I beseech you, be courteous and give me your assistance, and tell me what he did say.

MR. VICKERS: Ask the next question.

THE COURT: Ask the next question.

(Question repeated).

Q. How many would be present when you gave the hand out of the election officers? A. Why two more and myself.

Q. The two besides yourself? A. Yes.

Q. What would the other two do? A. Well, Mr. Looney wasn't very well up in writing books.

Q. Wasn't very well up in anything, was he? A. No sir, I wouldn't say that.

Q. What did he do around there? A. He took a hand checking them off in the registry book.

Q. Checking them off? A. Yes.

Q. So that you would enter sometimes the name of the voter as he came in, wouldn't you? A. Yes; very seldom.

Q. Very seldom? A. Yes sir.

Q. All this blue ink is in Hosbach's hand, isn't it? A. Yes; he had a fountain pen.

Q. Did his pen run out and did he use the other pen during the day? Do you remember he used the other pen? A. I can't swear. I seen him with the pen in his hand. I could swear I seen him once, though, anyway.

Q. With the pen? A. With the regular pen from the city clerk or wherever it came from.

Q. Coming down to specific instances, did you see a man, the man who came on the stand and gave his name as Benjamin Toback—did you see

him come in and sign the name Benjamin Toback in this place here—this position—two blank pages in this place,—did you see him sign any such name as that? A. No sir.

Q. Did you see anybody rub it out and write the word "William Leff" over it? A. No sir.

Q. Is that your handwriting? A. No sir.

Q. Do you know whose it is? A. No sir.

Q. Was it done in your presence? A. No sir.

Q. Now it has been testified in the morning you made a copy of a part of the registry list and gave it to Kane; is that true? A. Yes; that was in the afternoon.

Q. What were the circumstances under which that was done? A. Why, I was told it was customary to do it.

Q. Who told you? A. Why, fellows around there.

Q. What did Kane say he was going to do with this list? A. Why, this was in the afternoon; wanted to check out the voters. He had a list himself, printed list.

Q. He wanted to get the information and go out, he said, and get the voters? A. Yes.

Q. That is what he said? A. Yes.

Q. You believed that? A. Yes sir.

Q. You thought what Kane wanted was to go out and get voters in? A. Yes sir.

Q. You did not think that the list was to be used for any other improper purpose, did you? A. No sir.

Q. Now it has also been testified by Mr. Schoenberg that he knows you. You know Mr. Schoenberg? A. Yes.

Q. That is, some of your family were tenants of his? A. Yes.

Q. Did any person come in while you were in the polling place and represent himself as Mr. Schoenberg and vote, to your knowledge? A. No

sir.

Q. As far as you know no one did? A. No sir.

Q. You would have known any one that came in, if it was not Mr. Schoenberg, because you knew him? A. Yes, I knew him.

Q. Did you go away to lunch? A. Yes.

Q. What time did you go away to lunch? A. Oh, I should judge about two o'clock, I believe.

Q. How long were you away? A. About three-quarters of an hour.

Q. When you came back again how long did you stay there? A. I stayed there until about half past five and went out for about ten or fifteen minutes.

Q. Now it has been testified here practically in substance,—I am not going to take up much time with it,—that a number of men came there who had no right to vote, and voted on the names of other men. Did you know that, on the day of election? A. No sir.

Q. Did you aid any person to vote on the name of any man other than his own name? A. No sir.

Q. Did you do anything to assist people to come to that polling place and vote the names of men who were entitled to vote, the person voting being not entitled to vote? A. No sir.

Q. Did you do anything wilfully— A. No sir.

Q. —fraudulently, to make a false election? A. No sir.

Q. Did you try to do anything dishonest there to help people to vote who were not entitled to vote? A. No sir.

Q. Did you see anybody else doing it? A. No sir.

Q. Or anything that excited your suspicion? A. No.

Q. Your work was stringing the coupons,

New Jersey State Library

wasn't it? A. Yes.

Q. You know Looney, do you? A. Yes.

Q. Know him before the election? A. Yes.

Q. And you know Unger, don't you? A. Yes.

Q. Who was the man who seemed to be giving the instructions, the experienced man in this Board? Was it you or Unger or Looney? A. Mr. Unger.

Q. What was Hosbach doing? A. He was working on the poll book.

Q. What did Hosbach do? A. He was working on the poll book.

Q. Did he make any entries on the poll book? A. Yes.

Q. Did he, Hosbach, at any time, complain about anything suspicious or irregular in the conduct of the election to you? A. Not that I know of.

Q. Or draw your attention to it? A. No sir.

Q. Did you get any instructions from the city clerk about how to conduct this election? A. No sir.

Q. Where do you live now? A. 151 Pavonia Avenue.

Q. What is your business? A. Work for Swift, barrel cooper.

Q. What? A. Cooper, which is making barrels and fixing them up.

Q. In Swift's? A. Yes.

Q. You never had any particular education, did you,—I mean not a college graduate, or university man? A. No sir.

Q. Have not studied penmanship or anything of that kind? A. No sir.

Q. You were not instructed it was your duty to take every signature a man made in this election and look at the registry and see if the signatures looked alike? A. No, I wasn't told.

Q. Do you think, even if you were told, you were capable of telling whether the signatures

were made by the same man? A. I couldn't say.

Q. Have you any special experience in penmanship? You are a cooper? A. Yes.

Q. Make your living with your hammer and not with your eye A. Yes.

Q. As I understand you, as far as you know, this election was conducted according to law and honestly, as far as you knew? A. Yes.

Q. Were you present when Mr. McCarthy came there? A. Yes.

Q. What did he say about your being compelled to allow a man to vote? What did he say? Under what circumstances did Mr. McCarthy say you must allow a man to vote? A. Well, he came in there and took a look at the poll book—I was standing right behind him; I don't know whether he seen me or not, but then some man was with him, I don't know who he was, pointed out a couple of signatures, and he wanted to know if they didn't look kind of funny; so he said a man could learn to write different in a year, his hand might change.

Q. Who said that? A. Mr. McCarthy.

Q. Said a man might write differently in a year and his hand might change? A. Yes; and then he said if a man came in and claimed it was his signature we had a right to vote him—let him vote, if the Board was satisfied.

Q. That is, I understand you, Mr. McCarthy said there might be a change of penmanship in a year? A. Yes.

Q. And if the man insisted it was his signature you must let him vote? A. Yes.

Q. He was then the first Assistant Prosecutor, wasn't he? A. Yes.

Q. And he had somebody with him, you say? A. Yes.

Q. Did you follow his instructions as carefully as you could after he went out? A. I did,

sir.

Q. As far as you know the election was perfectly honest, wasn't it? A. Surely.

MR. SIMPSON: Let me have the poll book, please? Sorry to take it away from you, but I have to use it.

Q. Calling your attention to "Boats"—any of those from 82 to 89—any of those in your handwriting? A. Yes.

MR. VICKERS: May I see them?

MR. SIMPSON: Smith.

Q. Which one is in your handwriting, of the boats? These are men who lived on boats. (Witness indicates).

Q. Fleming, which one? A. All of them is in my handwriting.

Q. What did you do when Smith came in, or Fleming,—that was after Mr. McCarthy had been there? A. Yes, it was in the afternoon.

Q. Well, then, you looked at the registry, did you? A. Yes, surely, looked at the register to see if he registered and voted at the last general election.

Q. If you found the same name on the registry and he answered the questions you let him vote? A. Yes.

Q. You did not pretend to compare the penmanship? A. No, I did not.

Q. Didn't know anything about penmanship? A. No.

Q. You didn't register Schoenberg, I understand? A. No, I don't think I did.

MR. VICKERS: Mr. Unger has said he did.

MR. SIMPSON: Just a minute. I think that is all of this story. Now let me have the registry list, please.

MR. VICKERS. It is there.

Q. Now just take this name Thomas Fleming, 83—Mr. Vickers, can you tell me where on this registry list I will find these boats? I suppose under B.

MR. VICKERS: B, yes.

Q. Fleming. Now then a man comes in to you; he gives you the name of Thomas Fleming? A. Yes.

Q. And the boat, whatever it was, Theresa E., Erie Railroad—would he give you that name? A. Yes sir.

Q. Then you take this book, would you, and you would look to see if there was a Thomas Flemming here? A. Yes.

Q. And as soon as you found his name there would you then know he was entitled to vote, or would you run across and ask him all the questions, and see if the signature was the same, or would you simply find his name? A. Just find his name, that is all.

Q. If you found the name and knew he was registered you would then take— A. Let him vote, yes.

Q. You did that in every instance—I mean to say for this page you would run down and look at Smith, Flemming, Mean, Wright, Turner, Cross, Fox, without going over here? A. Yes.

Q. That was every case that you entered the name of the voter—unless there was something suspicious about the voter you would do that? A. Yes sir.

Q. Now then, you had no experience, practically, did you, in this thing? A. No sir.

Q. You wouldn't know a man was suspicious or not, unless he looked like a laborer? A. No.

Q. Is it a mixed population around there, Polish, Irish, Germans? A. Yes.

Q. And you don't know everybody who lives in the district? A. No sir.

Q. Don't know everybody that lives on the boats? A. No sir.

Q. You are not a boatman? A. No sir.

Q. Didn't know any of these man personally that claimed to have the right to register? A. No sir.

CROSS-EXAMINATION by Mr. Vickers:

Q. While you were there nobody representing himself to be Schoenberg, and not being Schoenberg, was permitted to vote, is that so? A. No sir.

Q. You wouldn't let anybody vote on Schoenberg's name while you were there, would you? A. No sir.

Q. And you did not, did you? A. No sir.

THE COURT: Why?

A. Because I knew the man personally.

Q. Knew his son, too? A. No sir.

Q. Don't know the son? A. No sir.

Q. Did you know two Schoenbergs? A. No sir.

Q. Just one; which one did you know? A. I knew the father.

Q. The father? A. Because he owns the house I live in.

Q. Were you born 151 Pavonia Avenue? A. No sir.

Q. Where were you born? A. New York City.

Q. How long have you lived in Jersey City?

A. Last seven years.

Q. And not longer? A. Well, I lived in Jersey City before. I was in New York before that.

Q. You lived there as a youngster? A. Yes.

Q. When you were a little lad? A. Yes sir.

Q. How long have you worked in Swift's? A. Oh, about a year.

Q. Well? A. I have worked there two different times.

Q. Three different times? A. Two different times, I believe.

Q. Were you working in Swift's at the time of the October 16th election? A. Yes.

Q. How long had you been working there up to that time? A. About eight months.

Q. When did you quit? A. Oh, about the 21st of October, or something like that.

Q. Where did you go?

MR. SIMPSON: I object to this as not proper cross-examination. As I said before, if they claim flight, we have no objection to the proof of flight.

MR. VICKERS: That is what we are doing.

MR. SIMPSON: What he did the day after the election it has nothing to do with.

MR. VICKERS: Depends on what he did.

THE COURT: I will allow it.

MR. SIMPSON: I ask an exception, on the ground it is irrelevant, incompetent and immaterial.

(Question repeated by stenographer).

A. I saw an ad. in the paper and went to Bridgeport and went to work to better myself.

Q. And left your pay at Swift's, didn't you? A. Left what?

Q. Left your pay at Swift's? A. My pay?

Q. Yes? Yes or no? A. Yes, I had a few dollars coming over there.

Q. And when did you come back to Jersey City? A. About three or four weeks ago, I believe.

Q. After Christmas? A. No, before Christmas.

Q. Eh? A. Before.

Q. Before Christmas. How soon before Christmas? Can't you fix the time? A. I can't say exactly.

Q. Now did you tell your family where you were going? A. No sir.

Q. You were then living with your mother? A. Yes sir.

Q. And your mother is here in Court? A. Yes sir.

Q. You didn't tell her where you were going? A. No sir.

Q. You did not draw your money from Swift's? A. No sir.

Q. But you saw and ad. in the paper and you went to Bridgeport and that about a week after this election? A. Yes sir.

Q. Now you say that Mr. McCarthy, the First Assistant Prosecutor, came in there on this election day and pointed out a couple of signatures and said, "Don't they look kind of funny"; right? A. No, I didn't say that.

Q. What did you say? A. I said a gentleman that was with him said that.

Q. Oh, I thought you said Mr. McCarthy. Who was the gentleman, describe him, who was with him? A. I couldn't say; gray haired man—eye-glasses, derby hat and overcoat.

Q. Didn't look anything like this man (indicating)? A. No sir.

Q. That is not the man? A. No sir.

Q. You were never there when this gentleman came in with Mr. McCarthy to that polling place? A. I don't believe I seen him there.

Q. This is not the man that came in with Mr. McCarthy? A. No, I don't think so.

MR. McCARTER: Did he have a pink vest on?

A. What?

THE COURT: Never mind.

MR. VICKERS: I thought the Attorney General had sat still about long enough.

THE COURT: Well, now, go on.

Q. Did Mr. McCarthy have more than one man with him when he came in? A. I couldn't say. I don't exactly remember.

Q. Now then, Mr. McCarthy or the man with him pointed out some signatures, and then Mr. McCarthy gave some advice with regard to taking a man's vote provided his signature agreed; isn't that so? A. Yes.

Q. And didn't he tell you that you had to compare them? A. I don't exactly remember hearing him say that.

Q. Don't remember that part of it? Well, you served once before on an election, didn't you? A. Yes sir.

Q. And you knew what this book meant when it said—when it provided a column for signatures compared, didn't you? A. I don't think so.

Q. You don't think you knew it? A. No sir.

Q. Do you know now what it meant? A. No sir.

Q. You do not. Well, did you make any

O.K.'s in that column anywhere? A. I can't remember.

Q. Suppose you look over the book and see if you can find any O. K.'s, any names that you wrote in there? A. Yes sir.

Q. Started right off with the first one on the first page of writing. Isn't that so? A. Yes sir.

Q. And you put a ditto mark, that is to say two lines? A. Uh, huh!

Q. And the next one? A. Yes.

Q. To indicate that that was O. K. too? A. Yes sir

Q. Is that right? A. Yes sir.

Q. Did you mean there that you had compared the signatures? A. No sir.

Q. What did you mean? A. The man was checked up, was registered and was entitled to vote.

Q. How did you check him up? A. Look in the registry book.

Q. Did you look in the registry? A. I can't say that I did.

Q. Well, you having put the O.K. there how did you satisfy yourself that the man was entitled to vote? A. Well, there was another clerk there doing that. I would write the name in and check it off and he would say it was O.K. and put it down there.

Q. You didn't bother at any time during that election comparing the signatures, did you? A. No, I did not.

Q. Did not; but when Judge McCarthy was there he told you that it was your duty to compare the signature, but that if it differed and the man still said that that was his signature in the registry book and was also his signature in the poll book, and you were satisfied that that was true, then you should let him vote; is that right? A. No sir.

Q. That is not right? Well, suppose you ex-

plain it then? A. I did not hear him say to compare the signature.

Q. Well, what did you hear Mr. McCarthy say about signatures in the registry book? A. Well, he said if a man came in and claimed that was his signature, you couldn't stop him, he was entitled to vote.

Q. You mean the signature in the registry book? A. Yes sir.

Q. Well, but was anbody asking him there about any signatures in the registry book? A. No sir; nobody asked him.

Q. And Mr. McCarthy did not tell you that you were obliged to compare them, did he? A. I didn't hear him say so.

Q. But whatever Mr. McCarthy said you were there where you could hear? A. Yes sir; I was standing right behind him.

Q. Yes. And all of these boatmen who were entered there in your handwriting, voted after Mr. McCarthy had been down there; isn't that so? A. I believe so, I couldn't say that.

Q. Well, you made all the entries, didn't you? A. Yes.

Q. Can't you tell from the ballot numbers, the first being 82, whether or not they voted before noontime or after noontime? A. No sir.

Q. No. I show you number 115 entry, Harris Schwarz, and ask you whether that is in your handwriting? A. No sir.

Q. You did not enter that name there? A. No sir.

Q. And you don't know who did enter it? A. No sir.

Q. Except in one instance, where Mr. Hosbach said he wrote with ink which was provided there, did you see him write, make any entries in this poll book except with his fountain pen in the blue ink? A. No, I did not. I seen him with the pen in his hand.

Q. With what pen? A. The regular pen.

Q. The regular pen. Now you did not permit anybody excepting members of the Board and the voters to write into this poll book at that election, did you? A. No sir.

Q. And you did not permit the voters to write into the column provided for the election officers writing in the names of the voters and their street and their residences, did you? A. No sir.

Q. That was done by some member of the Election Board in every instance where the writing appears in this book under the columns; is that right? A. Yes.

Q. I call your attention to No. 30, vote No. 30, on the page which is headed by William Looney, and ask you whether you wrote the entry there, "Joseph Curley?" A. No, sir.

Q. Do you know who did write it? A. No sir.

Q. Mr. Hosbach says he did not write it and Mr. Unger says he did not write it and Mr. Looney says he cannot tell. Now you say you did not write it. Can you tell us who did?

MR. SIMPSON: I object to that question in the form in which it is as highly improper to recite testimony of other witnesses and ask for an opinion or in any way direct the witness' mind to the testimony of other people. He is not responsible for what other people say.

THE COURT: I will sustain the objection.

Q. No. 90, on the same page; is that in your handwriting? A. Yes, sir.

Q. That is yours. Did you make the entry 33 here, James Evers, Sr.? A. No, sir.

Q. Did you make the entry 136, James Evers, Jr.? A. No sir.

Q. That is not yours? A. No sir.

Q. Calling your attention to the entry No. 10, Francis J. Donohue, first name on the page, I ask you whether that is in your handwriting? A. No sir.

Q. It is not; and you do not know who wrote that, do you? A. No sir.

Q. Do you know whether you were there at the time the person who is said to have voted on that name did vote? A. I couldn't say.

Q. Were you there during the entire morning? A. Yes, sir.

Q. That appears to be vote No. 10. Do you know what you were doing during the course of that morning between the opening of the polls and twelve o'clock? A. Why, I was in the polls all the time; I just can't say what I was doing.

Q. Well, were you watching the voters as they presented themselves A. Yes sir.

Q. And whenever a voter did come in did you ascertain whether you knew the person or not or whether he was registering properly or not or whether he has been registered in each instance? A. Well, I can't say. There was four men there then. All I was doing was stringing the pads.

Q. Was that all you did, string the pads? A. Yes.

Q. Excepting when you were writing in the book? A. Yes; the first part of the morning, yes.

Q. Did you write the name of John Courtney? A. No sir.

Q. Did you write the name of Patrick Arrahill? A. No sir.

Q. Or John Crimmins? A. No sir.

Q. 144, or Patrick Looney? A. No sir.

Q. You did not write on the next following page either the names of Morris Schoenberg or

Phillips Schoenberg, did you? A. No sir.

Q. Calling your attention to page which begins with the name of Morris Schoenberg, vote No. 2, 115 Pavonia Avenue, I ask you whether you know who made the entries from 18 to 26 on that page? A. No sir; I do not know.

Q. You do not know? A. No sir.

Q. These are the votes which are 18, 19, 20, 21, 22, 23, 25 and 26. You did not write it, did you? A. No sir.

Q. You don't know who did? A. No sir.

Q. Either by looking at the writing here in the book nor from your memory of what happened on that day; don't remember, do you? A. No sir.

Q. Have no recollection of what took place at the time these persons, if they did come in to vote, and their names were written in this poll book, have you? No recollection? A. No recollection of seeing them go in there.

Q. You have no recollection of it at all? A. No sir.

Q. By the way, about how many votes were received before you went to your lunch? A. I couldn't say.

Q. About? A. I don't just remember.

Q. Calling your attention to the next page beginning with Samuel Leuf, vote No. 27, being the next vote following after the Charles Clark vote, 26, on the page before, did you write that in? A. No sir.

Q. Samuel Leuf. The name carried out Samuel Leff in the signature column. Do you know who did write it in? A. No sir.

Q. Don't recognize the handwriting? A. No sir.

Q. Don't remember anything about it? A. No sir.

Q. 28, 29—neither in your handwriting? A. No sir.

Q. 32? A. No sir. These are my handwriting.

Q. That is 38, and the next one on that page, which is yours—that is Michael Kenyon; is that right? A. Yes.

Q. 42, yours? A. Yes.

Q. 43? A. Yes.

Q. 44? A. Yes.

Q. 45? A. Yes.

Q. And then 46? A. No sir.

Q. 47, 48, 49, 50, 51, 52, 53 are not in your handwriting? A. No sir.

Q. You don't know who wrote them, do you? A. No sir.

Q. They are all in black ink—right—as appears? A. They look like black to me.

Q. You know black when you see it, don't you? Now going on the next page, 87, Herman Tamke; is that in your handwriting? A. Yes.

Q. Do you know your handwriting? A. Yes.

Q. Do you know Herman Tamke? A. No sir.

Q. I think you have stated that you never compared the signatures in the registry; is that right? A. Yes.

Q. And 92, 93 and 94 on that page are yours, aren't they? A. Yes.

Q. On the next page, 105, 106, 107, 108, 109, 110, 111, 112 are yours, aren't they? A. Yes.

Q. 121 on that page is not yours and you do not know who wrote it, do you? A. No sir.

Q. 141; is that in your handwriting, Morris Dohrman? A. I couldn't say; looks like mine.

Q. Well, do you know him? A. No, I do not. It looks like my handwriting. I couldn't swear to it though.

Q. Well, do you know Mr. Unger? A. Yes.

Q. How long have you known him? A. Oh, about six months, I guess, seven months.

Q. You mean six months before this election? A. No.

Q. Well, you knew him at the election before that one, didn't you? A. In May, yes.

Q. Well, was that the first time you met him? A. Yes, but he was not on the Board at that time.

Q. He was not on the Board? A. No, I don't believe he was.

Q. The name of James J. Moran here on that same page; is that in your handwriting? A. No sir.

Q. You do not know whose that is? A. No sir.

Q. Has no ballot number in front of it? A. No sir.

Q. Has no ballot number in front of it. Well, now, the name of Benjamin Toback, 118 on this previous page, is not in your handwriting, is it? A. No sir, that is not mine.

Q. I think that is all.

REDIRECT EXAMINATION by Mr. Simpson:

Q. When you went to Bridgeport you were working for the Lake Torpedo Company? A. Yes.

Q. You made more money than you did in Swift's? A. Yes.

Q. When did you come back to Jersey City? A. Oh, around Christmas sometime.

Q. Sometime around Christmas? A. Yes.

Q. That is all.

MR. SIMPSON: That is the defendant's case. That is all.

THE COURT: The jury may—

MR. McCARTHY: Just a minute, your Honor.

MR. VICKERS: Just a minute, your Honor. We have got two witnesses, brought here under capias, and I think it won't take but a minute to produce them and that will close our case. They are the witnesses referred to.

THE COURT: Won't take but a minute, but these minutes stretch out a long time. I do not want to keep this jury too long. Produce them.

STATE'S TESTIMONY IN REBUTTAL.

WILLIAM TURNER, sworn:

THE COURT: Is this rebuttal?

MR. VICKERS: No.

MR. SIMPSON: We object to any testimony which should have been their main case. This is a criminal prosecution and not a civil trial.

THE COURT: I will give you full opportunity to meet it.

MR. SIMPSON: It is within the discretion of the Court. It is not a civil case.

THE COURT: Are these the witnesses who were sent for?

MR. McCARTHY: Yes.

DIRECT EXAMINATION by Mr. McCarthy:

Q. Mr. Turner, where do you live? A. I live

in Barge 298 Erie Railroad.

Q. Did you vote at the Commission Government Election in Jersey City on Tuesday, October 16 last? A. Yes, the last election.

Q. No, the Commission Government Election?

MR. SIMPSON: I object to his saying no, when the witness says yes. I object to the Prosecutor saying no and correcting his answer. We are entitled to his answer.

Q. You say the last election. I say did you vote at the Special Election for Commissioner on Tuesday, October 16? A. Yes.

Q. Huh? A. Yes, Tuesday, the 16th.

Q. Of what? A. November, I think it was. I have forgotten now.

Q. You voted the November election, did you? A. Yes.

MR. SIMPSON: I object to leading the witness. He is not satisfied with the answers.

MR. McCARTHY: I object to the statement of counsel. The witness said November election.

A. November election, not at the other one.

Q. Not at the other one. Now, when you say the other one—. A. The primary. I did not vote at that.

Q. Did not vote at the primaries? A. Yes.

Q. In September. Did you vote at the Special Election for Commissioner in October? A. No sir.

Q. The last year. I show you what purports to be the signature of William Turner on State Exhibit 5 for the Special Election and ask you whether or not that was made by you? A. No,

that is not my writing.

Q. What is your full name? A. William George Turner.

Q. How do you sign your name when you sign it? A. I generally—with the initials, W. M. Sometimes I use W. G.—apostrophe.

Q. I show you State Exhibit 4, which is the signature copy book of the November election 1916 and ask you if that signature William G. Turner was made by yourself? A. Yes, that is mine.

Q. That is your signature? A. Yes.

MR. McCARTHY: I will call Mrs. Turner.

MR. SIMPSON: Is this lady under capias?

MR. McCARTHY: No. Mr. Vickers said he had one under capias.

MR. SIMPSON: Maybe we can stipulate what you want to prove. What did you want to prove by this witness.

MR. McCARTHY: She is Peter O'Reilly's grand-daughter and she went to the hospital and he died there and she buried him.

MR. SIMPSON: We will stipulate that.

MR. McCARTHY: It is admitted on the part of the defendants that Peter O'Reilly, who was taken from 121 Pavonia Avenue to the City Hospital, died at the Jersey City Hospital on May 21, 1917.

MR. SIMPSON: That is all right. We will stipulate that.

THE COURT: Sit down, Madam. Is that all you want tonight?

MR. McCARTHY: That is all.

THE COURT: Sorry, gentlemen, but we will have to adjourn for tonight. We will have to continue tomorrow. You may step into my room and send such telephone messages as are proper and then they will take you to the place.

MR. SIMPSON: Is that your case in rebuttal?

MR. VICKERS: That is our case, isn't it?

MR. McCARTHY: No. Except rebuttal.

MR. VICKERS: There is rebuttal.

MR. McCARTER: I would like to move at this time—

THE COURT: They are not through with their case.

MR. VICKERS: We have some rebuttal.

THE COURT: I will give you, Mr. Simpson, full opportunity to rebut any of the testimony of these last two witnesses.

MR. SIMPSON: We do not care about it. That is all right.

(Adjourned to 9.30 tomorrow morning).

THE STATE

vs.

UNGER, KELLY and LOONEY.

Continuation of the trial of above case, January 23, 1918.

APPEARANCES:

Mr. Hudspeth, Mr. Vickers, Mr. McCarthy, for the State.

Mr. McCarter, Mr. Simpson, Mr. Hansen, for the defendants.

MR. SIMPSON: I have just notified the Prosecutor I wanted to make a motion. I told him I was willing to make it in the absence of the jury. He seemed to think he didn't care whether it was in their absence or their presence.

THE COURT: What is it?

MR. SIMPSON: A motion for a mistrial on the ground that an improper person went out with the jury.

THE COURT: You may make it now.

MR. SIMPSON: I make a motion for a mistrial and offer to prove that this jury was, very properly, by Your Honor, ordered confined, that they were placed in the custody, not only of four constables, who were representatives of the sheriff, who by law was charged with the possession of the jury, but by an attache of one of the parties of the action, in the office of the Prosecutor of the Pleas, he being one of the parties to the action, representing one of the parties, he has been with the jury every night, with the officers; that that is entirely illegal.

I have communicated with Mr. James and found out this fact. I am willing to put him on the stand concerning it, and I move for a mistrial on the ground there is no warrant of law for sending any person with the jury excepting a person connected with the sheriff's office, who has already been elected constable. Mr. James is not a constable, he is simply a detective in the Prosecutor's office. I don't suppose there is any dispute about the facts, there is no need of taking testimony.

THE COURT: I guess you will have to prove what you say.

MR. SIMPSON: Then I will call Mr. James.

JOHN JAMES, sworn, (on the motion) testified as follows:

DIRECT EXAMINATION by Mr. Simpson:

Q. You are a detective connected with the Prosecutor's office? A. Yes.

Q. You prepare cases for the Prosecutor's office? A. Yes.

Q. Have done work in the preparing of this case? A. No sir, I have not.

Q. Been connected with these ballot box cases at all in any way? A. Except serving subpoenas.

Q. Did you serve subpoenas in this case? A. Yes.

Q. When this jury went out under the orders of the Court you went out with the constables, didn't you, with them? A. I went out.

Q. On the order of the Court.

MR. VICKERS: I suppose Mr. James cannot prove the order of the Court unless it was an order by word of mouth.

Q. Who asked you? A. I went by the direction of Judge Tennant.

Q. With this jury. You went out with them and with the constables each night they have been out? A. I have went over to the hotel to see that no one interferred with the jury.

MR. SIMPSON: I ask that that be struck out as not responsive.

THE COURT: I refuse to strike it out.

Q. I didn't ask you what you went to do. I asked you if you went with them. Did you go with them? A. Accompanying the jury?

Q. With the constables? A. Yes.

Q. And you talked with the jury? A. Just a matter of conversation, that is all.

Q. How long did you talk to them? A. Oh, not very long. I didn't count it, Mr. Simpson.

Q. What? A. I didn't count the times.

Q. Where did you have these conversations with the jury? A. While sitting down at dinner tables.

Q. You were not sworn, were you, at all? Simply went out by direction of His Honor, didn't you? A. Yes.

Q. So the conversations you had with the jury were at the table where they were eating? A. Yes.

Q. Did you go upstairs with them at all when they went up to the rooms? A. I went upstairs at the—but had separate from where the jurors were.

Q. Did you go up when they went up to retire at night? Did you go up with them? A. Yes.

Q. Talk with them then? A. I don't recall that I did.

Q. How many of them did you talk to? A. I didn't count them.

Q. You cannot tell me that? A. I cannot say that, individually. I don't know that, how many I talked to.

Q. How long, during the time you were with them—how long were you associated with the jury—I don't mean you were talking all the time, but mixing with them, or around the hotel, about how long a time would you be associated with them? A. Well, I can't just answer, how you—

Q. I mean have conversation with them. A. They were downstairs in one part of the room, I was upstairs when some of the jurymen wanted to retire in their rooms. I went upstairs at the entrance to the place where they went back to their rooms, and the constables would be downstairs in the next floor in back, in a hallway, where no one could come there, two or three constables would be there, some of the constables would be upstairs where I was, at the entrance to this door that led to the rooms where the jurors were. Some

wanted to retire earlier than the others.

Q. You are on friendly terms with all these court officers? A. I know the court officers.

Q. Of course. When you went away from here at six o'clock—at night—what time would you retire to bed yourself? A. I had no special time to retire. I stayed up as much as I could.

Q. The first night, what time did you go to bed? A. It was half past twelve, when I laid down for an hour, I couldn't keep awake any longer, then I was awakened up and stayed up the balance of the night.

Q. From six to twelve you were associated with the constables? A. With the constables.

Q. Talking to them? A. Yes.

Q. During that time the constables were in the room where the jury were having dinner? A. Not at that time, no.

Q. Some of the time the jurors were having dinner, the constables were in the room then? A. The constables, all of them, were in the room.

Q. You talked to the constables? A. Yes.

Q. In the presence of the jury? A. Well, they were up at one end of the table and we were at the other end of it.

Q. How far were they from you while you were talking to the constables? A. There was a constable that side of me, and then the jurymen on the—on one side of the table, on the other side of these constables, two of them opposite me on the other side of the table.

Q. Then the jurors were quite near to you, if you were running along, the constable next to you, and then jurors all around that table?. A. They were all up at the other end, we were down on the extreme end.

Q. You were not sworn at all, have not been sworn at all, have you? A. No.

Q. You were simply assigned in your official capacity as detective of the Prosecutor's office?

A. To see that the telephone was not interfered with in any way, that nobody on the telephone would try to get to the rooms of the men, instructed to see that nobody called up the jurymen, and they did not answer the telephones, I went downstairs, seen they were plugged, the holes of the telephone central.

Q. The second night, you were from six to what time with the jury and the court officers? A. Well, I was in—we went in the dining room, when we came there—

Q. You stayed there how long? A. They were there for, I don't want to say exactly how long, I don't know, Mr. Simpson, it was a couple of hours, we sat downstairs, and some of the jurymen wanted to go upstairs to bed, wasn't feeling very well, so that then we went upstairs.

Q. Who do you mean? A. I went up—Walsh went upstairs and locked him up in the room.

Q. You left them up there and came down then yourself? A. He came right down. And I went right up and stayed there, and Constable Rollfs came upstairs and sat out in the apartment where we were. He was away around, the other end of the hallway.

Q. During all this time, until the gentlemen of the jury went to bed, you and the jury and the court officers were practically in association together, were you, until the jurors retired? A. No sir.

Q. Where were you, then? A. I was upstairs with a couple of constables, and then they brought the jurymen up to the second floor, and there is a sitting room there, and two of the constables sat down there, and sometimes three, and the other ones would come upstairs, where the room, where I was, where our rooms were, where the constables' and my room was.

Q. Where was the sitting room of the jury—

how far from your sitting room? A. They were on the first floor.

Q. Who was down there with them? A. Two of the constables.

Q. And you were upstairs? A. Upstairs with two of the other constables, sometimes three would go down—

Q. Would you go down at different times to the room where the jurymen were? A. I didn't go down where they were sitting except on one occasion, I went to see where they were.

Q. When the jury got tired, wanted to go to bed, did you go to the sitting room, or go upstairs with them? A. No, they came up with the constables.

Q. You went along? A. No, I was not there.

Q. Where were you then? A. I was upstairs with the two of the constables, and the others were downstairs with them. They came right on upstairs, they went to their rooms.

Q. Did you go down with Mr. McCarthy on the 16th of October, 1917, to the polling place we are now investigating? A. No, I didn't.

Q. Had nothing to do with that? A. Had nothing to do with that.

CROSS-EXAMINATION by Mr. Hudspeth:

Q. Mr. James, I understand you are a member of the staff of the detectives of the Prosecutor? A. Yes.

Q. Were you sworn in as such detective?

MR. SIMPSON: I object. It is a matter of—if there is any statute about it—it is a matter of record.

MR. HUDSPETH: I will withdraw the

question.

Q. How long have you acted as a detective in the Prosecutor's office? A. I have been ten years this February.

Q. Have you been assigned, either directly or indirectly, by the Prosecutor or any of his assistants, to do any work in this case? A. No sir, I was not.

Q. Have you done it? A. No sir, only—

Q. In the line of investigation? A. I don't know whether it was in this particular case, there was something I inquired for under the direction of Mr. McCarthy, to try to find out about some of the signatures, but I don't know whether it was these—in this case or not. I don't remember the names of the people I called on.

Q. You did do some work in investigating signatures in the Eighth Ward, did you, of this city? A. No.

Q. Eighth District? A. It was—I don't—

Q. Of the Second Ward? A. I think it was the Eighth District of the Second Ward.

Q. But not this district?

MR. SIMPSON: I object.

A. I don't recall what district it is. I don't know what this district is.

Q. This jury, since night before last, has been kept together, has it not? A. Yes.

Q. Which of the constables were assigned in charge of the jury? A. Mr. Rollfs, Mr. Walsh, and Vasser, and Fieghry—that is all.

Q. When were you assigned? A. Last—yesterday—or Monday.

Q. Afternoon or evening? A. Well, it was in around three o'clock, I was told to go home and get a little sleep, then come back at five o'clock.

Q. By whom were you assigned? A. Judge Tennant requested me to go.

Q. Did the Prosecutor or any of his assistants have anything— A. No sir.

Q. —to say to you, or give you any instructions regarding what you were to do? A. No.

Q. —what your duties were? A. No sir.

Q. Did the Prosecutor or any of his assistants have anything to do, so far as you know, with the assignment? A. No sir, I was not directed by any of them. That was Judge Tennant, sent for me, and told me to go out, look after this work, that he assigned me to.

Q. State as nearly as you can what directions you received from him as to what you were to do. A. I got those instructions from Judge Tennant.

Q. What is that? A. I got those instructions from Judge Tennant.

Q. What were they? A. To look after the telephones, to see that the telephones were not interfered with in the rooms, go see about the telephones in the rooms, and to notify the proprietor that no calls were to be received by any outside parties, or anybody to communicate with the jurors over the telephone, and to see that nobody approached the jurymen and spoke to them about the—anything, any conversation had with them. And I have—

Q. Have you done anything else than that? A. That is all the work I was assigned to do.

Q. What is that? A. That is all the work I was assigned to do, to keep—

Q. Where was this jury taken when they were taken from the Court House? A. To Carell's Hotel.

Q. How far away is that? A. About Five Corners—or the Tube, near the Tube Station.

Q. About eight or ten blocks away? A. Yes, about that.

Q. Where were they kept when they reached

the hotel? A. In the rooms, in one room, that first night. They were all brought up by the Sergeant-at-Arms.

Q. Who was he? A. Hanlon.

Q. One of the constables? A. No. He is the Sergeant-at-Arms.

Q. Of this court? A. Of this court—to the dining room upstairs.

Q. Were they detached there—kept separate from— A. They were kept separate from everybody.

Q. After meals in the dining room where did they then go—did you notice? A. They were then sent downstairs, stayed till quite late.

Q. In the same room? A. In that same room. One or two of them wanted to go to their bedrooms, they were given their rooms.

Q. Were they kept isolated in the dining room or sitting room? A. Yes, there was nobody could get to them in any way.

Q. From there where were they taken? A. They retired.

Q. Where were their bed-rooms? A. Upstairs on the next floor.

Q. Were their bedrooms also isolated from the rest of the house? A. Yes.

Q. And approach by outsiders? A. Nobody could get to them. I seen that there was two rooms upstairs, that one room where two fellows were together, I seen that those people were brought out of those rooms and put in another part of the building.

Q. Since you have been assigned, to the present day, have you spoken to any juror as to the merits or demerits of this case? A. Absolutely so, nothing at all.

Q. As to any of the issues involved? A. No sir.

Q. As to any of the witnesses? A. No.

Q. The testimony of witnesses? A. No.

Q. As to the defendants or any of them? A. No.

Q. Or their testimony? A. No sir, none whatever.

Q. As to the verdict? A. No sir, not anything.

Q. Have you had any conversation whatsoever, of any kind, with any juror or jurors in connection with this case? A. Nothing relating at all to the—

Q. Or they with you? A. No sir.

Q. Have they, with anyone, in your presence? A. No.

Q. Or you, with anyone, in their presence? A. No.

Q. Or any one of the jurors? A. No sir. They were commonplace talk, about the weather, whatever argument were talks whatever were about the weather, or some topic that happened to be brought up; nothing relating to anything regarding to this proceeding.

Q. Did you notice whether any newspapers reached any of the jurors? A. We wouldn't permit any newspapers to get to them that had any reference to the case, as far as I know.

Q. Did you notice whether they had any telephonic communication with anyone? A. No sir, not there at the hotel.

Q. Did any juror—(interrupted).

BY THE COURT:

Q. When you qualify that, you refer to telephonic communication in the court chambers, which the court permitted in order to let them communicate with their homes or places of business, about their business or home affairs? A. That is all, yes. There was none over there.

BY MR. HUDSPETH:

Q. Did any juror in your presence discuss this case or any of the testimony, or speak of the witnesses or their testimony, the defendants or their testimony? A. No sir, none whatsoever.

BY MR. SIMPSON:

Q. Who told you at three o'clock to go home, get some sleep?

THE COURT: He said Judge Tennant did.

A. Judge Tennant.

Q. Did Mr. McCarthy speak to you about it at all? A. No.

Q. Tell you you were assigned to this duty at his direction, or the Prosecutor's office? A. No sir.

Q. Did you get any leave of absence from the Prosecutor's office to do this work? A. I did not. I took Judge Tennant's order, being the Court, I assumed he had that authority.

Q. You are attached to the Prosecutor's office as a detective, and have been a long time? A. Yes.

Q. (By Mr. Vickers). Expect to be in the future? A. I hope so.

THE COURT: I will deny your motion.

MR. SIMPSON: I ask an exception, if it is the subject of an exception.

MR. HUDSPETH: I offer to have each juror asked, questioned as to whether Mr. James has said anything to any one of

them, discussed this matter, or whether they have discussed the case in his presence.

MR. SIMPSON: The motion is denied. There is nothing before—

THE COURT: I will permit the Prosecutor to do that.

MR. SIMPSON: Under our objection, if the Court please.

MR. HUDSPETH: Before I interrogate these jurors I ask, do the defendants or any one of them object to this course?

MR. SIMPSON: Yes, we do.

THE COURT: The Court now will direct it, in order that the Court may see whether there has been any proper cause for mistrial. You may call the jurors.

RUDOLPH DEUTL, a juror, sworn.

EXAMINATION by Mr. Hudspeth:

Q. Since you have served upon this jury, either in the Court House or elsewhere, has Mr. Joseph James spoken to you about this case or the merits of the case? A. No.

Q. Has he spoken of any witness or the testimony of any witness? A. No.

Q. Has he spoken of the defendants or any of them, or any of them, or their testimony? A. No.

Q. Has he discussed the case in any aspect with you? A. No.

Q. Or with any juror or with any other person in your presence? A. Not in my presence.

Q. Have you discussed with him— A. No.

Q. —the case or any matter in connection with the case? A. No.

CROSS-EXAMINATION by Mr. Simpson:

Q. You don't mean to say that since this trial began, when you gentlemen have been at dinner, you have not talked over this case at the table among yourselves, do you? A. Yes, spoken among ourselves.

Q. And at that time Mr. James was at the table with the constables, wasn't he? A. Not in our presence.

Q. I am not talking about your presence. He was at the table eating with you? A. I didn't see him eating on our table.

Q. How far away from you was he eating? A. I cannot remember that.

Q. In the same room with you, wasn't he? A. I saw some of those constables on the other side of the table, departed from us.

Q. At the same table you were at? A. Yes, on the very end, head of the other end, of the table.

Q. During that time— A. And that stout gentleman, (indicating Constable Vasser) he at the other end, away over.

Q. Didn't you men of the jury, naturally, when you were eating, you had been in court all day here, listening to the testimony, talk about that testimony at the table? A. Very little.

Q. You did, some, didn't you? A. We talked some.

Q. How big was the table? How many people were at the table, twelve jurymen, Mr. James, four constables, or seventeen people. You say that James didn't talk to you? Didn't he talk to

you at all? A. He brought me upstairs to my room.

Q. I don't mean in your room. I am talking about the table. Didn't he talk to you at the table? A. Not a word.

Q. You heard him on the stand say he had been talking to the jury, didn't you? A. Not to me, not a word.

Q. Did you see him talk to the other jurymen? A. No sir, I haven't seen it.

Q. You haven't heard it? A. No.

Q. He went upstairs with you to your room? A. Yes. There was another gentleman with him, there were two, but it was short little time, he simply brought me into that room. That room didn't suit me, he brought me to another room. That was all right. I didn't care to sleep with another man together, I wanted to sleep alone.

———

BENJAMIN FREEMAN, a juror, sworn.

DIRECT EXAMINATION by Mr. Hudspeth:

Q. Since your connection with this jury has Mr. Joseph James, either in this Court House or elsewhere, spoken to you about this case? A. No sir.

Q. Has he discussed in any wise the case or the testimony of any of the witnesses in the case? A. No sir.

Q. Has he spoken about any of the witnesses or their testimony?? A. No sir.

Q. Or of the defendants or their testimony? A. No.

Q. Has he or you in any wise discussed or talked about this case or the issues involved? A. No.

Q. Did he say anything to you at the hotel

where you have been the last two nights about the case? A. No sir.

Q. Or about the testimony or about any of the witnesses? A. No.

Q. Or discussed it in any way? A. No.

Q. Or any juror in your presence, or you in their presence? A. No.

CROSS-EXAMINATION by Mr. Simpson:

Q. When you went from the Court House you went around to Carell's? A. Yes.

Q. In what room did you have dinner? A. First night we had our dinner in a private dining room upstairs on the second floor.

Q. Who was present A. The jurors, at that time.

Q. Anybody else? A. Nobody else, at that time.

Q. Last night, where did they have their dinner? A. Had it on the main floor, in a private dining room.

Q. Who was present? A. Four constables and Mr. James.

Q. When you gentlemen were at dinner, didn't you discuss among yourselves— A. If any one would bring the conversation, one juror to the other, would say, "This is not the time to discuss it."

Q. There was no talk about it? A. No talk about it at all.

Q. After dinner? A.

Q. Did you go to bed at different times? A. Some went to bed, eight, nine, ten, I believe some at half past ten, and different times.

GEORGE BUSCH, juror, sworn.

DIRECT EXAMINATION by Mr. Hudspeth:

Q. Since you have been a juror in this case has Mr. Joseph James, either here or elsewhere, particularly at the hotel where you have been kept these nights, discussed this case in any wise? A. No sir.

Q. Has he spoken of the witnesses or evidence? A. No.

Q. Or the defendants or their evidence? A. No.

Q. Or of the merits or demerits of the case? A. No.

Q. Have you with him? A. No.

Q. Has he with anybody else in your presence? A. No.

Q. Have you heard him talk with any other juror, or any other juror talk with him about the case? A. None at all.

(No Cross-Examination).

EDWARD MILLER, a juror, sworn.

DIRECT EXAMINATION by Mr. Hudspeth:

Q. Since you have been a juror in this case has Mr. Joseph James spoken to you about the case here or at the hotel where you have been kept? A. No.

Q. Has he discussed the case in any wise, in any particular? A. No sir.

Q. Or the evidence or the testimony of any of the witnesses? A. No sir.

Q. Or of the defendants or any of them? A. No sir.

Q. Have you talked to him about the case? A. No sir.

Q. Or any of the witnesses or any of the evidence? A. No sir.

Q. Has he discussed the matter with any other juror in your presence, or any other juror discussed it with him in your presence? A. No sir.

(No Cross-Examination).

MICHAEL O'ROURKE, a juror, sworn.

DIRECT EXAMINATION by Mr. Hudspeth:

Q. Since you have been a juror in this case has Mr. Joseph James, either here or elsewhere, particularly at the hotel where you have been kept, with the other jurors, discussed this case or any of the evidence in the case? A. No sir.

Q. Have you with him? A. No sir.

Q. Has he spoken of the merits or demerits of the case or any of the evidence or any of the witnesses? A. No sir.

Q. Or of the defendants or their testimony? A. No sir.

Q. Has he spoken about this case in your presence with any other juror? A. No sir.

Q. Discussed it in any wise? A. No.

Q. Has any juror in your presence discussed it with him? A. No sir.

(No Cross-Examination).

HERMAN ROSKAMP, a juror, sworn.

DIRECT EXAMINATION by Mr. Hudspeth:

Q. Since you have been a juror in this case has

Mr. Joseph James, here or elsewhere, particularly at the hotel where you and the other jurors have been kept during the last two nights, discussed this case? A. No.

Q. In any particular? A. No.

Q. Or the evidence of any of the witnesses? A. No.

Q. Speak of any of the witnesses? A. No.

Q. Or of the defendants or any of them? A. No.

Q. Or their testimony? A. No.

Q. Has he discussed this matter in the presence of any other juror—in your presence? A. No.

(No Cross-Examination).

GEORGE COLMER, a juror, sworn.

DIRECT EXAMINATION by Mr. Hudspeth:

Q. Since you have been a juror in this case has Mr. Joseph James spoken about the case to you? A. No sir.

Q. Or of the witnesses or their testimony? A. No sir.

Q. Or of the defendants or their testimony? A. No sir.

Q. Has he spoken of the merits or demerits of the case in any wise? A. No sir.

Q. Has he discussed the matter or said anything about it to any other juror in your presence, or has any other juror in your presence discussed it with him? A. No sir.

(No Cross-Examination).

WILLIAM LUMLEIN, a juror, sworn.

DIRECT EXAMINATION by Mr. Hudspeth:

Q. Since you have been a juror in this case has Mr. Joseph James spoken about the case to you? A. No.

Q. Spoken of the witnesses or their testimony A. No.

Q. The defendants or their testimony? A. No.

Q. Has he discussed with you in any wise either the merits or demerits— A. No sir.

Q. Have you heard him discuss it with any other juror? A. No.

Q. Have you heard any other juror discuss it with him in your presence? A. No sir.

(No Cross-Examination).

HENRY CORFIELD, a juror, sworn.

DIRECT EXAMINATION by Mr. Hudspeth:

Q. Since you have been a juror in this case has Mr. Joseph James spoken about the case to you or you to him? A. No sir.

Q. Has he spoken about or discussed the evidence of any witnesses? A. No sir.

Q. Has he spoken about the defendants or any of their evidence? A. No.

Q. Has he discussed the matter with any other juror in your presence or any other juror discussed it with him in your presence? A. No sir.

(No Cross-Examination).

AUGUST SACKERMANN, Jr., a juror, sworn.

DIRECT EXAMINATION by Mr. Hudspeth:

Q. Since you have been a juror in this case has Mr. Joseph James spoken about the case to you? A. No sir.

Q. You to him? A. No sir.

Q. Has he discussed the evidence of any of the witnesses? A. No sir.

Q. Spoken about any of the witnesses? A. No sir.

Q. Or the defendants or any of them? A. No.

Q. Or of their evidence? A. No sir.

Q. Has he spoken about or discussed the merits or demerits of the case in any wise with you? A. No sir.

Q. Or any other juror in your presence? A. No.

Q. Have you heard any other juror discuss it with him in your presence? A. No sir.

(No Cross-Examination).

CARL KERNTOPF, a juror, sworn.

DIRECT EXAMINATION by Mr. Hudspeth:

Q. Since you have been a juror in this case has Mr. Joseph James spoken about the case to you? A. No sir.

Q. Has he discussed it in any wise? A. No sir.

Q. Or the evidence of any of the witnesses? A. No sir.

Q. Spoken about the defendants or any of them or their evidence? A. No sir.

Q. Have you discussed it at all in any aspect with him? A. No sir.

Q. Have you heard him discuss it with any of the jurors in your presence? A. No.

Q. Have you heard any of the jurors discuss it with him in your presence? A. No sir.

(No Cross-Examination).

MONTGOMERY WILSON, a juror, sworn.

DIRECT EXAMINATION by Mr. Hudspeth:

Q. Since you have been a juror in this case has Mr. Joseph James spoken about the case to you? A. No sir.

Q. Has he discussed the evidence with you? A. No sir.

Q. Of any of the witnesses? A. No sir.

Q. Of the defendants? A. No sir.

Q. Or any of them? A. No sir.

Q. Has he spoken of any of the witnesses or defendants to you? A. No sir.

Q. Have you, either directly or indirectly, talked with him about this case, or he with you? A. No.

Q. Have you heard him discuss it with any other juror in your presence? A. No sir.

Q. Have you heard any other juror discuss it with him in your presence? A. No.

MR. HUDSPETH: That is our reply.

THE COURT: I will deny the motion. You may call the next witness.

MR. SIMPSON: I ask an exception.

THE COURT: I am not sure that you are entitled to an exception, but the record will show what you have said.

JAMES W. McCARTHY, recalled.

DIRECT EXAMINATION by Mr. Vickers:

Q. You have been sworn as a witness heretofore? A. Yes.

Q. You are the person referred to by the testimony of Mr. Unger as the Mr. McCarthy with whom he had some conversation in the office of the Prosecutor of the Pleas? A. Yes.

Q. On that occasion did Mr. Unger say to you that Mr. Kane told the Board before they started that the Board should act in harmony, or words to that effect?

MR. McCARTER: Repeat that, please.

MR. VICKERS: That Mr. Kane told the Board before they started that the Board should act in harmony, or words to that effect.

MR. McCARTER: We object. It is in contradiction of an inconsequential and immaterial issue. It was not a question of acting in harmony, it was a question of acting according to law. You cannot contradict a matter that is immaterial.

THE COURT: Assuming that this question will lead to questions as to a conversation which it is denied by the defendants took place between Mr. McCarthy and them, I can see it may be very material in

view of the statement by the defense that they did or did not do certain things.

MR. McCARTER: This is a direct effort to contradict a specific thing. One of the witnesses was asked whether that particular conversation occurred between him and Mr. McCarthy. He said it did not. The only purpose of the question is to contradict that. I say it is on an immaterial point and cannot be contradicted.

THE COURT: I will allow it.

MR. McCARTER: I ask an exception.

(Exception allowed and signed and sealed accordingly.

George G. Tennant, Judge.

Seal.)

Q. (Repeated by Stenographer). A. Yes.

Q. Did Mr. Unger say to you that he saw Kane take a list of registered voters and go outside and from time to time send men in there to vote on other people's names, or words to that effect? A. Yes.

Q. Did Mr. Unger on that occasion say to you that he, meaning Unger, wrote the names of Hotchkiss, Schoenberg and Tamke himself, that he knew them all well? A. Yes.

Q. On that occasion did Mr. Unger say to you that Morris Dorman was his brother-in-law and had moved from the address in the book and did not vote, or words to that effect? A. Yes sir.

Q. Did Mr. Unger on that occasion say to you that the registry itself was rotten, or words to that effect? A. He did.

Q. Did Mr. Unger on that occasion say that not one hundred honest votes were cast at that

election, or words to that effect? A. He did.

Q. (By the Court). Did he make any reference to the Mr. Tamke, of which there were two? A. Yes, the grocery man.

Q. (By the Court). I want to bring it out because I think there were two.

MR. VICKERS: The reason I did not ask that was because I had not asked in the direct question which I want to contradict.

THE COURT: My notes say that you did.

Q. (By the Court). You refer to Henry Tamke, the grocer? A. Yes.

Q. Did Mr. Unger on that occasion say to you —what if anything did Mr. Unger say on that occasion as to where he lived and where he voted, and what was done at that time between yourself and Mr. Unger with respect to that particular phase of the conversation?

MR. SIMPSON: I object, it is not rebuttal. There is nothing in the case of the State, this is supposed to have been an admission by the defendant, and it was not put in. We have exhausted our case. The defendant's attention was not attracted to this matter for the purpose of contradiction. It is incompetent and immaterial.

MR. VICKERS: It is not in contradiction of anything that the defendant Unger said specifically, to which his attention was directed, but it is contradiction and it is proper rebuttal in respect to what the situation was as between the parties at the time of the conversation, which on the

State's direct case was placed in one posture, and by the defense in another. It seems to me we are entitled to rebut it by any facts or circumstances which will shed light to the jury whether or not under the circumstances the things that the defendant says took place there did take place, or whether the things which the State says took place, took place.

THE COURT: I will allow it.

MR. SIMPSON: I ask an exception.

A. In investigating the district I found Mr. Unger—

MR. SIMPSON: I object to what he found.

Q. What did you tell— A. I told this to Mr. Unger.

MR. SIMPSON: I object. It does not appear that he told it. He is asked the question, give the conversation, what did Mr. Unger say? He is not telling what he found out.

A. I asked Mr. Unger if he lived in the district and told him I did not find his name in the poll book. He said no, he didn't live in the district, that he used to live in the district, and gave his address, I cannot recall now, where it was he specified, the district in which he then lived. My impression is it was the 7th District, but I am not sure as to that, in the same ward, but whatever the district was I had the book in my office and I got the book out and gave the book to him—

Q. In his presence? A. In his presence, yes.

I gave the book to him and he went all through the book and he couldn't find his name in the book of his district. I said, "Are you sure you voted?"

MR. SIMPSON: I object. It has nothing to do with this case. Suppose he did say something, suppose he did say that on the 2nd day of January, 1917, he murdered Judge Tennant, would it be evidence in this case? It is an entirely different matter, what Unger did at some other time, it is not relevant.

MR. VICKERS: I think we would be entitled to show in this inquiry all the conversation in order to make clear to the jury the relationship between the parties at the time as to whether or not Mr. McCarthy was interrogating Mr. Unger, whether or not Mr. Unger was volunteering information, I think it is relevant and material to show what the attitude of the parties was so that this jury may know whether to belive Mr. Unger or to believe Mr. McCarthy, a very important thing in this case. I believe the entire conversation is relevant and material.

THE COURT: There is no question pending.

MR. McCARTER: I move that the evidence be struck out.

THE COURT: I will deny the motion. You may have an exception.

Q. (The Court.) Go on.

MR. McCARTER: Does it appear that

counsel was not heard? The motion was denied, and counsel was not heard. I intended to speak—

THE COURT: I will hear you now, sir.

MR. McCARTER: The effort is an effort on the part of the State to besmirch the witness, the defendant, Unger, by attempting to prove a conversation to which his attention was not directed, not in contradiction of anything, but an alleged conversation, to a portion of which his attention was directed, about which he was asked, and which he gave in evidence, to bring in a matter that has no concern with this issue at all. Whether he lived or didn't live in that district, and whether he voted or did not vote in that district, and whether he voted or didn't vote in that district; we say that is utterly immaterial. I move that it be struck out.

THE COURT: I will deny the motion.

MR. VICKERS: May I find out the position of the record?

(The stenographer gives a short resume of the testimony and argument leading up to the present point).

THE COURT: Between you, you must choose who will speak.

(Stenographer reads): "I said, are you sure you voted?"

Q. (Continuing). He said "Yes," and he could not find his name in the book.

MR. SIMPSON: I object. It calls for a conclusion of the witness.

THE WITNESS: He said he couldn't find it.

Q. He did not, in your presence, did he? A. He said, "I can't find it."

Q. At the time of this conversation had you any knowledge as to who Mr. Dorman was, whether he bore any relationship to the defendant Unger or whether he had voted or not voted —had you made any investigation with respect to his name on the registry or anything else? A. No sir.

Q. When Mr. Unger said, as you have testified, that Mr. Morris Dorman was his brother-in-law, and so forth, how did the name Morris Dorman at that time come up? What took place between you and Mr. Unger which brought up that name?

MR. McCARTER: I object. It is immaterial, incompetent and not rebuttal.

THE COURT: I will allow it.

MR. McCARTER: I ask an exception.

A. I had that book—

Q. Referring to S-5? A. S-5, yes. And I had pointed out to Mr. Unger, as I said, the names of Mr. Schoenberg and Mr. Tamke and Mr. Hotchkiss, and showed him the signatures on the signature side, and asked him if he had signed that himself, on the signature side, and he said, no, he had not.

Q. "Well," I said, "who wrote this side?" referring to the side where the names of the voters are supposed to appear—

Q. The entry? A. The entry. And he said that he wrote that, then I pointed to him the name of Peter O'Reilly. I said, "Who wrote that?" He said, "I did." That is, indicating the column where the name of the voter, the entry, is made.

Q. —is supposed to have been made by the election officer? A. Yes. He said he made that. Then I pointed to the signature of Peter O'Reilly, and I said, "Why, Unger, wasn't the signature written by the same man who wrote the entry in the name of the voters' column?" "Well," he said, "I didn't write it." "Why," I said, "don't you know that Peter O'Reilly is dead?" He said, "No," he didn't know that. Then I said, "By the way, do you know Mr. Schoenberg, the man who keeps the store on Pavonia Avenue?" He said, "Oh, yes." I says, "How long have you known him?" "Oh," he said, "I have known him a long while." I says, "You know him well?" He said, "Yes," I says, "Do you know Mr. Tamke, the grocer?" He said, "Yes," he knew him well and had known him a long while. I asked him if he knew Hotkiss, the hardware man? He said, yes, he knew him. Then I turned to Mr. Schoenberg's name, and I said, "Unger, who did you let vote on Mr. Schoenberg's name?" And he said, "I didn't let anybody vote." I said, "Well, now, you know Mr. Schoenberg and you say you wrote that name in in the column of the voters' name, who did you let vote on that?" I asked him the same question about Mr. Tamke, then he finally said, "Well, I will tell you." He said, "That morning, before the Board did business, Mr. John Kane, the Committeeman said he wanted the Board to act in harmony. Later in the day he got from Kelly a list of the registered voters—

Q. (By the Court). Who got from Kelly? A. Mr. Kane, and he said that Mr. Kane sent men down to vote on these names. I said, "How do

you know that?'' He said, ''Well, I saw him outside.'' I says, ''How could you see him outside if you were inside?'' He said, ''At times I went out to the door of the polling place and I saw these men coming down.'' I said, ''How many of them came down?'' He said, ''Maybe ten, twelve, possibly fifteen.'' I said, ''How many times did they vote?'' ''Well,'' he said, ''there were not one hundred honest votes cast in that district. Some of these men voted four times, some of them five times.'' I said, ''Good Lord, what did you permit anything like that to happen for?'' He said, ''I don't know.'' Then he went through the books himself, he pointed out, he said, ''Here is Morris Dorman, that is my brother-in-law.'' He said he didn't vote at all. I put an X alongside Mr. Morris Dorman's name in the book in his presence.

Q. Is that the X which now appears on the books,—was that made at that time in Mr. Unger's presence? A. Yes. I marked it right in his presence. I said, ''Where does he live?'' And he gave me his address. I had not investigated that name at all up to that time, didn't know who Mr. Dorman was.

Q. You didn't— A. No, sir. And he said that he had moved from this place some time before. Then he showed me the names, two or three names in these books, which he picked out. He said ''I can show you a whole lot.'' He said, the registry itself is rotten.'' I said, ''What do you mean by that?'' I had spoken to him about Dorman's name looking as if it compared with the signature of Morris Dorman on the registry. I told him I had not taken it off. Neither I had, when I compared the signatures. Because that name did look to me sufficiently similar. ''Well,'' he said, ''the registry itself is rotten.'' I said, ''What do you mean by that?'' He said, ''They added names to the registry.'' I said, ''Who?''

He said, "The crowd." I said, "What crowd?" He said, "The fellows around there." I said, "Who are they?" He said, "I don't know who they are." I said, "Yes, you do." He said, "No, I don't know who they are."

MR. McCARTER: I respectfully move that all of that testimony since the last question was put to the witness be stricken out as incompetent, irrelevant and not rebuttal.

THE COURT: I will deny the motion.

MR. McCARTER: I ask an exception.

Q. Was that, excepting the day of the election itself, on the 16th of October, 1917, the only time you had ever seen Mr. Unger? A. No, I saw him in the court room the day he was up here for pleading on the indictment, in this court room, and it was not the occasion when he was here in connection with this indictment, that you had the conversation with him? A. No sir.

Q. It was prior to the indictment, wasn't it? A. Yes, oh, yes.

Q. Before the indictment? A. Yes.

Q. Can you approximately fix the time of that conversation? A. It was a few days before the general election which was on November 5th. My impression—

Q. 1917? A. Yes. My impression was it was either Thursday or Friday, or possibly Saturday, of that week. I think Mr. Simpson will recall the date because he was there in court that day. Mr. Unger was in the back here when the election officers were brought in to answer a rule to show cause—

MR. McCARTER: One moment.

THE COURT: I think that is improper.

THE WITNESS: To fix the date, that is all.

MR. VICKERS: I consent that it be stricken out.

Q. At that time Mr. Unger was, so far as you know,—was not here in this Court House through any process instituted by the office of the Prosecutor of the Pleas? A. No sir.

Q. And at that time not under arrest, so far as you know, nor by you caused to make this statement by virtue of your authority and position as Prosecutor of the Pleas? A. No sir.

Q. Since then, Mr. McCarthy, have you and Unger had conversation with respect to these matters alleged by you to have been told you by him, and if so, when and where?

MR. SIMPSON: I object. It is immaterial, it is not rebuttal. There is not a suggestion of such a conversation made heretofore.

THE COURT: I will allow it.

MR. SIMPSON: I ask an exception.

A. Yes. The day he was up here for arraignment on his indictment. He was sitting in the back of the room and I went to talk to him and I asked him if he had made an affidavit that he had no talk with me and had not informed me anything about what had occurred at that election. He told me he had made an affidavit, but not about that. I said, "I have been told by Mr. Hosbach that you made an affidavit and that you said your work is as good as mine." And

he said he had made an affidavit, but not about what he had talked to me. He said, "I have a lawyer, I don't care to talk any more." When he said that I didn't say anything more to him.

CROSS-EXAMINATION by Mr. McCarter:

Q. As soon as you found out he had a lawyer you didn't talk to him again? A. After he made that statement to me?

Q. He didn't have a lawyer when you had your first talk to him? A. I don't know whether he had or not.

Q. You didn't ask him? A. No.

Q. You had at that time in your possession in the office of the Prosecutor this book, this poll book? A. Yes.

Q. You expected to bring the matter to the attention of the grand jury? A. He had already been indicted.

Q. I beg your pardon? A. Are you referring to the time in the court room?

Q. In the Prosecutor's room? A. Before he went down, yes; I thought you meant this day I spoke to him here. No, when he was here in this court room.

Q. One moment. Had you—

MR. VICKERS: I submit the witness is entitled to finish his answer, to answer the questions.

MR. McCARTER: He has answered.

MR. VICKERS: I think not.

Q. Have you answered my inquiry, with reference to the time of your talk in the Prosecutor's office with Mr. Unger, at that time, you had the purpose of bringing this matter to the attention

of the Grand Jury? A. Whether I had informed him of it?

Q. No. Now, Judge, you have been very glib on direct examination—

MR. VICKERS: I object to the statement of counsel, it is highly improper.

Q. Had you the book S-5, the poll book, that has been offered in evidence here in this trial, in the Prosecutor's room, on the day you have referred to as having had this conversation with Mr. Unger? A. Yes.

Q. Were you preparing the case for presentation to the Grand Jury? A. Yes.

Q. How did he come to your, the Prosecutor's room? A. He was here in the rear of this court room and they were all—the matters were all laid over, the matters concerning the election officers, with which I had nothing to do—

Q. Did you ask him to come in?

MR. VICKERS: I submit he should be allowed to answer the question.

MR. McCARTER: He is not answering the question.

A. (Continuing) and Mr. Unger called me to him when I was going through the aisle here, asked me if he had to come again. I said, "What do you mean?" He said, "Have I got to come here and lose my time?" I said, "You better see your lawyer." He said, "I have no lawyer." I said, "Isn't Mr. Simpson your lawyer?" He said, "I have no lawyer." I said "Have you any objection to talking to me?" He said, "No." I said, "Come downstairs." He came downstairs—

Q. He came downstairs. You asked him to

come down? A. Yes.

Q. I didn't care for all this preliminary talk — A. You asked me.

Q. Who else was there at the time the talk took place? A. I did not—

Q. Who else was in the room at the time the talk took place?

MR. VICKERS: What room?

Q. The Prosecutor's office. A. Mr. Hosbach, one of the other election officers, was there a few minutes, in a corner.

Q. Mr. Hosbach was there, Mr. Unger was there, and you were there? A. Yes.

Q. You have a stenographer there, haven't you? A. Not there, no sir.

Q. You have a stenographer in the Prosecutor's office? A. Yes sir.

Q. Was he present? A. No sir.

Q. Did Mr. Hosbach talk any during this conversation? A. No sir.

Q. Perfectly silent? A. Yes.

Q. How did he happen to be there? A. He was coming down to talk at the request of his— not his counsel, but of a lawyer.

Q. You didn't ask him to come? A. He was sent down to me.

Q. Pardon me? A. He was sent down to me.

Q. You didn't ask him? A. No sir, he was sent down to me.

Q. And you say that during the entire interview Mr. Hosbach remained entirely silent? A. No sir, I didn't say that. I said that Mr. Hosbach was in there a few minutes and then went out of the room. Mr. Egan called him out.

Q. Then the balance of the interview continued between you and Unger alone? A. Yes.

Q. Did you make a memorandum of this conversation? A. No sir.

Q. You knew that Unger had no counsel, you say? A. He told me so.

Q. Did you tell him that what he said might be used against him in this proposed prosecution that was in your mind?

MR. VICKERS: I object, it is immaterial.

THE COURT: It may be immaterial, but it is cross-examination and I will allow it.

A. No sir, I did not.

Q. I think you told us that at one stage of your testimony that you did not know at this time whether Unger had a lawyer or not, in your direct testimony, didn't you say so? A. Only what he had told me himself, he said he had no lawyer.

Q. I am not asking you what he told you himself, I asked you if you did not testify ten minutes ago in your answer to Col. Vickers that you didn't know whether Unger had a lawyer or not? A. That was the time when he was there on his arraignment, on his indictment, not in the office.

Q. Didn't you say that at the time he visited you in the Prosecutor's office you didn't know whether he had a lawyer or not? A. No sir, I did not.

Q. Well, we will stand by the record on that. You have been the person who has actively prepared this case, haven't you? A. Yes.

Q. In the multiplicity of matters that come to the Prosecutor's office the work is apportioned, it has been your function particularly to take care of this particular case in its preparation? A. These particular cases, this line of cases.

Q. Including this? A. Yes, including this.

Q. At the day when you say this conversa-

tion took place in the Prosecutor's office, between Mr. Unger and yourself, had Hosbach already agreed to turn State's evidence? A. Not to me, no sir.

Q. To any one? A. Not that I know of.

Q. You didn't know? A. Not that I know, he was going to turn State's evidence.

Q. He came as a friend at the suggestion of some lawyer?

MR. VICKERS: I object, nothing of the kind, came as a friend.

Q. Didn't you say some lawyer sent him? A. Yes.

Q. At that time didn't you know it was rather expected you would make a witness of him? A. I didn't know.

Q. You had hopes, we will say? A. Well, yes, yes, I was looking for the truth.

Q. Having that in mind, with Hosbach, you got Unger down there, didn't you, asked him to come down? A. No, not in reference to Mr. Hosbach.

Q. With that fact, you had those hopes with reference to Hosbach, you invited Mr. Unger to come down into the Prosecutor's office? A. Not in reference to Mr. Hosbach at all.

Q. I didn't say with reference to Mr. Hosbach?

MR. VICKERS: I object.

Q. Believing at the time that Mr. Hosbach was going to be a witness for the State you did invite Mr. Unger down to the Prosecutor's office? A. No, I did not.

Q. Didn't you believe at that time he was going to be a witness? A. Mr. Hosbach?

Q. Yes. A. No sir.

Q. You hoped so? A. We have lots of hopes, General.

Q. But the hope in this case has turned true? A. Yes.

Q. Did you arrange to have them there together? A. No.

Q. That was a mere coincidence? A. Yes, that was a coincidence.

Q. Hosbach overheard some of the conversation, didn't he? A. I don't know, General, how much he overheard of it. He was in the office and Mr. Egan—he was there a few minutes, and Mr. Egan called him into his office. I won't examine one witness in the presence of another.

Q. Haven't you sat here when Mr. Hosbach was asked by Col. Vickers, the first day of this trial here, whether all this occurred in his presence? A. Yes.

MR. VICKERS: I object on the ground the question contains an unwarranted assumption of fact. It has not been asked by me or testified by Mr. Hosbach, that he was present when "all this" took place. "All this" refers to the conversation, all the conversation.

THE COURT: I will allow the question.

Q. Were you here during Mr. Hosbach's examination? A. No.

Q. Did you conduct it? A. No sir.

Q. You sat by Col. Vickers when he was interrogating Mr. Hosbach on the first day? A. I did.

Q. Did you hear him ask whether certain questions were put to Mr. Unger and certain replies made by Mr. Unger? A. Yes.

Q. Who placed Col. Vickers—who gave to Col. Vickers the information that enabled him to ask

those questions—you? A. No sir.

Q. Who? A. I don't know. I talked about the case with Col. Vickers.

Q. Col. Vickers was not present? A. No sir.

Q. Col. Vickers was not present in the Prosecutor's office the day of the interview, was he? A. No sir.

Q. And did not, at the time that Hosbach was examined by Col. Vickers—did not the Colonel have in his hand notes of the matter asked by him? A. I don't know as to that.

MR. VICKERS: I object. It contains an unwarranted assumption of fact.

THE COURT: I will allow it.

Q. It appears in this case you were at the polls during this election? A. I called at the polling place, yes.

Q. Did you go in? A. Yes.

Q. Did you see the election officers? A. Yes.

Q. In what capacity did you go there? A. In my capacity of Assistant Prosecutor.

Q. Were you a watcher? A. No.

Q. An agent? A. No.

Q. Don't you know the law forbids anybody inside the enclosure except the election officers, the watchers, the agents and challengers?

MR. VICKERS: I object. It contains an unwarranted assumption of fact, and is a misstatement of the law.

THE COURT: I think the witness can answer it.

MR. VICKERS: I don't think that the Court can rule on the question because the

witness is a lawyer.

THE COURT: I will allow it.

A. I know that not to be the law.

Q. Not to be the law? A. Yes.

Q. Is there any provision of the law that authorizes the Assistant Prosecutor to be inside the enclosure on Election Day?? A. I don't know of any particular provision.

Q. No. A. But wherever we have complaints—

Q. I didn't ask you that, I am asking about a provision of law. Did you vote that day? A. Yes.

Q. Did you sign your name on the poll book? A. Yes, I did.

Q. Are you quite sure of that? A. Why, yes, certainly. I have it downstairs, I will show it to you.

REDIRECT EXAMINATION by Mr. Vickers:

Q. Do you know whether it is or is not the law that it is the duty of the Prosecutor of the Pleas of the County and his assistants to use all diligence in the matter of investigating any charge of crime? A. I know that to be the law, yes.

Q. And do you know that if that is not done Prosecutor of the Pleas is subject to impeachment and his assistants subject to the charge of malfeasance or nonfeasance in office? A. Yes, to investigate any charge where complaint is made.

Q. And under the Election Act is the Prosecutor of the Pleas charged with any duty with respect to the conduct of the election? A. Yes.

MR. McCARTER: Let us have the Act.

Point it out.

THE COURT: It is there, there is no question about it. I have seen it.

MR. VICKERS: If the Court will take judicial notice of it—

THE COURT: Yes, I do.

MR. VICKERS: —I will not press the question further.

Q. The Prosecutor of the Pleas has called my attention to something which I overlooked. One of the defendants testified that on the occasion of your visit to the polling place to which Mr. McCarter has referred, you advised this Board if a man referred to his signature in the signature copy of the registry and asserted that to be his signature, then the Board was obliged to accept his vote. Did you say that or any words to that effect? A. I did not.

Q. With respect to your going to the polling place, it is simply one of the polling places which you were visiting on that day under the direction of the Prosecutor of the Pleas? A. Yes, all over Jersey City.

Q. All over Jersey City? Jersey Citly being the only place where election was being conducted at that time? A. On that day, yes.

Q. How long have you been Assistant Prosecutor of the Pleas? A. Ten years this June.

Q. During those ten years have you on other occasions performed the same service with respect to your official duties on this day? A. Yes.

RECROSS-EXAMINATION by Mr. McCarter:

Q. Did you give any instructions on that day

as to how they should thereafter proceed? A. No instructions.

Q. I beg your pardon? A. I wouldn't consider them instruction.

Q. Did you give them advice? A. The Board—

Q. Did you give them any advice, if you prefer that language. A. I answered a question asked by Mr. Unger.

Q. Did you give them any advice as to how they should proceed? A. I didn't consider it advice.

Q. Did you tell them anything as to how they should proceed? A. In answer to a question of Mr. Unger, yes.

REDIRECT EXAMINATION by Mr. Vickers:

Q. What was the question.

MR. McCARTER: I object.

THE COURT: I will allow it in view of the question.

MR. McCARTER: I ask an exception.

A. After I had showed Mr. Unger some of these names and in his presence Mr. Filoramo, who was with me, with Mr. Charlock, having called attention to some of the names in the book apparently in the same—

MR. McCARTER: I object.

THE COURT: Objection sustained.

A. I did answer a specific question.

Q. What was the question? A. Mr. Unger asked me how they were to determine whether or

not the signature of the voter was the same as the one in the registry. "Why," I said, "by comparing them."

THE COURT: You have answered the question.

Q. What did you say,—give us the whole conversation?

MR. McCARTER: I object.

THE COURT: I will allow it.

MR. McCARTER: I ask an exception.

A. I said, "By comparing it." He said, "You know, handwriting sometimes differs, it might differ in a year." I said, "Well, it is easy for the Board to find out whether or not a man is a man whom he says he is by comparing his signature with the registry."

Q. Mr. Unger said, in connection with that conversation that it was you who said a man's handwriting might change in a year. Did you say that? A. Why, no, of course not.

BY THE COURT:

Q. There was a question I wanted to ask this witness. When these statements were made to you at the polling place by Mr. Unger or by him when he was in the court room or in your office, was there any threat made to him or any promise made to him or any hope held out if he stated to you what he did finally state? A. No sir, none whatever.

CROSS-EXAMINATION by Mr. McCarter:

Q. You have testified that you told Mr. Unger

it would be quite easy to tell, haven't you? A. I didn't say "Quite easy."

Q. "Easy"? A. If I recall it—

Q. Did you? A. —I told him he could tell by comparing the signature in the registry made by the voter with the one in the poll book.

Q. Do you know what test the law gives when a question arises as to the power of a man to vote? A. Yes.

Q. He is to compare the signatures and then if the signatures look dissimilar he is to pursue a certain line of inquiry, isn't he? A. Certainly.

Q. Did you speak of pursuing the line of inquiry the statute gives? A. No sir, because I was not—

Q. I don't want any because. A. No, I did not.

Q. You didn't tell him to ask the questions which the statute says to ask? A. No sir, I was not there to advise the Board.

Q. You seemed to be doing it.

MR. VICKERS: I object. The witness has expressly said that he was not.

Q. Different minds may differ with reference to the similarity or dissimilarity of signatures? A. In regard to—yes, with regard to some signatures, yes.

Q. Then there being such a difference the remaining questions that the statute lays out are asked and if they are answered, it is the duty of the Board to accept the vote A. Yes.

Q. Although they may differ as to signatures? A. That is a matter of law.

THE COURT: Call the next witness.

MR. VICKERS: We are through with our case.

THE COURT: Any other evidence on the part of the defendants?

MR. SIMPSON: No, we haven't any.

MR. McCARTER: I would just like, your Honor, in order the record may be straight at this time, to move to strike out the evidence touching, to move to strike out the evidence touching the voting by Rostrand, Kelly, Newmann and the several other persons who have testified, over our objection, as having voted who were not named in the indictment; our contention being that the State having given a list which is tantamount to a bill of particulars of those whom they were going to say had voted improperly, cannot thereafter prove that certain other persons, not named in the indictment, did so, and that we were entitled to be apprised, in order to make our preparation, of the names of those people; and therefore I move that the evidence of these some eighteen or twenty gentlemen who were not named in the indictment be stricken out.

THE COURT: I will deny the motion.

MR. McCARTER: Objection.

THE COURT: Now I assume, from your motion, you have no other evidence?

MR. McCARTER: No sir.

THE COURT: Now will you sum up?

MR. SIMPSON: I want Mr. McCarter to sum up.

MR. VICKERS: I do not think, may it please the Court, we ought to go to the jury on this question until the list or the manner in which these names shall be presented to the jury from the record shall be determined. I understand that was the arrangement. I attempted a moment ago to talk to Mr. McCarter and he was busy.

THE COURT: I suppose you gentlemen will agree upon it. I suggested it early in the trial, but if we cannot agree upon it we will have to take a minute now and dispose of it. There ought to be some simple method devised by which those names can be presented to the jury from the poll list and from the registry list for comparison.

(After some discussion Mr. McCarthy and Mr. McCarter retired into the Judge's chambers to prepare such a list, which it is agreed may be used.

MR. SIMPSON: I am going to ask for an affirmative opening on the part of the State before I sum up.

MR. VICKERS: With permission of the Court and Gentlemen of the Jury:

The defendant in this case, as the law entitles him to do, has called upon the State to make an affirmative opening, that is to say, that all of the evidence being in, for the State and for the defence, that the State now make clear on the record and

before the jury what it is that the State claims that has been shown in the case. That is a right which the defendant has. It is a technical matter. The State is obliged to include all of its claims in this opening, and therefore complies with the request made by the defendant.

Under the first count in the indictment, gentlemen of the jury, which is, stripping it of all of its surplusage and of the complicated legal phraseology that is necessary apparently in the drawing of indictments, that these defendants were and constituted the Board of Registry and Election of the Second District in the Second Ward in the City of Jersey City holding and conducting an election on October 16, 1917, and that they as such committee, knowingly and fraudulently received and deposited and caused to be received and deposited the votes of divers persons unknown to the Grand Jury who these defendants knew were impersonating and voting upon the names of certain persons named in the indictment and upon the names of divers other persons that the Grand Jury did not know; second, that these defendants, again characterizing them as the election officers, etc., and after this election in Jersey City, did wilfully and unlawfully counsel, procure, aid, advise, assist and abet divers persons unknown to the Grand Jury to vote upon the names of others, that is to say, upon the names of so and so and so and so, twelve persons named in the indictment, and upon the names of persons unknown, the persons unknown and the persons last named being registered as voters in said election district; then that these defendants, nam-

ing them in their capacities again, and at this election did give to divers persons unknown to the Grand Jury who represented themselves to be Smith and so and so, etc., naming the twelve persons in the indictment, they and each being registered as voters in said district, etc., to each an official ballot for voting in said special election, and did cause and permit said persons to cast the said official ballots, whereas, the signatures signed by said divers persons in the poll book were neither the same as nor sufficiently similar to the signatures written of the said names so registered to identify the persons signing in the poll book as being the persons having signed the registry, and that said persons were challenged by the defendants, and said persons representing themselves to be registered were not required to take any oath or affirmation by these defendants or anybody; that these defendants, under the provisions of the Election Laws, were charged with the duty of ascertaining the identity or sufficient similarity of the signatures of the voters before receiving the votes of the voters and with the duty of challenging the right of the persons to vote if they failed to ascertain the identity or sufficient similarity of the signature, or of requiring the persons to take the oath provided by law of the qualifications entitling him to vote; that they did, these defendants, in manner and form aforesaid, wilfully neglect and refuse to perform said duty.

That is what we claim to have established here, gentlemen, in this case, just as it is recited in the indictment and stripping the indictment of all legal phrase-

ology, which to the layman may seem intricate and complicated and unnecessary. We claim to have shown here conclusively by innumerable witnesses—almost innumerable; I don't believe I could count them and I don't believe the jury could count them—that there was no heed whatever paid by these election officers to the purpose for which they were put in office—to safeguard for you and for me and for the community and the city, aye, for themselves, were they God-fearing and honest citizens, the right of franchise in this community. We claim to have proved to you that they have utterly disregarded here, by their own testimony conclusively admitting that they paid no attention to it, the thing which caused this statute to be placed on the books, which created the post which they assumed and for which they were paid, the thing that had made the election machinery of this county a public machinery and is charging the taxpayers of the community with the burden of this work, instead of the old primary that was run with a shoe-box and a soap-box —it having been run by parties where the few only were interested and where those few ran it regardless of the right of the man who was outside the party breastwork to have his ballot safeguarded—these men, we claim, have shown by their own testimony and by every act here that they have wilfully neglected these duties, that they have refused to perform these duties which are so perfectly plain in every mandate in the statute; and you do not have to be befogged, the State claims, by any five hundred and two sections of the statute; all you have to know is what

is required to identify the voter; all you need is not, the State contends, the learning of a specialist on election law; all you need is an honest man, and then your vote and my vote is safeguarded. All you need is to have a man who will say, "Write your name down there. Who are you?" The law says, "Where do you live? Write your name down there": walk over to the signature copy registry, which is gotten up at great expense and furnished to these men for that purpose, and then determine, why, Mr. Jones' signature compares. Has he any doubt about it? "Mr. Jones, how old are you? Where do you live? On what floor do you live? Who owns the house?" The questions are there, and nobody who is honest can doubt what his duty was. Nobody can doubt it. You do not have to have five hundred and two or any other number of sections of the Election Law. Nothing complicated about it. The State contends that it has shown to you that element of this last portion of the indictment which I have just read to you, that they wilfully neglected and refused to perform those things which were their duties charged upon them by the law, the duties that they assumed when they took this office, the duties that an honest truck driver can perform—if he wants to perform them.

We contend that we have shown to you by the evidence in the form of the documents. When you come to inspect this poll book and registry there will be no doubt in your minds that this is not a case of a possibility—a dissimilarity of signatures. That does not mean one man who has a nervous hand at one time and

a steadier hand at another time or who has grown a year older or six months older or who has a different pen, but where Mr. "Minch" is written down as Mr. "Mint" and where Mr. "Hotkiss" is written down as Mr. "Hotchkiss," where the names do not look any more like Jones looks like Smith when it is written, where nobody could make any mistake on the subject; then we say that when Mr. Murphy, Mr. Minch or Mr. Wright, or Mr. Corson or Mr. Sheehan or Mr. Clarence McKenna or Mr. Cornelius Kelly or Mr. Peter O'Reilly or James McKeefe or Benjamin Toback or Joseph Curry come in there and we give a ballot and give the license—because nobody could give them the right—the license, the leave to vote, that those election officers then present at that time knew that the man that came in there personated the man whose name was on the registry. Personating does not mean that he was attempting only to disguise him to make him look like him. Not at all. It means that a man—the Grand Jury could not know, gentlemen, you know that, who it was, unless you got the man in the flesh who said, "Yes, I went down there and somebody handed me a name and said, 'You are seventy-eight years old and your name is Benjamin Toback and you live in such and such a street, go on in and offer to vote, it will be all right.' " Could not be done that way. But when Peter O'Reilly is said to have appeared in the flesh and Peter O'Reilly was dead six months before, the Grand Jury says—according to this indictment now—looking at the signatures of Peter O'Reilly in the poll books and looking at the signature of Peter

O'Reilly in the signature copy book, plus the fact that Peter O'Reilly is dead, somebody, unknown to the Grand Jury, went in and personated Peter O'Reilly. Peter O'Reilly is dead. If anybody voted—don't make any difference whether it is an election officer, if the election officer shoved the ballot in—I am merely offering that as an illustration, but I am not intimating it was done—but if the election officer was personating himself—if he put Peter O'Reilly's name in the book, that is what I mean. I am trying to tell you what the State claims to have proven under that count in the indictment, that it does not make any difference whether we have shown to you all of these persons. Any one of the twelve persons who have been set out in this indictment and the State contends any other persons named that has been shown on that poll book to have been voted upon although not here in this indictment is a part of the claim of the State as purporting that indictment. Why? In order that you may know by the course of conduct of that election whether it is true that this was done wilfully, that it was done fraudulently, that it was done knowingly. An honest man can make a mistake. An honest man cannot participate in a course of conduct which on the face—if it is so—one after the other manifestly shows that the person who comes in and signs the poll book is not the man who signed the registry copy book. And so if I want to prove to you that John Smith was permitted to be personated by some other person at that election— I don't know who it is; the Grand Jury says it doesn't know who it is, but John Smith

was personated—I show to you that there is a total dissimilarity, that there could not be any doubt about it, and that proves the fact, if I show you, for instance, that John Smith was dead, that he was personated. Now then in order to know whether that Election Board knowingly and wilfully did this, why, I say, of course, here is Jones and Doe and Roe, and so forth, they did the same thing; therefore you have this evidence on the question of guilty intent and guilty knowledge.

If I hand you a half a dollar in a business transaction, and it is counterfeit, you come back to me and you say, "You passed a counterfeit on me," and I say, "Well, is that so. I am sorry." But if you made an investigation and you found I had handed the same kind of a counterfeit to every member of the Grand Jury, would you think I did it innocently or knowingly? You would want that information, wouldn't you, as to whether you were an isolated victim, whether it was an accident on my part that I might have had the counterfeit half dollar, but if you went to every other member of your jury, and every other member in this court room, and you found that that had been my course of conduct, by getting rid of spurious half dollars, you would say, "Well, that bugger is a crook," and you would be entitled to do it, and you would be entitled to the evidence of all these men in order to prove my course of conduct, whether I had guilty knowledge. So I say we have established that to you here by this volume of evidence of these persons other than the particular persons then named, the twelve, to show you the

guilty knowledge.

We claim to have established, and I think there is no contradiction on it, that the persons named in the indictment as having been personated are all registered. It is not alleged in the indictment that they are duly qualified voters. We just say they are registered. It is a fact. It is not disputed that they are not. We claim that with respect to each name and as far as our proof goes that there was a vote deposited purporting to be the vote of the person. Now each person who has come here has said in the presence of the signature copy book that that is their signature, that is where they signed, and I understand the list will be given to you to show you. Each one himself said: "No, I didn't sign it in the poll book at all." The State contends there is no dispute on that point. Nobody has uttered any testimony to the contrary. No man comes forward and says that what the State says, that a man signs a signature copy book of the registry and somebody else personated him and came forth and signed for him in the poll book—no one has yet come forth and said on any charge that the State has made that the man who signed the signature copy book also signed the poll book. Nor do these defendants say it is so, excepting in the general way, that nobody knowingly was permitted to vote there who was not registered. Registered, the State contends, gentlemen, means registered as the law requires. If there were no signature on the registry there would be no registry. And a man cannot come into Court, having taken the office and reaped the profits, the State says, and say, "Why, I just look

down here to see whether John Smith at 133 Pavonia Avenue or Herman Tamke, 133 Pavonia Avenue was down in the registry.'' Supposing Herman Tamke had come in and that had already been written there and then Herman Tamke did not sign, he would not be registered; and the law has placed that safeguard around the vote of the voters since it became the machinery of this State. It was taken out of the hands of the political organizations as a matter of convention of their own, and you are here to protect that. You are here to protect these defendants, under the evidence in this, and nothing else. When you have done that the State is satisfied, you are satisfied, and the defendants cannot help but be satisfied. They honestly have no complaint when you decide on the evidence under your oaths.

I think I have covered the point.

(Mr. Hudspeth in the course of summing up to the jury read from a list in his hand apparently a list of violations or wrongful entry or wrongful voting).

MR. SIMPSON: We have not seen this list from which Mr. Hudspeth is reading.

THE COURT: Counsel tells me that they have not seen this list.

MR. HUDSPETH: They don't have to. This list is my own, my own memorandum at present.

THE COURT: The list that was made up for the jury—

MR. HUDSPETH: I am using it now.

MR. SIMPSON: That is the list you made up for the jury. We were to see it before you used it. You are blithely using it.

MR. HUDSPETH: This list is based on evidence in the case.

THE COURT: Let him see it now.

MR. SIMPSON: We may not consent to your using it. (Mr. Simpson looks over the list).

We object to the use of this list because it does not correctly state the registry. The registry states the name of Charles Clark, in the registry. They have it here Charles Ross. Charles Ross is the signature which you say has been made by Charles Clark.

THE COURT: Counsel has been spending some time on that incident, in his summing up.

MR. SIMPSON: We didn't see the list.

MR. McCARTER: This paper is really in the form of a brief, it is argument. It goes a great deal further than I understood it was to go. I don't know that it makes much difference, but it is not what we understood it was to be. We understood it was to be simply a list of the pages in which they say there were discrepancies. They have in one case O'Reilly, in one case Reilly, in another. I understood it was to be simply a memorandum so that the jury would know where to turn to,

instead of trusting to their memory, in examining these books. I think this is not what we understood it to be. I don't see how there is any room for misunderstanding about it.

THE COURT: I thought counsel had agreed that a memorandum should be simply the names referred to by the testimony and the cross references from the poll book, and the registry book, so the jury can readily and conveniently and immediately refer from one to the other for purposes of comparison.

MR. McCARTER: That is what I understood.

MR. SIMPSON: We don't consent to this going to the jury at all. It is not what we agreed to do. We have not seen it. If he uses it as a memorandum of course it is his own memorandum.

The COURT: There ought to be—the jury ought not to be asked to weigh and grope around in the dark of this great volume of testimony which has been taken. There ought to be a key to these names. If necessary I will stop this trial now until one is prepared.

MR. VICKERS: If the Court will permit, after the Prosecutor gets through summing up, through with using his own memorandum—I have not seen it—I will prepare a list in accordance with the agreement of counsel and submit it to counsel.

———

(Mr. Hudspeth was commenting on the flight of Kelly to Bridgeport).

MR. SIMPSON: I object. There is no proof of flight. The Prosecutor has no right—

MR. HUDSPETH: I claim he fled. I claim he fled to avoid the consequences of his act as an election officer.

MR. SIMPSON: I ask for a mistrial and for your Honor to instruct the Jury there is no proof in this case of flight.

THE COURT: I will not direct a mistrial and I will deal with it in the charge at the proper time.

(Mr. Hudspeth continued his argument).

MR. HUDSPETH, (Continuing). "Unger walks up flippantly to him (Mr. McCarthy), and says, 'How long am I going to be kept here?' "

MR. SIMPSON: The testimony is that this occurred when the gentlemen were here on election business, not when they were arraigned.

MR. HUDSPETH: I think you are right; when they were here on election business, and Mr. McCarthy was here on his election business. In the corridor he comes to him and wants to know if he can talk to him. He asked him to come to the office. Is there anything wrong about that? Is there any inveigling of Mr. Unger to come to the Prosecutor's

office, and undue advantage to be taken of him, and he to be railroaded to prison by reason of the machinations of Mr. McCarthy? Unger goes down. Finally there is a meeting in the Prosecutor's office, and this man Hosbach, is there,—another defendant. Don't you believe this thing occurred in that office? What I am going to recount—have you any doubt that it is true? If you have a doubt, gentlemen, of the fact, of what Mr. McCarthy says regarding what occurred there, then you might as well throw out all the evidence in this case. Mr. McCarthy didn't know Mr. Unger. He knew him as one of the election officers. Mr. McCarthy had worked up this case, he had been on the scent of this fraud. Does Mr. Simpson mean to insinute that Mr. McCarthy deliberately put his finger on the name of the signature of the voter and then tried to mislead Mr. Unger?

MR. SIMPSON: Of course not.

MR. HUDSPETH: (Continuing). No, but the argument was pretty near it. Mr. McCarthy points to the name, and says to Mr. Unger, "Did you write that?" "Did you write that?" And Unger denied that at first.

MR. HUDSPETH: (Continuing). Unger says no, "my name is not in the poll book, but I voted,—" Absolute disregard of the law. Unger goes from the place into his own district and votes, and they don't even take the trouble to put him on the poll book, but let his vote go in the box—

MR. McCARTER: I desire to have it recorded that that remark has been made by the Prosecutor in summing up. That was the evidence we objected to, strenuously, we think it was illegally admitted. We desire to have it appear on the record that he has used it in summing up.

MR. HUDSPETH: (Continuing). Now here is what Mr. McCarthy said Mr. Unger said. It is partially corroborated by Mr. Hosbach. This statement, I say, is truthfully made by Mr. Unger when he wanted to tell the truth, regarding what happened at this election on the day in question.

(Mr. Hudspeth reads a portion of Mr. McCarthy's testimony).

DEFENDANTS' REQUESTS TO CHARGE.

1. There can be no conviction in this case unless the jury believes that the evidence establishes, beyond a reasonable doubt, that the defendants or some of them, wilfully neglected or refused to perform the duties imposed upon them; or fraudulently and knowingly acted in violation of the election law, as charged in the indictment. Mere inattention to provisions of the law of which they were ignorant, or neglect to perform duties which they did not understand or comprehend, are not sufficient to constitute guilt under this charge.

2. All of the election officers are not charged by law with the duty of comparing the signature of the voter, with the signature on the registry book; only one member of the Board is charged

with that duty. If that one is satisfied with the signatures and shall have so manifested, then there is no duty cast by the law, upon the other members of the Board to pursue the subject, and the mere fact that the jury may think the two signatures in any given case, are not the same, or not sufficiently similar to identify them as being written by the same person, does not of itself justify the conclusion that all of the accused can be convicted.

3. There can be no conviction, arising out of dissimilarity in the signatures in this case, unless it is proven that the person connected knew or had reason to believe that they did not correspond. All members were not bound to compare the signatures, and those who did not assume that task, had a right to honestly rely on the manifested expression of satisfaction made by the member who did compare. Unless it is proven beyond a reasonable doubt that all of the defendants had knowledge of this dissimilarity, and wilfully neglected and refused to pursue the matter, as provided in the Act, then they cannot be convicted because of the dissimilarity in the signatures.

4. If the defendants failed to perform any of the duties required by the act, through ignorance, such failure can not constitute guilt under this charge.

5. In order to convict all of the defendants, all must be shown beyond a reasonable doubt to have personally and knowingly violated the provisions of the act charged in the indictment. One or more can be acquitted, and one or more can be convicted. None can be convicted, unless he is shown to have wilfully neglected or knowingly or fraudulently violated the provisions of the law,

referred to in the indictment.

6. All the members of the Board are not required to perform the same act, or to participate in every step of the proceeding. Each one is only required to perform the part assumed by, or imposed upon, him; and so long as he does so, to the best of his ability, he cannot be criminally liable for the misdeeds or shortcomings of his associates, unless he personally participated therein.

7. The failure, if there were a failure, to O. K. the signatures in the poll book, cannot be a ground of liability under this indictment.

8. Even if the failure to initial the signature can be considered in this case, such failure must have been wilful or fraudulent, and not mere neglect.

9. The mere fact that persons voted at this election, who were not entitled to vote, does not constitute or establish guilt in these defendants. Before they or any of them can be found guilty because of that fact, they must be shown, beyond a reasonable doubt, to have wilfully or fraudulently or knowingly permitted it.

10. Mere negligence or inattention or stupidity, which may have led to these impersonations and false voting, is not enough. There must have been wilful knowledge of the act.

11. If the false voting was inspired by some one outside of the room, and took place innocently, so far as the defendants were concerned, then they cannot be convicted.

12. The defendants cannot be convicted because of a lack of comparison of the names as written in the poll book, with the same name as

written in the registry, nor can the mere failure on their part to make such comparison be charged against them, unless they knew of the provisions of the law in that respect, and wilfully violated them.

13. The Assistant Prosecutor of the Pleas, as such, has no authority to instruct the Boards of Election how to perform their duties; and any instruction or advice he gave them was not authoritative, nor entitled to more credence than that of any other intelligent man. The statute imposes upon the Secretary of State the duty of issuing instructions, and the Board was under no obligation to obey any instructions that Mr. McCarthy may have given.

14. The Court is asked to charge and instruct the jury that it is the duty of the State to prove beyond a reasonable doubt, that the defendants sought to be found guilty, knew that the voter or voters, who, it is alleged and sought to be proved, voted illegally, were not entitled to vote at the polling place alleged in the indictment; that the knowledge of such defendant must be proven by proof of actual knowledge on the part of such defendant, of the fact that such alleged voter was not the man whose name was on the registry book, but that such alleged illegal voter was a person other than the man whose name was on the registry book; that, whether any such vote which was cast was legally or illegally cast and was actually known to be illegally cast by such defendant, when deposited into the ballot box, and such defendant did so deposit by his own physical act such said ballot into said ballot box or that he abetted said act, must be proven to the jury by evidence as to each such ballot alleged to have been illegally cast, deposited in the ballot box and voted, which as to each such al-

leged illegal vote, will prove to the jury beyond a reasonable doubt that such defendant actually knew the fact that the vote was to be voted illegally and that such defendant did so deposit by his own physical act such said ballot into said box wilfully, fraudulently and with a guilty knowledge thereof on the part of himself, such said defendant, or did so abet said act; that in coming to its verdict the jury must consider the evidence, as to each ballot alleged and sought to be proved to have been illegally cast, and as to the conduct of each defendant, whether as to each such ballot, such said conduct was legal or illegal; that actual knowlege means that as to each said defendant, he, such said defendant, knew the fact to be that the individual person so offering to vote each such ballot, did not have the right to vote in this ballot box, viz. at the polling place alleged; that the proof thereof must be beyond a reasonable doubt of such guilty knowledge and acts on the part of such defendant, and that proof only of negligence or carelessness or inattention on the part of such said defendant does not satisfy the standard of proof required by law to convict of the offence charged by the indictment, viz. proof thereof that a defendant is guilty beyond a reasonable doubt; that what one defendant did or said, or what one defendant saw done or heard said, as to any ballot alleged to have been illegally voted or voted by an alleged illegal voter, must be proven as to each ballot, alleged to have been voted illegally, beyond a reasonable doubt to have been said or done by said defendant, or that such defendant heard said saying said or saw said act done; that if the State so proves as to any ballot alleged to have been illegally cast, beyond a reasonable doubt, and if any such act seen or saying heard, which was done or said by another defendant, was or was not seen or heard or comprehended by any of the others of the ac-

cused in a manner to apprise such other or others that a ballot was offered and about to be offered into the ballot box by a man not entitled to vote at such polling place, where such ballot box was, is a question for the jury, and the jury cannot convict such defendant unless the proof be beyond a reasonable doubt of such character and strength to make the jury believe such defendant to be guilty as charged in the indictment; that in order to convict a defendant as charged by this indictment, irrespective of what the jury finds such defendant did or said, or saw done or heard said, or how such act or saying was comprehended by such defendant, in order to convict, the jury must first find that such defendant wilfully and knowingly did place or actually aid, assist and abet by positive act or conduct of his, such said defendant, in the placing of, such ballot alleged to have been voted illegally into and in said ballot box, and unless this be proven to the jury beyond a reasonable doubt, as regards each ballot testified about, by its own separate proof, the jury must acquit such defendant.

15. The Court is requested to charge the jury that it is the province of the Court to instruct the jury that it is the province of the Court to instruct the jury on questions of law by which instruction the jury is bound, but the jury is the sole function in the Court to fix and determine the facts in the case together with its, the jury's sole duty and responsibility to determine who of the witnesses told the truth, testified with accuracy and the relative mental capacity and memory of the witnesses at the trial; that the jury can believe expert testimony as against the testimony of witnesses testifying to facts and vice versa, the testimony of fact witnesses as against expert witnesses, or both kinds of evidence combined, but in order to convict any defendant it must be

proved beyond a reasonable doubt against such defendant that in the light of all the testimony in the case, the difference, if any, between the signatures on the registry book and the signature as signed by a man offering to vote under such name was so apparently different—taking into consideration the quality and type of penmanship in the signature—as to apprise such defendant as saw the signature, that said signature was a forgery and that it would appear to such defendant to be a forgery, the jury having had before them such defendant at the bar of the Court, and by its, the jury's observation of such defendant it being able to form its estimate of the defendant's ability to discern between the signatures if to any extent such signatures differed, inexperience in judging handwriting being merely a lack of ability and not an offence against the law, for which a defendant cannot be convicted.

16. The Court is requested to charge the jury that if there is found, in its judgment, to be a question of veracity between the testimony of the State's witness or witnesses and the defendants or any of them as to whether such defendants or defendants knew by previous acquaintance the personal identity of any voter, whose name was on the registry book, who says he did not vote at the Commission Government Election, in order to convict, the State in sustaining its necessity to prove the accused guilty beyond a reasonable doubt, must produce substantiating proof regarding each ballot alleged to have been illegally voted; that differences in the signatures on the election poll books is not necessarily conclusive of guilty, but merely relevant to the issues now being tried under the indictment, and before the accused can be convicted, this as well as all other proof must leave no reasonble doubt in the minds

of the jury otherwise the jury must acquit such defendant or defendants.

17. The Court is requested to charge the jury that before it can find any defendant guilty of false and illegal tallying, counting and certification of votes cast at this polling place in the Commission Government Election, it must find such defendant had actual knowledge that an illegal vote had been cast into the ballot box; and that this vote was counted in the total of votes and such total certified to have been cast and that every allegation of the indictment must be proven against such defendant sufficiently to constitute some offence against the law under the facts alleged by the indictment, beyond a reasonable doubt, and that the presumption of innocency of such defendant will protect him, such defendant, from conviction unless this burden of proof has overcome it as to any ballot alleged and sought to be proved to have been illegally voted, and that the conduct of such defendant during the election was wilful as to any illegal vote cast, if any illegal vote was cast.

18. The Court is requested to charge the jury that it is the right of each of the defendants, or any one of them, that the State prove each element in the charge preferred by this indictment against them, or any of them, as to any ballot, alleged to have been illegally voted, beyond a reasonable doubt, and if any such doubt of the guilt of any or of all of them, the said defendants, exists in the mind of any one or more than one of the jury, it is the duty of such juror or jurors to vote for an acquittal of the defendants or such defendants, notwithstanding that a disagreement of the jury is caused thereby.

19. The Court is requested to charge the jury that as to any ballot cast under the name of any

man who has testified that he neither registered or voted at the General Election in 1917, but whose name was voted on the Commission Government election in 1917, by some one other than himself, the accused, in the absence of other proper proof that there was but one man bearing the name of the person so registered, and conforming otherwise to the question and answers therein as to the address and other identification requirements, of the election law, unless these facts were actually known to such defendant or defendants, such defendant or defendants must be acquitted as the State has not proven their or his guilt beyond a reasonable doubt.

20. The Court is requested to charge the jury that the jury may acquit all or any one of the defendants and should do so if not convinced of the guilt beyond a reasonable doubt.

The Court charged the jury as follows:

GENTLEMEN OF THE JURY:

This case has occupied three very long days, and I have no doubt it has been a matter of considerable hardship to you that you have had to sit as long, and be kept together, as in the judgment of the Court it was found necessary to do.

I need not, I am sure, dwell upon the importance of this case. I would like, however, before entering upon my charge, to emphasize to you the seriousness with which you should consider the evidence, and arrive at your verdict. It should not be idly done, there should be no clamor about it; there should not be any outside pressure on your minds as to what some one else thinks is right or wrong in this case. I charge you that it is your duty to determine your verdict in this case, solely according to the evi-

dence, and on your conscience. Do not be moved by passion, do not confuse the issue, do not present a verdict because you think it will win popular favor, or through sympathy for these defendants, one or the other.

I admonish you to carefully consider all the evidence, quietly and conscientiously, with regard to your oath as jurors, but to be carried away by any passion, not to be carried away by anything, excepting the fair consideration of the evidence in the case. I have said that the case is important and I need not repeat that, except that I do not want the jury to determine the case simply because it is important, but to carefully consider the evidence as to the issue joined. And I am going to try, in as little time as seems to me proper, to present to you what seems to me to be the real issue in this case.

These defendants are charged by indictment, by the Grand Jury, with having done something; there are three counts. The first count in the indictment alleges that the defendants were election officers, that they were in charge properly of an election then being held to fill the vacancy caused by the death of one of the former City Commissioners of Jersey City; that these defendants, acting as such Board of Election, knowingly and fraudulently received and deposited in, and caused to be received and deposited in, the ballot-box, the votes of divers persons whose names were unknown to the Grand Jury, whom the defendants then and there knew, and who then and there impersonated, and voted upon the names of, John J. Murphy, Henry Minsch, John Wright, and a number of others whose names will appear to you in the indictment, and other persons registered as voters in said district at such special election contrary to law—that is to say, that they did this thing contrary to law.

The second count in the indictment charges that these defendants were, as before stated, members of the Election Board, and as such, while in charge of the special election referred to, and acting as such Board, wilfully and unlawfully counselled, procured, aided, advised, assisted, and abetted divers persons, whose names are unknown to the Grand Jury, as stated in the indictment, to vote in said district, upon the names of other persons, to wit, these names—it goes on again— John J. Murphy, and others, as heretofore, and other unknown persons; these last named persons being then and there registered as voters in said district, contrary to the form of the statute.

There is a further count in the indictment, that these defendants, acting as such Election Board as aforesaid, then and there gave to divers persons, whose names are unknown, and who represented themselves to be John J. Murphy, and others—to each of these unknown persons—an official ballot for voting at such election, and caused and permitted the said divers persons to cast those official ballots in the ballot-box, whereas the signatures signed by said divers unknown persons in the poll book were neither the same nor sufficiently similar to the signatures written by the said named person, so registered at the time of registration, as to identify the said signatures referred to, as having been written by the same persons who wrote the signature so registered. That the divers persons so voting, that is, these unknown persons, were not challenged in their right to vote by the defendants, that these divers persons did not take the oath concerning their right to vote, as required by law. That count goes on further to charge that these defendants, being charged with the duty under the election law, of ascertaining, prior to receiving the vote, the identity or the sufficient similarity of the signatures of the voters, made at the time

of registration, with the signatures of the voters made at the time of voting, and with the duty of challenging, in the event of their failure to ascertain the person applying to vote, or of requiring them to take the oath provided by law, did, in manner and form aforesaid, wilfully neglect and refuse to perform their duty according to law.

The State, as I understand it, does not ask for a conviction—I do not see that there could be one in this case—because of the failure of the election officers to comply with some provision of the eleetion law in what might be termed to be a technicality; it is not urged that because they did not close the polls when they went to lunch, they should be found guilty; nor that they did not write their initials in the signature column, but wrote an "O.K", as we use the term "O.K." instead. None of those things are sufficient justification for a verdict of guilty in this case. There should be no verdict on any such things as that.

The State urges that these defendants knowingly and fraudulently permitted people to vote on the names of others. That is the only thing you are trying, under the first two counts in the indictment, and the only thing you are to consider in the determination of that question, as I have stated, you are to be guided by the evidence and your conscience. The indictment charges three offences, in three separate counts. They are all what the law calls cognate or similar offences, therefore are properly charged in one indictment. If you find that these defendants or any of them are guilty beyond a reasonable doubt of any of the crimes charged, then the defendants, or one or more of them, as you so find, are guilty as charged. You should take up in this case the guilt or innocence of the defendants separately. This is not an indictment for con-

spiracy, and what one has done, as you may find, is not to affect the other or others. As to each one, before finding a verdict of guilty, you should be satisfied by the weight of the evidence beyond a reasonable doubt that the defendant, under consideration, is guilty of at least one of the counts of the indictment. If you do not so find, you should find, as to that defendant, not guilty.

I have been requested to charge you—there can be no conviction in this case unless the jury believe that the evidence establishes beyond a reasonable doubt, that the defendants or some of them, wilfully neglected or refused to perform the duties imposed upon them, or fraudulently and knowingly acted in violation of the election law, as charged in the indictment. Mere inattention to provisions of the law of which they were ignorant, or neglect to perform duties which they did not understand or comprehend, are not sufficient to constitute guilt under the charge.

Also, all of the election officers are not charged by law with the duty of comparing the signature of the voter with the signature on the registry book—only one member of the Board is charged with that duty. If that one is satisfied with the signatures and shall have so manifested, there is no duty cast by the law upon the other members of the Board to pursue the subject, and the mere fact that the jury may think the signatures are not sufficiently similar in any given case, to identify them as being written by the same person, does not of itself justify the conclusion that all of the accused should be convicted.

But in that connection I also charge you that while the law says that one of the members shall compare the signature book, as I have stated, the comparison of the signature and answers on election day with the signature and statements shall be in full view of the watchers, challengers or agents, and the right to challenge voters shall

exist until the ballot shall have been deposited in the ballot box, if the signatures of the voters or the answers to the question made by the voter do not correspond, it shall be the privilege of the watchers and challengers to challenge, and the duty of each member of the board of registry and election to challenge unless some other authorized person shall challenge.

There can be no conviction, arising out of the dissimilarity in the signatures in this case, unless it is proven that the person connected, knew or had reason to believe that they did not correspond. All members were not bound to compare the signatures and those who did not assume that task had a right honestly to rely on the manifested expression of satisfaction made by the member who did compare, unless it is proven beyond a reasonable doubt that all of the defendants had knowledge of the dissimilarity, and wilfully neglected and refused to pursue the matter as provided in the act, they cannot be convicted because of the dissimilarity in the signatures.

If the defendants failed to perform any of the duties required by law, through ignorance, such failure cannot constitute guilt. In order to convict all of the defendants all must be shown beyond a reasonable doubt to have personally and knowingly violated the provisions of the act charged in the indictment. One or more can be acquitted, and one or more can convicted. None can be convicted unless he is shown to have wilfully neglected or knowingly and fraudulently violated the provisions of the law, referred to in the indictment.

All the members of the Board are not required to perform the same act, or to participate in every stage of the proceedings. Each one is only required to perform the part assumed by, or imposed upon, him, and so long as he does so, to

the best of his ability, he cannot be criminally liable for the misdeeds or shortcomings of his associates, unless he personally participated therein.

The failure, if there were a failure, to O.K. the signatures in the poll book, cannot be a ground of liability under this indictment, but the failure to O.K. may be considered by you as bearing on the other evidence in the case.

Even if the failure to initial the signature can be considered in this case, such failure must have been wilful or fraudulent, and not mere neglect.

The mere fact that persons voted at this election, who were not entitled to vote, does not constitute or establish guilt of these defendants. Before they or any one of them can be found guilty because of that fact, they must be shown, beyond a reasonable doubt, to have wilfully, or fraudulently, or knowingly permitted it.

Mere negligence or inattention or stupidity, which may have led to these impersonations and false voting, is not enough. There must have been wilful knowledge of the act.

If the false voting was inspired by some one outside of the room, and took place innocently, so far as the defendants were concerned, they cannot be convicted.

The defendants cannot be convicted because of a lack of comparison of the names as written in the poll book with the same names as written in the registry, nor can the mere—I will eliminate that sentence. I started to say something which I conclude not to say, in that respect. I have tried to follow the exact language of counsel. If I have by any mischance misstated it, it is not because I have intentionally done so, but the writing is not always quite clear to me.

I am also requested to charge you, and I do charge you, it is the duty of the State to prove beyond a reasonable doubt that the defendants

sought to be found guilty, knew that the voter or voters, who it is alleged and sought to be proved, voted illegally, were not entitled to vote at the polling place alleged in the indictment; but the knowledge of such defendants must be proved by proof of actual knowledge on the part of the defendants, of the fact that such alleged illegal voter was not the man whose name was on the registry book, but that such alleged illegal voter was a person other than the one whose name was on the registry book.

Also, whether any such vote which was cast, was legally or illegally cast, was actually known to be illegally cast, by such defendant, when deposited in the ballot box, and such defendant did so deposit by his own physical act such ballot into said ballot box or that he abetted said act, must be proven to the jury by evidence as to each such ballot alleged to be illegally cast, as to each alleged illegal vote that said defendant actually knew the fact that that vote was to be illegally cast, and that such defendant did so physically deposit, by his own physical act, such said ballot in the ballot box, wilfully and fraudulently and with guilty knowledge thereof on the part of himself, such defendant, or that he aided or abetted in said act.

In arriving at your verdict the jury is to consider the evidence as to each ballot alleged and sought to be proved as having been illegally cast, and as to the conduct of each defendant, whether as to each said ballot, such conduct was legal or illegal. That actual knowledge means that as to each such defendant, he, such defendant, knew the fact to be that the individual person so offering to vote each such ballot, did not have the right to vote in this ballot box; that the proof thereof must be beyond a reasonable doubt of such guilty knowledge and acts on the part of the defendant or defendants, and that proof only of

negligence or carelessness or inattention on the part of such said defendant does not satisfy the standard of proof required by law to convict of the offence charged, namely, proof thereof that the defendant is guilty beyond a reasonable doubt.

In this case, as in all other criminal cases, the defendants and each of them are presumed to be innocent and that presumption remains with them until you by your verdict find them guilty. The burden of proof is on the State. The defendants are entitled to the benefit of all reasonable doubt on every phase of the case.

The election law requires this Election Board to keep what is known as a poll book. Previous to delivery of a ballot to the voter, a member of the Board having charge of the poll book, is by law required to enter therein in the appropriate column set apart for that purpose, the name of the voter, his residence, street number, and so forth; the voter, prior to receiving his ballot, is required to sign his name; after the voter has signed, and before delivery of these ballots, one of the members of the Board is required to compare the signature made by the voter in the registry book on registration day; if the signature is the same or sufficiently similar to the signature written on registration day to identify it as being written by the same person as the signature on registration day, such member shall so certify, under the statute, by writing his initial in the proper column.

By a further provision of the statute, the comparison of the signature shall be had in full view of the watchers, challengers or agents. If the signatures do not correspond it is the privilege of the watchers or challengers to challenge, and it is the duty of each member of the Board to challenge unless some other authorized person shall challenge. Then follows, in the statute, the

provisions whereby, if the voter is challenged, the Board shall ask him certain questions, based on the questions asked the persons registered on registration day, the answers to which appear on the signature book, or registration book; if the answers do not correspond the law requires that a note of such fact is to be made in the column in the poll book.

The object of this legislation must be readily apparent; having registered, with his previous signature, on one of the registration days, and having answered certain questions, he has given a record which permits investigation as to his right to vote. If a stranger applies to vote on his name, the Election Board has this information before it; and when he signs his name the two signatures are before the Board for comparison. The purpose of this is to prevent fraud. It was the duty of the Election Board to follow the law. If the signature or answers to the questions did not correspond, the challengers or watchers are privileged to challenge, but it still remains the duty of each member of the Board to challenge, if some one else did not do so.

In this case, therefore, the jury will consider what the defendants did, any one or more of them. After the voter signed, did one of the members of the Board compare the signature made in the poll book with the signature previously made in the registration book? If he did, did he so certify in the book with his initials or O.K.? Did the signature of the voters correspond? If they did not, in the absence of any challenger or watcher, challenging at that time, did any member of the Election Board challenge? If these signatures did not correspond it was the duty of the Election Board to challenge and to proceed to ask questions, to check up the entries with the information in the registration book. The purpose of having the signatures to compare

was to insure, if possible, having an honest election. If the signatures, so compared, were the same, or were sufficiently similar, no further inquiry seems to have been necessary. If the election officers did examine the signatures, did the signatures compare, in their opinion? Were they, in their opinion, sufficiently similar to reasonably justify them, the defendants, in believing that the proposed voter was the same person who had previously registered? If you find that, these defendants should be acquitted. But look at the signatures, look at the spelling, the writing, to compare them, and say whether, as election officers entrusted with the conduct of this election, you believe they, used such care as the law requires, in the comparison of the signatures, to satisfy themselves of the identity or sufficient similarity of the signatures. The law does not require your test, or my test, or an expert's test, of comparison. It requires their examination to satisfy themselves, and if you believe they satisfied themselves by the comparison which the law requires, and that they had no other knowledge of false votes, or that false voters were voting, the defendants should be found not guilty. As bearing upon whether they did this, as bearing upon whether they did this, in the comparison you have the right to take all the circumstances, all the work they did, or permitted to be done in that election on that day, the number of witnesses who have testified here that they did not vote, yet whose names were falsely voted upon, seemingly, you have a right to take the poll book and compare the signature entered therein in the column where the voters were required to sign. If those signatures, or a large number of them, were entered by the same hand, it is then not only very obvious that the election law has not been complied with, but it is also obvious that the signatures are not the signatures of those

whose names are entered in the registration book, and if that was done, and one of these defendants knew it, a comparison of the signatures was superfluous. Such knowledge would show guilt, and it is important in this connection to consider the testimony of witnesses that they and these election officers, or one or more of them, had been acquainted for several years, knew them well enough to call each other by their first names, and that it appears that some other person voted that day on their names, if you believe such testimony to be true, beyond a reasonable doubt, and if these men—I will change that—if these men were so acquainted, if you believe such testimony to be true beyond a reasonable doubt, how could these defendants or any one of them innocently have permitted strangers to vote on their names? But that is a fact question for you to say, for you to determine. I am drawing it to your attention in order that you may think it over. All this evidence may be considered, with the other evidence in the case, as bearing upon the alleged wilful neglect or their alleged refusal to perform their duty, or alleged knowing and fraudulent acts contrary to law; in other words, gentlemen, take all the facts, and say whether because of what was done or was not done by these defendants or any one of them, they were receiving votes from persons whom they knew were not the identical persons of the same name, they had previously registered. If they knew, irrespective of comparison, irrespective of making a comparison, the making of a comparison thereafter could not relieve them, that is to say, if they knew that these persons who were voting were not the persons, irrespective of the signatures in the books, the mere fact that these defendants or any one of them compared the signature, with that knowledge, would not relieve that defendant from a verdict in this case, as these defendants are

charged with the duty of comparing the signatures, if the jury finds that they wilfully neglected and refused to perform that duty or that they knowingly and fraudulently acted in contravention and violation of these requirements, they should be found guilty.

I have already stated—I feel however, I want to repeat it—each of these defendants is to be considered separately. You may find all guilty or all not guilty, you may find one guilty and two not guilty, you may find two guilty and one not guilty. The facts are for the jury and for the jury alone. It is for the jury alone to say whether the defendants or either of them wilfully neglected or refused to perform the requirements of the law already referred to. It is for the jury alone to say whether any one of the defendants had knowledge, and with that knowledge permitted people to vote who were not the identical parties who had previously registered.

Guilt is not to be inferred because the wrong was done. The defendants are protected by the presumption of innocence, to which I have already referred, and guilt must be established to your satisfaction by the weight of evidence beyond a reasonable doubt. The testimony on any one point, insofar as it tends to show guilt on the part of one defendant, is not to be considered to show guilt on the part of any other defendant. These defendants are not being tried for conspiracy. They stand alone, and the evidence to show guilt must be shown as to each one separately. There is to be no inference of guilt against any one or more simply because you find guilt against one. If one of the defendants had knowledge of persons applying to vote, that persons applying to vote were not the identical persons who were previously registered, and the others did not have that knowledge, the knowledge of one is not to affect any of the others.

If you find that one or more of these defendants left the city shortly after the election, you may consider whether that is evidence to justify you in believing that they left, that they, one or both, left the city because of their previous conduct as members of the Election Board. If you believe they left the city because of misconduct you may consider that as bearing upon, or as indicating, their guilt. In considering that testimony, however, you should be satisfied by the evidence beyond a reasonable doubt, first that the defendants did, or that the defendants indicated, did flee, before you consider it as indicating their guilt, or the guilt of either of them.

If there are two constructions which can reasonably be placed upon their conduct, one of innocence and one of guilt, they and each of them are entitled to the benefit of the presumption of innocence—of the innocent aspect of that. The jury will not lose sight of the fact that these election directions are not mere printed formulae which the Election Board may pass over or disregard as they please, because they are inconvenient or not to their liking.

Our whole national government, state government, our local government, is founded on what we call democracy, democracy secured through the ballot. It is the only real chance the individual has to express his opinions. That is if the ballot is to be destroyed by dishonest or by wilfully neglectful election officers, then our boasted democracy fails utterly. A purpose that the people of this state have had in mind over a long period of years is the securing of an honest ballot, and the free rights of each voter to cast his vote, to have it honestly recorded and counted, and even to safeguard his refusal to vote. One important thing done to secure this was to require personal registration before the election. That gave the opportunity to all interested to

see that only qualified voters were placed in a position to vote. Then we added the signature book. That seems to be the last safeguard. It is not one which can be used or not, at the will of an Election Board; they are required to use it in the manner the law directs, they cannot cast it aside as a matter of inconvenience or in the rush of business, or under any such excuse. They are charged with a duty to perform in a certain specified way. An important thing which they are to do is to compare the signature offered by the voter with the previous signature in the registration books. Some of the evidence in this case, as I recall it—what the evidence is is for you alone, if I misstate it, you will take your own version of it, not mine,—some of the evidence, as I understand it, is practically an admission that a comparison of the signatures was not made, and that this was not done because they considered it sufficient to ascertain that the voter's name appeared on the registry, and if they found it there, they permitted the man who applied to vote in that name, without making the signature comparison.

In that connection I have had the stenographer write up for me some of the testimony. I will take the time now to read for you from the testimony of Mr. Kelly. He was asked:

"Q. What did you do when Smith came in or Fleming—that was after Mr. McCarthy had been there?

A. Yes, it was in the afternoon.

Q. Well, then, you looked at the registry, did you?

A. Yes, surely; looked at the register to see if he registered and voted at the last general election.

Q. If you found the same name on the registry and he answered the questions, you let him vote?

A. Yes.

Q. You didn't pretend to compare the penmanship?

A. No, I did not.

Q. Flemming. Now then, a man comes in to you, and he gives you the name of Thomas Flemming?

A. Yes.

Q. And the boat, whatever it was Theresa E., Erie Railroad,—would he give you that name?

A. Yes.

Q. Then you take this book, would you, and you would look to see if there was a Thomas Flemming here?

A. Yes.

Q. As soon as you found his name there would you then know he was entitled to vote, or would you run across and ask him all the questions and see if the signature was the same, or would you simply find his name? A. Just find his name, was all.

Q. If you found the name and knew he was registered you would let him take—

A. Let him vote, yes.

Q. You did that in every instance—I mean to say for this page you would run down and look at Smith, Flemming, Wright, Turner, Cross, Fox, without going over here

A. Yes.

Q. That was every case that you entered the name of the voter, unless there was something suspicious about the name of the voter you would do that?

A. Yes."

THE COURT: Mr. Kelly, later on, the same witness, was asked:

"Q. Suppose you look over the book and see if you can find any O.K.'s, any names that you wrote in there?

A. Yes sir.

Q. Start it right off with the first name on the first page of writing, isn't that so?

A. Yes.

Q. And you put a ditto mark, that is to say, two lines?

A. Uh-huh."

THE COURT: That is, I suppose, 'Yes.'

"Q. And the next one?

A. Yes.

Q. To indicate that that was O.K. too?

A. Yes sir.

Q. Is that right?

A. Yes.

Q. What did you mean?

A. The man was checked up was registered and was entitled to vote.

Q. How did you check him up

A. Look in the registry book.

Q. Did you look in the registry?

A. I can't say that I did.

Q. Well, you having put the O.K. there, how did you satisfy yourself that the man was entitled to vote?

A. Well, there was another clerk doing that. I would write the name in and check it off and he would say it was O.K., and put it down there.

Q. You didn't bother at any time during that election comparing the signatures, did you?

A. No, I did not."

I repeat that, gentlemen of the jury, because of certain further testimony in the case, and because

of some comments I desire to make upon what I have read and what I am about to read, from the testimony of the witness Hosbach—examined by the Court:

"Q. You said after the voter signed his name in the book you passed the book to somebody. To whom?

A. Mr. Unger, or Mr. Kelly; he checked it back.

Q. Why did you pass the book over to them?

A. For comparison of signature.

Q. What did they compare the signature with?

A. With the registration of the general election 1916.

Q. Did they have the registry book on their side of the table?

A. Yes.

Q. Is that why you passed the book over to them?

A. Yes.

Q. Did they do that?

A. Yes.

Q. You saw them do that?

A. Yes, checked it back and marked it with a red or blue pencil.

Q. After they found the signature was O.K.—

A. All right.

Q. Then you—

A. Gave them the ballot.

Q. —gave the man the ballot?

A. Yes."

What is the fact, as to what was done? Is the testimony of Mr. Kelly indicative of what they did? Or is the testimony of Mr. Hosbach indicative of what they did? Or did they do both at various times of the day? It is for you to say. It is important in this connection, as it may be

a test as to the truth of this defense. Is that the real reason why they now come here and say they only looked to see if some one by that name was registered? I ask the jury that. I ask you to consider that. Is that the real reason why they come here and say that they did not do any more than to look and see whether the names of Jones was in the registry book? Or is the real reason, the true reason, that the signature was so absolutely different that any reasonable man, you jury men, after you compared it, without any skill as penmen, or with no experience in comparing handwriting, can tell at a glance that not only are they not similar, but so absolutely dissimilar as to excite suspicion at once? Is that the real reason the defendants or one or more of them, say that they did not make the comparison that day? Are they afraid that if they say they did make the comparison, and then permitted the voter to vote, you will examine the signatures and you will come to the conclusion that there is such dissimilarity in the signatures before you, that they ought to have made further inquiry, even put the voter on his oath, as the law requires? And that if they failed to do these things, it showed them guilty?

These are proper questions for you to consider, for you to determine. Is that why they did this?

Having passed by these inquiries it is important you should consider the theory of the defense, why they did not make the comparison, if they did not make it. Can they determine not to do what the law requires, at their own will? The indictment charges that these defendants acting as election officers, gave to divers persons who presented themselves to vote, and who alleged themselves to be John J. Murphy, and others, who had been previously duly registered—to each one an official ballot for voting, and then permitted these persons to vote, whereas the signatures

signed by these persons were neither the similar as nor sufficiently similar to the signatures written in the registry as to identify the proposed voters as the voters who were in the registry book; that divers persons were not then and there challenged by the defendants in their right to vote, by the defendants or either of them, or by any other authorized person, and these persons were not required to take any oath or affirmation concerning their right to vote. In this connection the jury has the right to consider that in some cases the poll book is marked O.K., that this seems to show that in some cases comparison of the signature seems to have been made; because of that, you may properly inquire whether, having done it in some cases, they did not know the requirement of the law in that respect. That may be considered by you as bearing upon their knowledge or intent or wilfulness.

The indictment, which I was a few minutes ago referring to, goes on to state that these defendants being charged with the duty of ascertaining the identity or sufficient similarity of the signatures and with the duty of challenging in the event of their failure so to ascertain the person applying to vote, or of requiring them to take the oath provided by law, and qualifying them, entitling them to vote, wilfully neglected and refused to perform their duties. I charge you it was their duty to make this comparison; that it was their duty if the signatures did not identify or indicate a sufficient similarity to them, to challenge, unless some other person authorized for the purpose, so challenged. It was their duty, if the answer to any question did not correspond, to challenge unless some other authorized person challenged, that it was their duty to determine the right of such persons to vote, after making use of the evidence supported by his signature, together with any of the said answers. These are

the requirements of the law which it was their duty to observe. They had no right to substitute any other method to determine who should vote, to permit that would be to permit a different method of conducting an election in every election district of the city. As these are the requirement of the law they had to observe, I charge you, if you find they have either wilfully neglected or refused to perform the duties enjoined upon them by law, or that they refused to perform these duties, if you find they did give out these official ballots to divers persons unknown, as charged in the indictment, you should find them guilty. That is your clear duty; no sympathy for them will permit you to escape what is your sworn duty in the matter.

Take this case and consider the evidence very carefully and come to a fair conclusion, from the evidence alone.

MR. VICKERS: By consent, because the ballot box has not been used, Exhibits S-2 and S-3 are eliminated from the jury room because neither has been used.

MR. SIMPSON: Both sides consent, and the exhibits that have been sent in were picked out by both sides and consented to.

(The Jury retired).

January 24, 1918; 9.45 A. M.

(The Jury returned into Court).

THE COURT: Gentlemen, I understand you desire to ask some important questions.

THE FOREMAN: May it please Your Honor, Juror Number 9, Mr. Corfield, wishes some information on a point, if he may ask you.

THE COURT: Yes, I will be very glad, so far as I am able, to answer any questions you want.

JUROR NO. 9: The question arose in the jury room, where the word "wilful" comes in; now, what we want to know, is that put in evidence or if we could render a verdict on such an information as that, or ought it to be scratched out entirely?

THE COURT: Do you mean, whether they did this thing wilfully?

JUROR NO. 9: Yes sir.

THE COURT: You would take all of the evidence—was that all, gentlemen?

VOICES: Yes.

THE COURT: You would take all of the evidence and say whether these men have persisted in doing the thing; if then, from the evidence, you would deduce by the ordinary processes of your minds that these men or any one or more of them gave, persisted in doing something which it was obvious that they should not have done, that is wilfulness. If it shows that they had a design in their minds, by all the evidence in the case, that would be wilful,

and a keeping right at the thing, that is wilfulness. If you can say from all the evidence in this case that a number of people voted who apparently had no right to vote, that if these defendants or any one or more of them, permitted that thing to go on knowingly, that is wilfulness. Does that answer your question, gentlemen?

JUROR NO. 9: Yes.

(The Court instructs the stenographer that Mr. Simpson may have an exception to what he has charged on the word "wilfulness" in the foregoing).

(The jury retired, recalled to the court room, Juror No. 7 treated by a physician, and the jury further instructed at 10.40, as follows):

THE COURT: Now, gentlemen, a little while ago you asked me, through one of your members, to tell you what was meant by the word "wilful." I want to, with a little more time than I had before, give you what may be a simple definition of the word "wilful," so that you may have the benefit of it and the benefit of what our own courts have said.

In a case in the Supreme Court some years ago one of our judges said, and I charge you this to be the law therefore: "Wilful is used in the sense of intentional as distinguished from accidental or voluntary"; and again in another case later, "Wilful, in the ordinary sense is said to mean not merely voluntary, but to imply that the thing was done with a bad pur-

pose."

If in this case you find that it was either accidental, or simply a voluntary thing, why then that is not said to be wilful, but if he intended to do the thing which you have in mind in this case, that it was not merely a passing voluntary thing that was running through his mind, but that he implied by the doing of that thing, the doing of the act, then you may say that is wilful.

It is pretty hard for me to try to improve upon what a more able court has said. I have to say just this, that if the defendants herein determined or intended the thing in question should be done, then that thing is said to be wilful and he is said to have done it wilfully.

I hope that may be of some help to you, gentlemen. You may retire now.

(The jury retires).

THE COURT: (To the Stenographer). You may give Mr. Simpson the benefit of an exception to what I have charged on this point.

MR. SIMPSON: I desire to except to what Your Honor has charged, especially to where Your Honor, after having read from the Supreme Court decisions, omitted from the laws laid down in the Supreme Court in your last statement, that the thing must be done with a bad purpose, saying to the jury that if that thing was done intentionally, that is, with knowledge, it was wilful, and omitting from that statement the statement laid down in the Supreme

Court that if it was intentional and voluntary, it must also be done with a bad purpose. I want specifically to get an exception to that, and also an exception to all that Your Honor has said.

THE COURT: Yes.

4.15 P. M.

(The jury returned into court).

THE COURT: Gentlemen, I received a message, you wanted to say something to the Court. I have tried to get here, but communication is pretty bad; I came here as soon as I could. What is it you want to ask? I understood you wanted to ask something of the Court?

THE FOREMAN: We would like to get the testimony of those witnesses that have been here on the witness stand, the testimony of those three defendants.

THE COURT: Gentlemen, I am sorry I cannot help you in that respect, but the law does not permit me to have read to you, or to furnish you, the testimony after you have once retired to deliberate upon your verdict. I am afraid I cannot help you in that respect. You will have to recall from your own memories what the testimony was. Was there anything else?

THE FOREMAN: May it please Your Honor, to have the case for longer consideration

THE COURT: You may retire and consider it.

(The jury retired).

EXCEPTIONS TO CHARGE.

1. The defendants pray exception to that part of the charge of the Court wherein the Court added to the language of the second request to charge, as charged by the Court, the following:

> "But in that connection I also charge you that while the law says that one of the members shall compare the signature book, as I have stated, the comparison of the signature and answers on election day with the signature and statements shall be in full view of the watchers, challengers or agents, and the right to challenge voters shall exist until the ballot shall have been deposited in the ballot box, if the signatures of the voters or the answers to the questions made by the voter do not correspond, it shall be the duty of the watchers and challengers to challenge, and the duty of each member of the Board of Registry and Election to challenge unless some other authorized person shall challenge."

(Exception allowed and signed and sealed accordingly.

George G. Tennant, Judge.

Seal).

2. The defendants pray exception to that part of the charge of the Court wherein the Court add-

ed to the language of the seventh request to charge, as charged by the Court, the following:

"but the failure to O.K. may be considered by you as bearing on the other evidence in the case."

(Exception allowed and signed and sealed accordingly.

George G. Tennant, Judge.

Seal).

3. The defendants pray exception to the Court's failure or refusal to charge as requested in and by the twelfth request to charge.

(Exception allowed and signed and sealed accordingly.

George G. Tennant, Judge.

Seal).

4. The defendants pray exception to the Court's failure or refusal to charge as requested in and by the thirteenth request to charge.

(Exception allowed and signed and sealed accordingly.

George G. Tennant, Judge.

Seal).

5. The defendants pray exception to that part of the charge of the Court wherein the Court said:

"If the signature or answers to the questions did not correspond, the challengers or watchers are privileged to challenge, but it still remains the duty of each member of the Board to challenge, if some one else did not do so."

(Exception allowed and signed and

sealed accordingly.
GEORGE G. TENNANT, Judge.
Seal).

6. The defendants pray exception to that part of the charge of the Court wherein the Court said:

"I charge you it was their duty to make this comparison; that it was their duty if the signatures did not identify or indicate a sufficient similarity to them, to challenge, unless some other person authorized for the purpose, so challenged."

(Exception allowed and signed and sealed accordingly.
GEORGE G. TENNANT, Judge.
Seal).

7. The defendants pray exception to the part of the charge of the Court wherein the Court said:

"But look at the signatures, look at the spelling, the writing, to compare them, and say whether, as election officers entrusted with the conduct of this election, you believe they used such care as the law requires, to satisfy themselves of the identity or sufficient similarity of the signatures."

(Exception allowed and signed and sealed accordingly.
GEORGE G. TENNANT, Judge.
Seal).

8. The defendants pray exception to that part of the charge of the Court wherein the Court said:

"As these defendants are charged with the duty of comparing the signatures, if the jury finds that they wilfully neglected and refused to perform that duty or that they

knowingly and fraudulently acted in contravention and violation of these requirements, they should be found guilty.''

(Exception allowed and signed and sealed accordingly.
GEORGE G. TENNANT, Judge.
Seal).

9. The defendants pray exception to that part of the charge of the Court wherein the Court said:

''The law does not require your test, or my test, or an expert's test, of comparison. It requires their examination to satisfy themselves, and if you believe they satisfied themselves by the comparison which the law requires, and that they had no other knowledge of false voting, or that false voters were voting, the defendants should be found not guilty. As bearing upon whether they did this, in the comparison, you have the right to take all the circumstances, all the work they did, or permitted to be done in that election on that day, the number of witnesses who have testified here that they did not vote, yet whose names were falsely voted upon, seemingly, you have a right to take the poll book and compare the signature entered therein in the column where the voters were required to sign.''

(Exception allowed and signed and sealed accordingly.
GEORGE G. TENNANT, Judge.
Seal).

10. The defendants pray an exception to the Court's charge to the jury, generally.

(Exception allowed and signed and sealed accordingly.
GEORGE G. TENNANT, Judge.
Seal).

11. The defendants pray an exception to the charge of the Court, delivered when the jury returned to court, on the subject of the meaning of the word "wilful," intending to include within such exception all that the Court said on that subject.

(Exception allowed and signed and sealed accordingly.
GEORGE G. TENNANT, Judge.
Seal).

12. The defendants pray an exception to that part of the Court's charge which deals with the subject of "Wilfulness," delivered when the jury returned into Court, in that the Court, after having read from the Supreme Court decisions, omitted from the rule laid down in the Supreme Court, in the Court's last statement, that the thing must be done with a bad purpose, saying to the jury that if that thing was done intentionally, that is, with knowledge, it was wilful, and omitting from that statement the statement laid down in the Supreme Court that if it was intentional and voluntary, it must also be done with a bad purpose.

(Exception allowed and signed and sealed accordingly.
GEORGE G. TENNANT, Judge.
Seal).

13. The defendants pray an exception to that part of the Court's charge to the jury, delivered when the jury returned into Court, as follows:

"I have to say just this, that if the de-

fendants herein determined or intended the thing in question should be done, then that thing is said to be wilful and he is said to have done it wilfully.''

(Exception allowed and signed and sealed accordingly.

GEORGE G. TENNANT, Judge.

Seal).

January 28, 1918.

(The jury having, by their verdict, found the defendants guilty, the Prosecutor moved for sentence).

Appearances:

Mr. Robert S. Hudspeth, for the State.

Mr. Alexander Simpson, for the Defendants.

MR. HUDSPETH: I move for sentence.

MR. SIMPSON: I move for an arrest of judgment on the ground there was no valid indictment, inasmuch as the foreman of the grand jury did not certify to the court the names of witnesses examined by the grand jury, and that the defendants were put to trial without an indictment, in volation of the Fourteenth Amendment of the Constitution of the United States, and were deprived of due process of law.

Also on the ground that the jury were in the custody and control of four officers, sworn, from the sheriff's office, and a detective from the Prosecutor's office was al-

lowed to be with them, in the hotel, converse with them, stay with them all night, although he was not sworn and was not a representatitve of the sheriff, and had no legal custody or control of the said jury.

THE COURT: I will deny your motion.

HUDSON COUNTY COURT OF QUARTER SESSIONS.

THE STATE	
vs.	On Indictment.
WILLIAM F. LOONEY, JOHN P. KELLY and LOUIS UNGER.	

I, the undersigned, judge before whom the trial of the foregoing indictment was had, hereby certify that the foregoing is the entire record of the proceedings had upon the trial of the cause.

IN WITNESS WHEREOF, I have hereto set my hand and affixed the seal of the said Court, on this 14th day of February, 1918.

(Seal) GEORGE G. TENNANT,
Judge, Hudson County Court of Quarter Sessions.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, Defendant-in-Error.	On Error to the Hudson County Court of Quarter Sessions.
vs.	
LOUIS UNGER, JOHN P. KELLY and WM. F. LOONEY. Plaintiffs-in-Error.	Assignments of Error.

Afterwards, in the New Jersey Supreme Court, comes the said Louis Unger, John P. Kelly and William F. Looney, by Messrs. Robert H. McCarter, Alexander Simpson and Louis Hansen, their attorneys, and say that in the record and proceedings aforesaid, and also in the matters recited and contained in the bill of exceptions; also in the giving of the verdict and judgment aforesaid there is manifest error in this respect, to wit:

1. Because in the trial of the case the learned trial judge denied the motion of defendants' counsel to quash the indictment on the grounds that the foreman of the Grand Jury should have certified a list of all the witnesses examined by the Grand Jury, and also that the indictment does not charge a crime.

2. Because in the trial of the said case the learned trial judge allowed two poll books to be admitted in evidence against the objection of the defendants' counsel, that there was no proof that

their condition was the same as at the close of the election.

3. Because in the trial of the said case the Court permitted Valentine Hill, against the objection of the defendants' counsel, to testify that subsequent to October 1, 1916, no one resided at 111, 113 or 115 Ninth Street.

4. Because in the trial of the said case the learned trial judge refused to permit the defendants' counsel to ask the witness Peter Fox, on cross-examination:

> "It would be perfectly easy for anybody to come in to them, and say they were Peter Fox?"

5. Because in the trial of the said case, the learned trial judge permitted the following question to be asked of Jacob Coursen, against the objection of the defendants' counsel:

> "Did you vote at the Commission Government Election on Tuesday, October 16th of last year?"

6. Because in the trial of the said case, the Court permitted Herman Hotchkiss to say that he signed the poll book S-5, over the objection of the defendants' counsel.

7. Because in the trial of the said case the learned trial judge permitted the following question to be asked of Benjamin Toback, against the objection of the defendants' counsel:

> "Do you remember the circumstances under which you signed the poll book, where you signed?"

8. Because in the trial of the said case the Court, against the objection of defendants' coun-

sel, permitted the State to ask of Benjamin Toback:

> "I call your attention to vote No. 118, Toback, Benjamin, 140 Pavonia Avenue, and the signature of Ben Toback, and ask you whether that is your signature, whether you wrote it?"

9. Because in the trial of the said case the learned trial judge, against the objection of defendants' counsel, allowed the State to question Benjamin Toback as follows:

> "I call your attention to a page in the same poll book, after the name of Less, William, 129, 156 Pavonia Avenue. I will ask you whether, by examining this page, where the signature of William Less, or the name of William Less in the signature column appears, by examination of that you can say whether your name, as you wrote it in the registry in the poll book, at the time you voted, was on that page?"

10. Because in the trial of the said case, the Court, against the objection of defendants' counsel, permitted Benjamin Toback, to be asked by the State:

> "Who was the election officer who directed you to put your name on that page at the time you voted?"

11. Because in the trial of the case, the learned trial judge, against the objection of defendants' counsel, allowed William W. Small to testify that he could not find the names of Harry Arrowhill, Peter O'Reilly and John Cash in the Homestead Hotel register under the date of October 16, 1917.

12. Because in the trial of said case the learned trial judge permitted William F. Looney,

one of the defendants against the objection of defendants' counsel, to be asked on cross-examination, whether or not he compared the signature of one James Gillen in the poll book.

13. Because in the trial of the said case the Court permitted the State, against the objection of defendants' counsel, to inquire of William F. Looney, one of the defendants, whether any one went away with him to Bridgeport, Connecticut, after October 16, 1917.

14. Because in the trial of the said case the learned trial judge overruled the following question put to Louis Unger, one of the defendants:

"What is the usual vote cast in that voting place?"

15. Because in the trial of the said case, the Court allowed Louis Unger, one of the defendants to be asked on cross-examination, against the objection of the defendants' counsel, whether he received any votes before he got the official poll book.

16. Because in the trial of the said case the learned trial judge, allowed the following question to be asked by the State of James W. McCarthy, against the objection of defendants' counsel:

"On that occasion did Mr. Unger say to you that Mr. Kane told the Board before they started that the Board should act in harmony, or words to that effect?"

17. Because the Court erred in adding to the language of the second request to charge, as charged by the Court, the following:

"But in that connection I also charge you that while the law says that one of the members shall compare the signature book,

as I have stated, the comparison of the signature and answers on election day with the signature and statements shall be in full view of the watchers, challengers or agents, and the right to challenge voters shall exist until the ballot shall have been deposited in the ballot box, if the signatures of the voters or the answers to the questions made by the voter do not correspond, it shall be the privilege of the watchers and challengers to challenge, and the duty of each member of the Board of Registry and Election to challenge unless some other authorized person shall challenge."

18. Because the Court erred in adding to the language of the seventh request to charge, as charged by the Court, the following:

"but the failure to O.K. may be considered by you as bearing on the other evidence in the case."

19. Because the Court erred in refusing to charge the defendants 12th request to charge:

"The defendants cannot be convicted because of a lack of comparison of the names as written in the poll book with the same names as written in the registry, nor can the mere failure on their part to make such comparison be charged against them, unless they knew of the provisions of the law in that respect, and wilfully violated them."

20. Because the Court erred in refusing to charge the defendants' 13th request to charge:

"The Assistant Prosecutor of the Pleas as such has no authority to instruct the Boards of Election how to perform their duties; and any instruction or advice he gave them was not authoritative, nor en-

titled to more credence than that of any other intelligent man. The statute imposes upon the Secretary of State the duty of issuing instructions, and the Board was under no obligation to obey any instructions that Mr. McCarthy may have given."

21. Because the learned trial judge, in charging the jury, stated:

"If the signature or answers to the questions did not correspond, the challengers or watchers are privileged to challenge, but it still remains the duty of each member of the Board to challenge, if some one else did not do so."

22. Because the learned trial judge in the course of his charge to the jury stated:

"I charge you it was their duty to make this comparison; that it was their duty if the signatures did not identify or indicate a sufficient similarity to them, to challenge, unless some other person authorized for the purpose, so challenged."

23. Because the learned trial judge in charging the jury stated:

"But look at the signatures, look at the spelling, the writing, to compare them, and say whether, as election officers entrusted with the conduct of this election, you believe they used such care as the law requires, to satisfy themselves of the identity or sufficient similarity of the signatures."

24. Because the learned trial judge, in the course of his charge to the jury, stated:

"As these defendants are charged with the duty of comparing the signatures, if the jury finds that they wilfully neglected

and refused to perform that duty or that they knowingly and fraudulently acted in contravention and violation of these requirements, they should be found guilty."

25. Because the learned trial judge, in charging the jury, stated:

"The law does not require your test, or my test, or an expert's test of comparison. It requires their examination to satisfy themselves, and if you believe they satisfied themselves by the comparison which the law requires, and that they had no other knowledge of false voting, or that false voters were voting, the defendants should be found not guilty. As bearing upon whether they did this, in the comparison, you have the right to take all the circumstances, all the work they did, or permitted to be done in that election on that day, the number of witnesses who have testified here that they did not vote, yet whose names were falsely voted upon, seemingly, you have a right to take the poll book and compare the signature entered therein in the column where the voters were required to sign."

26. Because manifest injustice was done to the defendants by the whole charge of the Court.

27. Because the Court erred in charging the jury on the subject of the meaning of the word "wilful."

28. Because the Court in charging upon the subject of "wilfulness," after having read from Supreme Court decisions, omitted from the rule laid down in the Supreme Court, that the thing must be done with a bad purpose, saying to the jury that if that thing was done intentionally,

that is, with knowledge, it is wilful, and omitting from the statement the statement laid down in the Supreme Court that if it was intentional and voluntary, it must also be done with a bad purpose.

29. Because the Court in charging the jury, which charge was delivered when the jury returned into Court, charged as follows:

"I have to say just this, that if the defendants herein determined or intended the thing in question should be done, then that thing is said to be wilful and he is said to have done it wilfully."

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Attorneys for Plaintiffs-in-Error.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, Defendant-in-Error.	)	On Error to the Hudson County Court of Quarter Sessions.
vs.	)	
LOUIS UNGER, JOHN P. KELLY and WM. F. LOONEY. Plaintiffs-in-Error.	)	Causes for Reversal.

The plaintiffs-in-error assign the following reasons or causes for reversal of the verdict and judgment of conviction in the above stated cause upon the whole record:

1. Because the learned trial judge permitted R. Martin Hosbach, against the objection of the defendants' counsel, to answer questions based upon the poll book used on October 16, 1917, said book not havin been admitted in evidence.

2. Because the learned trial judge allowed the State's witness, R. Martin Hosbach, against the objection of the defendants' counsel, to answer the following question:

> "In the course of that conversation was the interview in the Prosecutor's office referred to by you or Mr. Unger?"

3. Because the learned trial judge permitted the State to ask the witness William M. Small, against the objection of the defendants' counsel, whether Anthony Miller, James McCabe, Frank

Meeker and James Burns, lived at the Homestead Hotel, 121 Pavonia Avenue, on the 16th of October, 1917.

4. Because in the trial of the said case the learned trial judge permitted William M. Small, against the objection of the defendants' counsel, to answer the following question:

"Do you remember that you were waked up on one occasion when Mr. McCarthy came there. You had been asleep and you were waked up?"

5. Because in the trial of the case the learned trial judge refused to strike out the answer of R. Martin Hosbach, on cross-examination, to the following question put by the defendants' counsel:

"When you had control of this poll book, all these signatures in blue ink, you did not determine the man—after the man made his signature, which you said he did make, you did not take the signature and compare it with the registry book, did you?"

A. I passed it over to Kelly or Unger who was sitting on the other side of the table, they checked it off with the corresponding signature."

6. Because the learned trial judge refused to strike out the answer of R. Martin Hosbach, on cross-examination, to the following question put by the defendants' counsel:

"When you were not writing in this book, when somebody else had control of the poll book, did you compare the voter's signature as made in the Commission Government Election, with the signature in the register?

A. No.

Q. You never compared one signature that whole day?

A. Because I was on the other side of the table."

7. Because the learned trial judge allowed William F. Looney, one of the defendants, against the objection of the defendants' counsel, to be asked the following question on cross-examination:

"Can you give any explanation as to why it is you cannot identify any of your handwriting in the poll book except your signature?"

8. Because the Court in the trial of the case allowed William F. Looney, one of the defendants, to be asked on cross-examination, against the objection of the defendants' counsel, who had taught him what to do at the primary election.

9. Because the learned trial judge allowed L. Myer, one of the defendants, to be asked on cross-examination, against the objection of the defendants' counsel, the following question:

"Did you accept any votes before you had the poll book?"

10. Because the Court permitted the State, on cross-examination, to ask the following question of Louis Unger, one of the defendants, against the objection of the defendants' counsel:

"Did he (referring to Mr. McCarthy, the Assistant Prosecutor) make any criticism at all with regard to the way the names appeared there (in the poll book)?"

11. Because the learned trial judge, in the trial of the case, allowed Louis Unger, one of the defendants, to be asked by the State on cross-

examination, against the objection of the defendants' counsel, the following question:

"And do you remember Mr. Clark coming at the registry for the general election in 1916, and registering there by your assistance?"

12. Because the Court permitted the State, on cross-examination, against the objection of the defendants' counsel, to ask Louis Unger, one of the defendants, the following question:

"How do you know if you don't remember the names—how do you know you did not know the men?"

13. Because the learned trial judge allowed the State, on cross-examination, against the objection of the defendants' counsel, to ask John P. Kelly, the following question (referring to his leaving Swift's employ):

"Where did you go?"

14. Because the Court refused to strike out the answer of Joseph James to the following question:

"You went with them, and with the constables each night they have been out?"

15. Because the learned trial judge denied the motion of the defendants' counsel for a mistrial on the ground that an improper person, Joseph James, went out and stayed with the jury, taking meals with them and remaining over night.

16. Because the learned trial judge allowed James W. McCarthy to answer the following question, against the objection of the defendants' counsel:

"Did Mr. Unger on that occasion show to you—what, if anything, did Mr. Unger

show on that occasion as to where he lived and where he voted, and what was done at that time between yourself and Mr. Unger with respect to that particular phase of the conversation?''

17, Because the learned trial judge permitted the Prosecutor, against the objection of the defendants' counsel, to question each juror as to whether Mr. James had said anything to them, or discussed the case in their presence.

18. Because the Court, against the objection of the defendants' counsel, permitted the State to ask the following question of James W. McCarthy:

''When Mr. Unger said, as you have testified, that Mr. Morris Dorman was his brother-in-law, etc., how did the name of Morris Dorman at that time come up? What took place between you and Mr. Unger which brought up that name?''

19. Because the learned trial judge, against the objection of the defendants' counsel, allowed James W. McCarthy to relate at length a conversation which he said he had with Louis Unger, one of the defendants.

20. Because the learned trial judge, against the objection of the defendants' counsel, permitted the following question to be asked of James W .McCarthy:

''Q. Since then Mr. McCarthy, have you and Mr. Unger had conversations with reference to these matters alleged by you to have been told you by him, and if so, when and where?''

21. Because the Court, against the objection of the defendants' counsel, allowed the State to ask

James W. McCarthy the following question (referring to the District Election Board):

"Q. Did you tell them anything as to how they should proceed?"

"A. In answer to a question of Mr. Unger, yes."

22. Because the Court, against the objection of the defendants' counsel, permitted James W. McCarthy, to give his conversation with Louis Unger, one of the defendants, as to how they were to determine whether or not the signature of the voter was the same as the one in the registry.

23. Because the Court denied the motion of the defendants' counsel to strike out the evidence touching on the voting by Rostrand, Kelly, Newman and the several other persons who testified in the case, over the objection of the defendants' counsel, they not being named in the indictment.

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ADDENDUM.

Opinion of Supreme Court..... A-1
Rule of Affirmance A-11
Writ of Error, Court of Errors..... A-12
Return A-13
Assignments of Error A-14
Causes for Reversal A-23

New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* LOUIS UNGER, WILLIAM E. LOONEY, and JOHN P. KELLY, *Plaintiffs-in-Error.*	In Error to the Supreme Court.

BRIEF FOR THE STATE OF NEW JERSEY.

Facts.

The defendants were members of and did constitute a board of Registry and Election in the City of Jersey City, at the Election held there on the sixteenth day of October, 1917, to fill a vacancy in the office of Commissioner of the City of Jersey City caused by the death of the late George F. Brensinger. The gist of the charge against them was that a number of persons at the election in question appeared at the polling precinct in which the defendants held the election, and there actually personated, and voted upon the names of, other persons who were duly registered as voters in that precinct and for the said election; that the said defendants were aware of this false personation, notwithstanding which they permitted the casting of the illegal votes. Sixteen of the registered voters alleged to have thus been personated are named in the indictment.

To be more specific the language used in the opinion of the Supreme Court concerning the indictment is quoted: The indictment contained three counts. The first charged the defendants with knowingly and fraudulently receiving the votes of persons who the defendants knew impersonated and voted upon the names of others. The second count charges them with wilfully and unlawfully aiding and abetting persons to vote upon names other than their own; and the third count is based upon the alleged willful neglect and refusal of the defendants to carry into effect the provisions of sections 46, 47 and 48, of the Act of April 19, 1911, (1st Sup. Comp. pp. 547, 548) requiring the comparison of the signatures upon the registry and poll books respectively, and the challenge of voters in certain cases.

The defendants were tried in the Hudson Quarter Sessions and the jury returned a general verdict of guilty. The case is before this court on strict bill of exceptions, in conjunction with causes specified for reversal on a full certified record under the 136th Section of the Criminal Procedure Act.

In the Supreme Court the plaintiffs-in-error confined themselves to the following points:

I.

The Court erred in charging the jury with reference to the defendants' duty to compare the signature of the voter in the poll book, with that in the registry book.

II.

The Trial Judge erred in permitting Assistant Prosecutor McCarthy to testify in the manner he did in rebuttal.

III.

There was error in the Trial Judge's refusal to charge the defendants' thirteenth request to charge.

IV.

There was manifest injustice to the defendants in the refusal and failure of the Trial Judge to grant their request for a mistrial, because it appeared that an attache of the prosecutor's office, under the direction of the judge, accompanied the jury to the hotel where they were confined and ate, slept and conversed with them.

V.

There was also error in the court's permitting the State to prove that (a) at the election in question persons were permitted to vote who were registered, as residing at places where they did not, in fact, reside; and (b) that others voted who were not registered.

VI.

There was also error in the failure of the trial judge to charge the defendants' seventh request to charge (p. 367, l. 11).

There are exceptions, assignments and reasons for reversal dealing with other points, which will be disregarded by defendant-in-error on the assumption that plaintiffs-in-error have abandoned them.

POINT I.

There was no error in the Court's instructions to the jury.

All of the defendants' requests to charge were adopted by the trial court insofar as it was proper to do so.

> "A Judge is not required to adopt the form or the words or the collection of phrases in which a request to charge is framed."
>
> *Gardner v. State,* 55 N. J. L., 17.

There was no error in the comments by the trial judge on the evidence relating to the dissimilarity in handwriting and in the spelling of the names (Case, pp. 383-4; p. 391).

> "Where a trial judge leaves it to a jury to determine disputed questions of fact, his comments and expressions of opinion upon the testimony are not assignable for error."
>
> *State v. Simon,* 71 N. J. L., 142;
> *State v. Valentina,* 71 N. J. L., 552.

Of the first twelve requests to charge the trial court disposed of all but the second and third requests, in a general way, and apparently unobjectionably to plaintiffs-in-error, except for the

seventh request, before particularizing, emphasizing and repeating *in haec verbae* the first request to charge.

The trial court then took up request number two dealing with the duty concerning comparison of signatures.

It is urged by the plaintiffs-in-error, that with the mere words "I am requested to charge" and the reading of the request to charge, the trial court submitted the matter to the jury; but, without in the slightest degree assenting to the contention that this would have been insufficient, the defendant-in-error respectfully submits that the printed charge (page 377, lines 9-40) shows that what the trial court did do, appears as follows: *"I have been requested to charge you— * * * Also * * * But in that connection I also charge you that,* &c."

The plaintiffs-in-error complain that the court "expressly failed to charge the request" (Brief, page 12). It is possible that by some extreme refinements in reasoning this contention could be worked out; but it seems like a wild stretch of the imagination to attribute that kind of reasoning to the trial jury. For the jury to have concluded *that the court did not charge the quoted request* to be the law governing them, they must necessarily have done what the plaintiffs-in-error have done, to wit, omit entirely from their consideration the emphasizing language of the court. *"But in that connection I also charge you,* &c."

The subject matter of this request was referred to in another part of the charge, and does in fact form the chief contention of plaintiffs-in-error against the validity of the judgment below.

It is therefore now dealt with bilaterally:

A. There was no error, because the law itself was quoted and said to be the statute on the subject, and the requests of defendants were charged in *haec verbae.*

B. Because the portions of the charge complained of had reference to *the facts in this particular case* and correctly stated the law applicable to these defendants under the facts.

A.

A reading of the charge will show that it is divisable into two parts in dealing with the subject of comparison of signatures, and other duties of the election officers. Up to page 386 the court had repeatedly charged it to be the duty of *but one member of the board* to make the comparison of signatures according to the statute. Beginning on page 386 the court digressed upon the origin and value of this law, and delved into the situation of these defendants at the particular election; in their relation, *each* of them, to the taking of votes which required *each* to have compared the signatures. This must be quite apparent from the extensive verbatim quotation of the testimony, as well as other references by the court to the conduct and activities of the different members of the board. Under these circumstances it was not error to charge that these election officers, *all of them,* were charged with the duty of comparing the signatures.

B.

Each of these defendants was in fact at one time or another during this particular election day clerk of the board, dealing with the identification of the voters.

Too much emphasis cannot be put upon this particular point, for it has a most vital effect; first, on the facts before the jury involving *all of these defendants* in the fraudulent and wilfull *receipt of votes,* knowing the voters not to be entitled to cast them; and second, on the *harmful effect* of the court's charge as to the duty of *each*

member of the board to compare the signatures, assuming for this purpose that the law on this point was in any part of the charge incorrectly stated by the court.

In support of this point some testimony regarding each defendant is here set out.

Looney, upon examination by his counsel:

"I got no instructions at all. I only used to ask the judge of elections what I would do." "Who was judge?" "Unger was judge." "What did he tell you your duties were?" "Told me my duties was to be one of the clerks of the board."

"Q. What did you have to do as clerk of the board? A. Compare signatures like, and so forth" (p. 200, ll. 29-37).

"Q. Who was the person who seemed to be at the head of the board, who was directing things? A. The fact is we were all helping one another out, but Mr. Unger, he was judge of the board, he was explaining to us" (p. 202, ll. 13-17).

(By the Court.) (On cross examination.) "Who was the inspector?" "Ans. Mr. Kelly was inspector" (p. 202, l. 34). "I always asked the man next to me, *'How does this signature look?'* " He says, "All right," I says, 'You can vote.' "

"Q. As soon as you received the vote you did that? A. Yes."

Did that with any vote that came in while he was at the books (p. 205, ll. 12-19).

Unger, election officer since 1912:

"Q. What did you do as judge? Did you also enter yourself names in the book? A. Yes (p. 232, l. 33).

"Q. It was not necessary for you to compare his signature? A. We compared anyhow (p. 233, l. 16).

"Q. Knowing the man, you would not compare the signature? A. Yes, we would compare it anyhow to see if he was there" (p. 233, l. 32).

The conduct of the defendant Unger was thus proved by himself upon the interrogations of his counsel. By reference to page 237 it will appear that it was undoubtedly the purpose of counsel to show the defendant to be ignorant of the requirements of the law with respect to comparison of signatures, despite this testimony just quoted, so as to combat the charge that his acts were "wilfully," "knowingly" or "fraudulently" done; or that he "wilfully" neglected these duties. But it could not have escaped the jury's attention that Unger was an old election officer (since 1912, p. 230, l. 38) and that the co-defendant Looney had just testified that he, Looney, was new at the business and received his instructions from Unger about comparing signatures (p. 200, ll. 10-37; p. 202, ll. 13-16); and also that Looney understood his instructions and claimed to have acted accordingly (page 208, ll. 15-20; p. 213, l. 20 to p. 215, entire page).

If by any chance the jury had failed up to this point to grasp that Unger was instructing the board, the direct examination of the defendant Kelly by Mr. Simpson (p. 286, ll. 5-8) must have driven home conviction thereon.

Kelly, served in a Commission Government Election before this one:

> "Q. *Who was the man who seemed to be giving the instructions, the experienced man in this board? Was it you or Unger or Looney?* A. *Mr. Unger.*"

This defendant likewise acted as clerk of the board and although on direct examination he said that he "very seldom" (p. 283, l. 26) wrote into the poll book the names of the voters, it will readily appear by reading the cross examination, that he wrote in the names of many voters and numbers of them consecutively (p. 299, ll. 1-35) showing conclusively the extent to which he acted as clerk.

The facts as disclosed by the testimony and the physical evidence on this point are of the utmost importance.

If the evidence *as a matter of fact* cast the duty on *each* of these defendants to compare the signatures in this particular election, and proved that *each* fraudulently received votes; it is of little or no consequence whether the court in its charge academically erred in stating the law applicable to the duties of an election board.

"Each man relieved the other at the station." Hosbach, p. 48, as to clerks entering the names.

In this connection it must be borne in mind that the jury had the poll and signature copy books, and that in the poll book was the handwriting of all of the defendants, including the defendant Hosbach not on trial.

The attitude of the defendants by their testimony as to the alleged fraudulent votes received must have impressed the jury forcefully.

That one or all of these defendants could not tell their own handwriting; nor tell in whose handwriting these important entries were; nor remember who received the fraudulent votes of persons well known to them or some of them; all of these things, together with the physical evidence contained in the poll and signature copy books made the conclusion inevitable that these defendants were guilty as charged.

From this mass of damaging evidence these defendants seek to extricate themselves through most technical and illusory objections, based on studiously selected and disconnected excerpts from the charge of the trial court.

This fact can best be illustrated by reference to the objections themselves.

Quoting from the brief of plaintiffs-in-error submitted in the Supreme Court (page 3) the point is thus developed:

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"An examination of the charge shows that the trial judge proceeded upon the hypothesis that it was the duty of the entire Election Board to make the comparison between the signatures in the poll book and registry book respectively in accordance with the requirements of the so-called Geran Act. This appears from the following quotations from the charge (p. 382, l. 40):

"'The purpose of having the signatures to compare was to insure, if possible, having an honest election. If the signatures so compared were the same, or were sufficiently similar no further inquiry seems to have been necessary. If the Election Officers did examine the signatures, did the signatures compare in their opinion? Were they in their opinion sufficiently similar to reasonably justify the defendants in believing that the proposed voter was the same person who had previously registered? If you find that, these defendants should be acquitted, but look at the signatures, look at the spelling, the writing, and compare them, and say whether as Election Officers, entrusted with the conduct of this election, you believe they used such care as the law requires in the comparison of the signatures, to satisfy themselves of the identity or sufficient similarity of the signatures. The law does not require your test, or my test, or an expert's test of comparison. It requires their examination to satisfy themselves, and if you believe they satisfied themselves by the comparison which the law requires, and that they had no other knowledge of false votes, or that false voters were voted, the defendants should be found not guilty.'"

By reference to that which preceded on the same page of the printed case (382) the method of excerpting will clearly appear. The charge reads:

"The object of this legislation must be readily apparent; having registered, with his previous signature, on one of the regis-

tration days, and having answered certain questions, he has given a record which permits investigation as to his right to vote. If a stranger applies to vote on his name, the Election Board has this information before it; and when he signs his name the two signatures are before the board for comparison. The purpose of this is to prevent fraud. *It was the duty of the Election Board to follow the law.* If the signatures or answers to the questions did not correspond, *the challengers or watchers are privileged to challenge,* but it still remains the duty of each member of the Board to challenge, if some one else did not do so. *In this case, therefore* the jury will consider *what the defendants did, any one or more of them. After the voter signed did one of the members of the Board compare the signature made* in the poll book with the signature previously made in the registration book? If HE did, did HE so certify in the book with his initials or O. K.? Did the signature of the voter correspond? If they did not, in the absence of any challenger or watcher, challenging at that time, did *any* member of the Election Board challenge? If these signatures did not correspond it was the duty of the Election Board to challenge and to proceed to ask questions, to check up the entries with the information in the registration book."

Here follows the excerpted portion of the charge above quoted. How the jury, or for that matter, any one, could have misunderstood or misconstrued these instructions is incomprehensible.

Quoting the next excerpt:

"As these defendants were charged with the duty of comparing the signatures, if the jury find that they wilfully neglected and refused to perform that duty, or that they knowingly and fraudulently acted in contravention and violation of these requirements, they should be found guilty. * * *"

Reference to the printed charge (p. 384, l. 37) will show, that what is here represented as a sen-

tence, is in fact taken from the middle of a sentence, and that the *omitted portion* contains this phrase "the mere fact that these defendants *or any one of them compared the signature*"; negativing completely the assertion that the judge proceeded on the erroneous theory of the law that it was the duty of the *entire board* under all conditions to compare the signatures.

Quoting the next excerpt:

> "An important thing which they are to do is to compare the signature offered by the voter with the previous signature in the signature book. * * *"

Referring to the printed charge, (page 387, at line 8), it will be seen that this sentence is most intimately connected with the one immediately preceding it. *"They are charged with a duty to perform in a certain specified way."* And this latter sentence again refers to the use of the signature book just explained by the court at line 5; *"they are required to use it in the manner the law directs.* * * *"

So it must be clear that only by isolating a sentence, or part of a sentence, in the charge from its proper and legitimate context, can even the semblance of an argument be built up for the defendants, that the trial court proceeded on an erroneous theory of the law.

The same argument applies to the portion of the "affirmative opening" by the State, at the close of the evidence, to which the plaintiffs-in-error object; quoted as follows: "That these defendants under the provisions of the Election Laws were charged with the duty of ascertaining the identity or sufficient similarity of the signatures of the voters before receiving the votes of the voters." Reference to that portion of the "affirmatives opening," (p. 353, l. 22) dealing with this subject will show; that here again is an excerpt represented as being a sentence complete in itself, when

in fact it is only a part of a sentence, *and is not an expression as to the law governing the case, but the reading of the indictment at a particular point.*

The views of the prosecuting attorney, however, were expressed on this point of law and they appear on page 354, l. 38, et seq.:

> "* * * and you do not have to be befogged, the State claims, by any five hundred and two sections of the statute; all you have to know is what is required to identify the voter; all you need is not, the State contends, the learning of a specialist on election law; all you need is *an honest man,* and then your vote and my vote is safeguarded. All you need is to have *a man* who will say, write your name down there, * * * walk over to the signature copy registry, &c. * * * The questions are there and nobody who is honest can doubt what *his* duty was * * * The duties that *an honest truck driver* can perform—if *he* wants to perform them."

POINT II.

The action of the trial judge in declining the motion for a mistrial based on counsel's allegation that, in addition to the regular sworn officers, a person other than a sheriff's officer had been assigned to watch the jury against outside interference, was not erroneous.

The action of the Court below in declining this motion is not properly the subject of an assignment.

State vs. Warner, 56 N. J. L. 686, at 694.

The trial judge in his discretion assigned the officer to the duty of watching the jury. It was done entirely without suggestion or action on the part of the prosecutor (Case, p. 313, ll. 1-20).

There were no communications whatsoever with the jury ab extra (Case, p. 314, l. 33, to p. 316, l. 5).

Each juror swore that he had absolutely no communication with any person outside the jury in anywise relating to the subject of the trial, directly or indirectly (Case, p. 317, l. 30 to p. 326, l. 40).

The person assigned by the Court was a county detective (Case, p. 311, l. 30; p. 312, l. 10).

Counsel below moved for a mistrial "on the ground there is no warrant of law for sending any person with the jury except a person connected with the sheriff's office who has already been elected constable. Mr. James is not a constable" (Case, p. 306, ll. 18-25). County detectives

> "shall possess all the rights and powers of special deputy sheriffs, *constables* and police officers * * * " (Vol. 2, Compiled Stat. Sec. 158-D, p. 1872).

The judicial action to be taken on counsel's motion for the mistrial below lay in the sound discretion of the Court.

State vs. Peter Cucuel, 31 N. J. L. 249.

There was nothing adduced at the trial to sustain the least suspicion that the jury had been improperly influenced. On the contrary, the testimony of the jurors themselves, as well as of the officer who was examined, showed conclusively that the custody and guarding of the jury against any and all extraneous influence were maintained with perfect integrity. There was no contradiction of this. In such aspect of the case the denial of the motion for a mistrial was proper.

> "A verdict will not be set aside on account of misconduct or irregularity of a jury even in a capital case, unless it be such as might

affect impartiality or disqualify them from the proper exercise of their functions."

State vs. Cucuel (Supra);
Titus vs. State, 49 N. J. L. 36;
12 Cyc. 729 (6).

It might well be claimed that the environment and influence to which the jurors in the Cucuel case were exposed could be calculated to subvert the judicial impartiality of the jury. Nevertheless the sage Chief Justice Beasley in that case denied, on behalf of the Supreme Court, a motion to set aside the verdict. And this though he saw fit to say at a subsequent time in speaking of the conduct of the jurors in the Cucuel case:

> "*And although the lapses from the line of duty of some of the jurors were of a very marked character indeed,* the Court refused to annul the verdict because there was no reason to think that the verdict had in the least degree been affected by such irregularity."

Titus vs. State (Supra), at p. 40.

In the Cucuel case, Chief Justice Beasley says, at page 255:

> "All that the law attempted, all that it could rationally attempt, was to prevent the intrusion into the minds of the jury of the sentiment of the community or of some of its members *touching the matter under judicial cognizance."*

And again at page 257:

> "It is not the legal right of the prisoner that the Court should go further than this [that is, to enjoin the sworn officers to whose keeping the jury are committed to prevent the jurors from holding intercourse with any persons *on the subject of the trial*]. All restrictions upon the jury beyond this limit are matter of discretion with the Court; and if

omitted such omission affords no ground of exception to the conduct of the cause."

And again at page 257:

"All that the defendant can demand as a right is that the Court should not sanction the withdrawal of the jury, in whole or in part, during the trial from the presence of the Court or its officers."

And again at page 258:

"I cannot but think that among legal phenomena, few are more strange than that this question has been one on which Courts have been much divided—for it would certainly seem, that the rule that the misconduct of any member of the jury or any one of the officers in charge of them, in violation of the order of the Court as to their seclusion, should per se and without reference to the effect of such misconduct on the verdict rendered, have the effect of a mistrial, would be utterly impracticable. It is perhaps not rash to say, that no verdict was ever rendered which would stand this test."

See also *State v. Warner,* (Supra).

But the foregoing authorities, it must be borne in mind, defend a situation that might be considered questionable. The record of the case at bar, however, precludes even any suspicion of the least violation of the jury sanctum.

POINT III.

There was no error in permitting the State to give testimony of the fraudulent personation of registrants additional to those named in the indictment.

In the case at bar the registrants who were personated and upon whose names the illegal votes were cast, testified at the trial that the signatures made in the poll book by the persons

casting the votes on their names were not made by them, and that they did not vote at that election. To the latter proposition there is one exception, an instance where the registrant presented himself at the polls to vote after his name had been already voted upon by another, and where he was directed to sign his name on a blank sheet of the poll book, his signature being erased after he had cast his ballot and left the polling place (Case p. 133, l. 1 to p. 137, l. 19).

There was no contradiction of the State's proof that the duly qualified registrants did not vote at the election in question and that these registrants were personated and their names voted upon by others. It was ignorance of the wrong done of which the defendants sought to avail themselves as a defense.

It is therefore fair to assert that at the trial below the acts of the defendants were conceded and their state of mind put in issue. It was under these circumstances that the State gave testimony that duly qualified registrants, additional to those named in the indictment, were personated in the voting at the election in question.

The rationes of this established exception to the general rule against testimony of *res inter alios acta* is sounded by Greenleaf:

> "Now, when the act is conceded, and the state of mind is in issue, the ordinary doctrine of chances is apt to assist us materially in coming to a decision. For example, if A while hunting in a party with B finds a shot from B's gun whistling past his head, A is willing to accept a bad aim or an accidental stumble as the explanation; but the same thing happens again, and if on the third occasion A receives B's bullet in his body, the natural inference of probability is that it was done deliberately. For the basis of this inference we have merely the doctrine

> of chances i. e. that the chances of three successive accidental and innocent shots of the sort are very small, or (to put it in another way) that inadvertence or accident is abnormal or occasional, and thus the recurrence of the same harmful result indicates a normal, i. e. deliberate, origin; in short, similar results do not usually recur through abnormal causes. Such seems to be the principle upon which, when the doing of a wrongful act is conceded and the innocent intent is in issue, the doing of the same or a similar act upon other occasions is admitted in evidence to negative the innocence of intent. The limitations of this use are (a) that the wrongful act itself is conceded or otherwise proved to be done and the evidence is used only to negative innocent intent; and (b) the other acts must be of the same or a closely similar sort and not widely separated in time, in order to exclude an innocent explanation."

The testimony objected to below was that of the acceptance by the defendants, *in the same election and on the same day,* of votes that were cast on the names of other registrants in addition to those named in the indictment; the additional registrants thus personated being men who knew one or more of the defendants intimately, some of them since boyhood (Case p. 101, ll. 20-30; p. 112, l. 34; p. 113, l. 5; p. 99, ll. 1-10; p. 97, ll. 30-35; p. 95, ll. 10-16).

> "The question here is not the establishment of defendant's guilt in respect to some isolated transaction, but the state of mind therein evinced by him, if it be shown to have been carried forward and exhibited in a criminal act so nearly related in kind, place and circumstances that the mental state involved is practically continuous."

Justice Garrison in *State v. Deliso,* 46 Vr. at 808-817.

Such testimony must be held to come within the exception to the general rule.

State v. Robinson, 16 N. J. L., 507.

Justice Dixon went far beyond the necessities of the State's present contention when he said in *State v. Raymond,* 24 Vr. 260 pp. 264-5:

> "And in general it may be said that whenever the defendant's guilt of an extraneous crime tends logically to prove against him some particular element of the crime for which he is being tried, such guilt may be shown."

See also

State v. Van Houten, 3 N. J. L., 248;
State v. Snover, 36 Vr. 289;
State v. Deliso, 75 N. J. L., 809 at 816-17.
Harris v. D. L. & W., 77 N. J. L., 279;
State v. Popick, 83 N. J. L. 318;
12 *Cyc.,* 408.

If the defendants had shown in their conduct of the election, discrimination in the refusal of the votes of persons offering to vote who failed completely to satisfy the legal tests of their title to the franchise, and did maintain in their defense that whatever fraudulent personation was committed in the casting of illegal votes in that election was beyond their scienter, proof of their exacting care and caution in the proper conduct of the election would most certainly have been available in behalf of the defendants as explanatory of their volitional state and as showing want of scienter.

Schlemer v. State, 51 N. J. L., 23.

Now, the mental condition of these defendants was part of the *res gestae,* and under the broad principle of the Schlemmer Case (Supra), proof of defendants' contrary conduct was properly admissable against them.

For a case dealing with proof of scienter in fraudulent voting see

People v. Shea, 147 N. Y., 78.

POINT IV.

There was no error in permitting Assistant Prosecutor McCarthy to testify as he did in rebuttal.

This point can be disposed of best in the language of the Supreme Court thereon, and the reasons therein given:

> "But we perceive nothing in this justifying reversal."

POINT V.

There was no error in the refusal of the court to charge the defendant's thirteenth request.

The request is: "The Assistant Prosecutor of the Pleas, as such, has no authority to instruct the Boards of Election how to perform their duties; and any instruction or advice he gave them was not authoritative, nor entitled to more credence than that of any other intelligent man. The statute imposes upon the Secretary of the State the duty of issuing instructions, and the Board was under no obligation to obey any instructions that Mr. McCarthy may have given."

Under the 38th section of the Elections Act of April 20th, 1911, (P. L. 1911, p. 328), it becomes the duty of the Prosecutor of the Pleas under certain conditions *to diligently inquire into alleged violations, for the purpose of presenting a charge to the grand jury.*

The Assistant Prosecutor, being an officer of the court, it must be assumed that he was acting by virtue of his office to carry out the law, and as the *alter ego* of the Prosecutor.

To have made such an investigation, and finding that either gross ignorance, wilful neglect or palpable fraud was in evidence, and then not have

instructed the members of the Board, would seem to require of the Prosecutor that he appear to acquiesce in these irregularities. It is not contended that the Assistant Prosecutor acted illegally to the harm of these defendants.

POINT VI.

There was no error as to the seventh request to charge.

The request reads: "7. The failure, if there were a failure, to O. K. the signature in the poll book cannot be a ground of liability under this indictment."

The court might very properly have refused, and the state thinks should have refused, to charge this request; because it depended upon the *reason* for the failure, to O. K. the signature in order to determine whether such failure could "be a ground of liability under this indictment."

If *fraud* or *wilful neglect* was the *reason*, then liability attached to the defendants under this indictment.

But the court did charge the request *in haec verbae*, adding, "but the failure to O. K. may be considered by you as bearing on the other evidence in the case."

This was a proper safeguard for it will be remembered that these defendants used the O. K. in the place of the initials required by law; and the court had particularly called the attention of the jury to the fact that the state did not ask for a conviction on this ground.

> "There should be no verdict on any such things as that."
>
> (Charge, page 376, l. 21.)

The defendant in error respectfully submits that the judgment of the Supreme Court should be affirmed.

PIERRE P. GARVEN,
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Attorney for and of Counsel,
with Defendant in Error.

GEORGE T. VICKERS,
First Assistant Prosecutor,
Of Counsel.

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New Jersey Court of Errors and Appeals

THE STATE, *Defendant-in-Error,* *vs.* LOUIS UNGER, WILLIAM F. LOONEY and JOHN P. KELLY, *Plaintiffs-in-Error.*	*On Writ of Error to the Supreme Court.*

BRIEF FOR PLAINTIFFS-IN-ERROR.

The defendants were three members of the District Board of Registry and Election for the second district of the second ward of Jersey City, and with one Hosbach, the fourth member, were indicted for misconduct in conducting a special election held in Jersey City on the 7th of October, 1917, to fill a vacancy in the Board of Commissioners of Jersey City, caused by the death of Commissioner Brensinger. Hosbach was not tried, and appeared as a witness for the State. The three plaintiffs-in-error were convicted and sentenced to State's Prison for several years. This conviction was affirmed by the Supreme Court, the opinion (p.) being by Mr. Justice Trenchard.

The case is here for review under a strict bill of exceptions, and also with the whole record certified by the Trial Judge, under section 136 (p. 404). The defendant Looney was serving for the first time at this election (p. 200); the defendant Kelly had only been appointed in May, 1917 (p. 282), and therefore had only served at a primary election previous to the one in question, in October of that year. The defendant Unger had been an election officer since 1912. The district is a tenement neighborhood thickly populated with a large number of foreigners. (P. 131, l. 25.) It also has a large floating population. It is not pretended that the defendant personally knew all, or even many, of the voters in the district. This decided difference in the experience and length of previous service of the different members of the board is of importance in view of the questions first hereinafter raised.

The indictment is in three counts—the first count, based upon section 31 of the Act of April 20, 1911, (P. L. 1911, p. 329) charges the defendants with knowingly and fraudulently receiv-

ing the votes of divers persons who the defendants knew impersonated and voted upon the names of others; the second count, based upon the second section of the Act of April 6, 1905 (P. L. 905, p. 224), charges the defendants with aiding and abetting persons to vote upon names other than their own; and the third count is based upon the wilful neglect and refusal of the defendants (section 31 of the Act of April 20, 1911, *supra*) to carry into effect the provisions of sections 46 to 48 of the Geran Act (P. L. 1911, p. 276), requiring the comparison of signatures and the challenge of voters.

The trial consumed three days and the jury was isolated throughout the trial. On the morning of the third day it came to the knowledge of the defendants that by order of Judge Tennant a clerk or detective in the Prosecutor's office had been with the jury at the hotel where they were detained, in addition to the four sworn officers having them in charge. The matter was at once brought to the Court's attention, and a motion for a mistrial made and denied.

There are several assignments of error and causes for reversal specified. We shall, in this brief, rely upon the following:

I.

The Court erred in charging the jury with reference to the defendants' duty to compare the signature of the voter in the poll book, with that in the registry book.

The storm center of the case, as the Trial Judge charged, was with reference to the alleged neglect of the defendants to have compared the signatures of the voters at the election in question, with their purported signatures on the registry books, in obedience to the provisions of the Geran Act (P. L. 1911, p. 276).

Each defendant was cross examined by the State, with specific reference to the signatures, and his conduct in the comparison, without regard to the question whether he was, in fact assigned to and engaged in the discharge of other duties. It was erroneously assumed, as indeed the third count of the indictment charges (p. 8, ll. 15-30), that it was the duty of the whole board and each and every member thereof, to ascertain "prior to accepting the votes of voters in the said special election, the identity or the sufficient similarity of the signatures of the voters therein, made at the time of the registration thereof, with the signatures of the voters therein made at the time of their voting in the said special election." The only charge in the indictment

with reference to alleged violation of the Geran Act is found in this third count.

Before examining in detail the language of the charge, we should familiarize ourselves with the provisions of the statute.

There was, of course, under the General Election Act (Revision of 1898) a provision for a Poll book and a Registration sheet, and at elections no person could vote whose name was not on the Registration sheet, and when he did vote his name was likewise required to be entered on the Poll book. The distinctive feature of the Geran Act (P. L. 1911, p. 276, as amended by sections 3 and 4 of chapter 417 of the laws of 1912) is to require in certain elections the personal registration of each voter in certain localities, and at the election, the writing by the voter of his signature in the Poll book, and the comparison thereof with the signature previously made on registration day.

In the Geran Act no change is made in the *personnel* of the Election Board. The Geran Act simply assumes that the provisions of the General Election Law of 1898, with reference to the four election officers with their several designations, are in effect. The 19th section of the General Election Law (Revision of 1898 as amended in 1905, P. L., p. 506), provides that each of the Election Boards shall elect one of its members as "Judge," who shall be chairman, and another of its members as "Inspector," and the other two members are designated "Clerks." By the 67th section of the Revision, the judge is to designate one of the clerks to keep the Poll book. Sections 72 to 82 inclusive of the Revision of 1898 prescribed the method of conducting an election held pursuant to the provisions of that Act, and placed upon the whole board the duty of becoming satisfied as to the right of a proposing voter to vote, and to challenge if in doubt. Indeed, there is no particular division of labor among the election officers until we come to the 86th section of the Revision, when the duties of the judge, clerk and inspector with reference to the canvassing of the votes are specifically provided for.

The Geran Act, with its novel requirement of a comparison of signatures, and the duty of the voter to sign his name, imposes so much more labor upon the different members of the board, and apart from the confusion that would otherwise result, the delay in requiring the personal participation of each member in all the formalities required by the Act would impede the voting and in many districts disenfranchise the voters. Hence we have the division of labor indicated in sections 46 and 48 of the Geran Act.

These sections so far as they pertain to the subject under consideration, provide as follows:

"Sec. 46. The signature copy of the registry list or book shall be kept by the Board of Registry and Election in such election district, and used on Election day as hereinafter provided. In all election districts in cities, towns, townships, borough and villages containing a population exceeding ten thousand, each Board of Registry and Election shall have a Poll book for keeping the list of voters voting or offering to vote thereat at the election. Such book shall have six columns headed respectively: * * * Previous to each delivery of an official ballot by the ballot clerk to a voter, the member of the board having charge of the Poll book shall enter therein in the appropriate column the number of the voter, in the successive order of the delivery of ballots to voters, the name of the voter in the alphabetical order of the first letter of his surname, his residence by street and number, or if he has no street or number, a brief description of the locality thereof. The column headed 'signature or statement number of voter' shall have printed above each horizontal line the words 'the foregoing statements are true,' and the voter shall previous to the receipt of an official ballot, sign his name by his own hand and without assistance, using an indelible pencil or ink, below the said words in the Poll book. After the voter shall have so signed, and before an official ballot shall be given to him, one of the members of the Board of Registry and Election shall compare the signature made in the Poll book with the signature theretofore made by the voter in the Registration book on Registration day, * * * and if the said signature is the same or sufficiently similar to the signature written on Registration day * * * as to identify it being written by the same person who wrote the signature on Registration day, or on such affidavit, said member shall thereupon certify that fact by writing his initials after such signature in the columns headed 'signature compared.' "

"Sec. 48. The comparison of signatures of a voter made on Registration and Election days, and a comparison of the answers made by a voter on Registration and Election days shall be had in full view of the watchers, challengers or agents, and the right to challenge voters shall exist until the ballot shall have been deposited in the ballot-box. If the signatures of the voters or the answers to the questions made by the voter do not correspond, then it shall be the privilege of the watchers and challengers to challenge and the duty of each member of the Board of Registry and Elections to challenge, unless some other authorized person shall challenge."

The person who manipulates the ballot, handing it to the voter and receiving it from him in turn, deposits it in the ballot box, is known as the "ballot clerk" of the board, and the person having charge of the Poll book enters therein the name and number of the voter, his residence, etc. Obviously, under his superintendence the voter signs his name in the Poll book, when (§46, chap. 183, laws of 1911):

> "**One of the members of the Board of Registry and Election shall compare the signature made in the Poll book with the signature theretofore made by the voter in the Registration book on Registration day, and if said signature is the same or sufficiently similar to that written on Registration day, to identify it as having been written by the same person who wrote the signature on Registration day, said member shall thereupon certify that fact by writing his initials after the signature.**"

Section 48 is careful to provide that the comparison which, as we have seen, one member is to make, shall be had in full view of the "watchers, challengers or agents." No requirement is made that the other members of the board, who obviously are busy in discharging their other duties, shall observe or participate in the comparison.

As we have seen, a large part of the evidence was devoted to the failure of each of the defendants to have properly compared the signatures, and each was subjected to a severe cross examination as to the great dissimilarity between several of the signatures in the Registry and Poll books respectively, without regard to the question whether or not the particular defendant was the member of the board specifically charged with that duty, or without any proof that the attention of the other members was, by the clerk of election, whose duty it was to compare the signatures, called to the dissimilarity said to have existed between them.

On page 152, answering an objection of the defendant's counsel, the Trial Judge said (l. 12):

> "A man comes up to vote, he is required under the election law first to sign his name in the Poll book. **The District Election Board is thereupon required to take that signature and compare it with the register.** That is the fundamental theory of the Geran Act, the comparison of signatures."

Counsel for the State, in their so-called "affirmative opening," at the close of the evidence (p. 353, l. 22) said, expressing their views as to the law covering the case:

> "That these defendants, under the provisions of the Election Laws, were charged with the duty of ascertaining the identity or sufficient similarity of the signatures of the voters before receiving the votes of the voters."

In view of the nature of the charge in the third count of the indictment; the insistance of the prosecuting attorney; the nature of the evidence; and the position of the Trial Judge during the taking of the testimony, we are not surprised that he charged the jury as follows (see page 382, l. 40):

> "The purpose of having the signatures to compare was to insure, if possible, having an honest election. If the signatures so compared were the same, or were sufficiently similar no further inquiry seems to have been necessary. If the election officers did examine the signatures, did the signatures compare in their opinion? Were they in their opinion sufficiently similar to reasonably justify the defendants in believing that the proposed voter was the same person who had previously registered? If you find that, these defendants should be acquitted, but look at the signatures, look at the spelling, the writing, and compare them, and say whether as election officers, entrusted with the conduct of this election, you believe they used such care as the law requires in the comparison of the signatures, to satisfy themselves of the identity or sufficient similarity of the signatures. The law does not require your test, or my test, or an expert's test of comparison. It requires their examination to satisfy themselves and if you believe they satisfy themselves by the comparison which the law requires, and that they had no other knowledge of false votes, or that false votes were voted, the defendants should be found not guilty. * * *"

Again at p. 384, l. 40, he said:

> "As these defendants were charged with the duty of comparing the signatures, if the jury find that they wilfully neglected and refused to perform that duty, or that they knowingly and fraudulently acted in contravention and violation of these requirements, they shall be found guilty. * * *"

Again at p. 387, l. 10, he continued:

> "An important thing which they are to do is to compare the signature offered by the voter with the previous signature in the registration book. * * *"

and at p. 392, l. 30, he added:

> "I charge you it was their duty to make this comparison; it was their duty if the signature did not identify or indicate a sufficient similarity to them to challenge, unless some other person authorized for the person so challenged."

The foregoing quotations manifest that the Trial Judge, throughout his charge, proceeded upon the hypothesis that it was the duty of the entire election board to make the comparison between the signatures in the Poll book and Registry book respectively, in accordance with his conception of the requirements of the so-called Geran Act.

The Supreme Court disposed of this matter in this wise:

> "The real contention under this point is that the Judge erroneously lead the jury to believe that it was the duty of the entire election board to make such comparison. But that he did not do. True, he stated that the duty of making such comparison of signatures was cast upon the election officers, but he also clearly and correctly charged, in the very language of the defendants' request, that not all of the election officers, but only one of them, was charged with that duty, and this was in accordance with Section 46 of the Act of April 19, 1911 (P. L., p. 276, as amended by P. L. 1916, p. 593), providing that 'one of the members of the board of registry and election shall compare the signature made in the poll book with the signature theretofore made by the voter in the registration book,' etc. In view of the fact that different members of the board may make the comparisons at different times of the day, we are not prepared to say that the instruction was objectionable as to the portion complained of considered alone. *But if so, that would not lead to reversal, because it is quite clear that in the circumstances of the case the charge on this topic considered as a whole was correct and not misleading, and could not have prejudiced the defendants. State* v. *MacDonald,* 89 N. J. L. 421; affd. 103 Atl. 165. *Kargman* v. *Carlo,* 85 N. J. L. 632."

It is submitted that this is a mistaken view of the situation, and that the true rule, applicable to this case, is that (the contradiction in the charge being admitted), when confusion results, the Appellate Court cannot substitute itself for the jury, and determine the extent of confusion that may have been left upon the minds of the jury, and whether or not the matter was nevertheless clear to them.

A number of cases have been decided to the effect that when directly contradictory statements of the law are made by the Judge in charging a jury, the Court on review cannot arrogate to itself the right to determine whether confusion was or was not thereby created in the minds of the jury.

An important one, very similar to the case at bar, is *McNear* v. *American & British Mfg. Co.* (Rhode Island Supreme Court), 107 Atl. Rep. at p. 242. This was an action of assumpsit to recover moneys claimed to be due the plaintiff. The defense set up that the acts and circumstances giving rise to the obligations relied on by the plaintiff arose out of an illegal conspiracy, and hence that the contract was illegal. The Court, after charging that if the contract was illegal, no recovery could be had, reviewed the circumstances relied on by the defendant to show a conspiracy in restraint of trade, charging:

> "There must be a combination between two or more persons in order to have a conspiracy, and so you take the testimony relating to the communications from Hoadley to McNear and from McNear to Hoadley, and determine from the evidence whether or not there was a conspiracy between them in view of what happened between these gentlemen and the American & British Company."

The Court, at the request of the defendant, reading from the defendant's first request, also charged the jury:

> "1. If you find from the evidence that the plaintiff and defendant conspired to create a corner in quicksilver, then your verdict must be for the defendant."

Later, also upon the request of the plaintiff, reading from his third request, he charged:

> "3. There is no evidence in the case that the plaintiff knew of, or had any scheme to monopolize quicksilver, and if Joseph H. Hoadley, or the defendant, had any such scheme in his mind which was illegal, which was not communicated to the plaintiff's agent, such illegal scheme in the mind of Hoadley could not be imputed to the plaintiff, the McNear Company."

He further charged the plaintiff's 23d request:

> "23. There is no evidence of any conspiracy or agreement between the plaintiff and the defendant to control or fix prices or to restrain trade."

Concerning these contradictory and diverse charges upon the same point, the Court, in review, says:

> "We have given very careful consideration to these instructions, and they appear to us to be without doubt

> contradictory and misleading. In one portion of his charge he submits to the determination of the jury the question of whether or not under the evidence there was between the parties an illegal combination to create a monopoly and restrain trade. * * *
>
> In our opinion the instruction to the jury which the Court gave in response to the plaintiff's third and twenty-third requests, quoted above, constitute reversible error, and the error is not cured by the contrary instructions in the Judge's general charge. This Court has recently considered the case of *Greenhalch* v. *Barber,* reported in 104 Atl. 769. In that case in the Superior Court the Trial Justice had at different points in his charge instructed the jury as to the care required of the driver of an automobile in the circumstances of the case. In one portion of his charge he had given to the jury a proper statement of the law in that regard, and in another portion his instruction as to the driver's duty was erroneous. The Court held that these conflicting and confusing instructions constituted error, and entitled the defendant to a reversal and a new trial. This is in accord with the established doctrine that when contradictory instructions are calculated to confuse and mislead the jury, they constitute reversible error. It cannot be left to the jury to reconcile the conflicting statements of law; and it is impossible for the Appellate Court to determine in accordance with which of two inconsistent statements their verdict has been reached."

This Court, in *Ruckman* v. *Bergholz,* 37 N. J. L. 437, 442, adopted the same principle. There an action had been commenced, and a verdict obtained, for commissions in negotiating a contract. The plaintiff had acted as broker under an authority to sell at a stipulated price. The Trial Judge, distinguishing such a case from that where an agent is employed to sell at an unstipulated figure, held that the plaintiff might recover, notwithstanding the defendant was not aware of his interest. The Court directed the jury, in addition to deciding the main question, to determine specially whether or not the plaintiff was interested, and, if they concluded he was, the same would bear on his veracity. Inasmuch as the jury found in their special verdict that the plaintiff had not been interested, it was claimed that the error made in the charge as to the general question was, therefore, immaterial. The Court, however, took a different view, stating:

> "That while it is true that the parties to a suit have a right to have the law truly declared, it is also true that a judgment will not be reversed for an error, how-

> ever manifest, which has done no injustice. But it should be clear that the party complaining has not been injured by the error, and if there is reasonable doubt on that point, *it is the duty of the Court to give him the benefit of it.*"

The Court then concluded that after a general charge that the interest of the plaintiff in the contract would make no difference in his right to recover the commissions, concluded that the jury would be apt to pay little attention to the special finding of interest or no interest, and therefore reversed the judgment. The opinion adds:

> "In *Toulman* v. *Hedley,* 2 Carr. & Kir. 157, the Court were of opinion that the charge in terms was correct, but that it still might have been misunderstood by the jury, and for that cause they set aside the verdict. In *Benham* v. *Cary,* 11 Wend. 83, it was held to be error that the charge was calculated to make an erroneous impression upon the jury and to mislead them in their views of the case."

Reference is also made to the following authorities in support of the proposition that contradictory statements in a charge will lead to a reversal, unless it is perfectly obvious that the complaining party has not been injured thereby. *Lackawanna R. R. Co.* v. *Doak,* 52 Pa. St. 379, 38 Cyc. 1604; *White* v. *Sohu* (West Va.), 39 S. E. Rep. 890; *Cobb* v. *Glen* (*id*), 49 *id,* 1005; *Producers Coal Co.* v. *Mifflin* (*id*), 95 S. E. Rep., 948; *Central Coal & Coke Co.* v. *Elleson* (Iowa), 195 S. W. Rep. 722.

In neither of the cases cited by the Supreme Court was the situation the same as in the case at bar. The report of *State* v. *McDonald,* in the Supreme Court, 89 N. J. L. 421, shows nothing whatever except a holding that upon an indictment for robbery one can be convicted of larceny. When that case reached this Court, 103 Atl. 165, the question was raised as to whether the Trial Judge erred in commenting upon the evidence of the defendant, that he was not present at a location sworn to by witnesses for the State, as follows:

> "The defendant, you will recall, denies that he ever saw these men or the wife of one of these men. If the defendant's story is true, and you are persuaded he never saw them, or had anything to do with them, of course, your verdict should be not guilty."

The claim was made that this comment practically left to the jury the impression that the burden was cast upon the defendant to establish the truth of this claim, and that the Trial

Judge should have gone further and added that it was for the State to show beyond a reasonable doubt that the defendant was present, participating in the robbery. The charge had contained in its introduction the usual general statement that the burden was on the State to prove beyond a reasonable doubt all the essentials of the charge, and so the opinion in this court correctly said:

> "This had already been covered by the main charge, and the instruction complained of *is not legally inconsistent* therewith. If the defendant wished the Court to apply the burden of proof rule again to this specific point, a proper request should have been submitted before the jury retired."

Surely this is entirely different from the situation in the case at bar. Particular requests to charge had been made, and a position utterly inconsistent had been taken.

In *Kargman* v. *Carlo,* the other case cited by the Court, no objection had been made at the trial to the instructions complained of on review, and the Court adds:

> "So long as the law is stated correctly and intelligently, the ultimate test of the soundness of instructions to the jury is, not what the ingenuity of counsel can, at leisure, work out the instructions to mean, but how and in what sense, under the evidence before them and the circumstances of the trial, would ordinary men and jurors understand the instructions as a whole."

We have shown how in at least four distinct instances during the progress of his charge the learned Trial Judge reiterated in a positive and unequivocal manner the rule to be, that the statute cast upon all of the election officers the duty of comparison. So firm had been the correspondence between the views of the Trial Judge, and the charge in the third count of the indictment upon this point, that counsel for the defendants requested the Judge to charge as follows, for the purpose of having his record complete (p. 365, l. 27):

> "2. All of the election officers are not charged by law with the duty of comparing the signature of the voter, with the signature on the registry book; only one member of the board is charged with that duty. If that one is satisfied with the signatures and shall have so manifested, then there is no duty cast by the law, upon the other members of the board to pursue the subject, and the mere fact that the jury may think the two signatures in any given case, are not the same, or not sufficiently similar to identify them as being written by the same person, does not of itself justify the conclusion that all of the accused can be convicted."

The Trial Judge, instead of charging generally, and then treating the requests separately at the end of the charge; or else incorporating so many of them as he adopted in his charge generally, and refusing to charge otherwise than as he had done; in this case (p. 377) in the middle of his charge took up the defendants' requests, and at line 21 quoted the second request *in haec verba.* It will be observed, however, that he expressly failed to charge the request. At line 9 of the same page he took up the defendants' requests, introducing them by the remark—"I have been requested to charge you." He then read the first and second requests, and left them without further comment, whereas at the bottom of p. 379, with reference to another of the requests he says:

> "I am also requested to charge you, *and I do charge you,* it is the duty of the State to prove beyond a reasonable doubt, etc."

Can the repetition of a request to charge in the language of the request, and simply prefaced by the remark "I am requested to charge," without a positive expression of the Court's adherence to, or its disapproval of the doctrine of the request, be considered, in the hurry of a trial, particularly when in connection with other requests the Trial Judge, beside repeating the words of the request, adds that he does so charge, be said to be a plain expression of the law, when on at least four or five other occasions in the charge, we find direct and unequivocal charges to the opposite effect? Are we not justified in claiming for the defendants the benefit of the doubt (to quote the language in *Kargman* v. *Carlo, supra*):

> "How and in what sense, under the evidence before them, and the circumstances of the trial, would ordinary men and jurors understand the instructions as a whole?"

In *Georgia Co.* v. *Flowers* (Ga.), 33 S. E. Rep. 874, it was held that when appropriate written requests to charge are duly presented, it is the duty of the Judge, not merely to read the same to the jury, but to distinctly inform them that such requests are correct propositions of law to be considered along with the other instructions.

In the calm repose accompanying the reading of this charge it is difficult to ascertain exactly what the Trial Judge did mean, and whether he intended to charge the first, second or third requests, or whether he simply read them and forgot to dispose of them. *A fortiori,* how much more confusion would exist in the minds of the jurors in the hurry of trial, in view

of the way the defendants were examined, each one's attention being directed to the discrepancy between the handwriting in the Registry book and the Poll book of the same signatures, and the Trial Judge, in answer to an objection, announcing (p. 152):

> "A man comes up to vote. He is required under the Election Law, first to sign his name in the Poll book. **The District Election Board is thereupon required to take that signature and compare it with the register.** That is the **fundamental** theory of the Geran Act, the comparison of signatures."

There is the indictment, with the sole charge that the duty is cast upon all of them, and there is the reiteration, in language that would admit of no misunderstanding, that the duty is one cast upon the entire board.

We respectfully, but urgently, insist that this was a fundamental error in the charge, that existed throughout the case, from the indictment to the summing up by counsel for the State; acquiesced in throughout by the Trial Judge in his conduct of the case; and that by simply repeating the language of a request designed to make a further record, without charging the request, he has not cleared up the situation.

The storm center of this case, as shown by the evidence, is around the question of the duty of comparing the signatures, and throughout the case it was contended by the defense that such an obligation did not rest upon all of the election officers, but only upon him to whom that special duty was delegated. The prosecutor, in drawing his indictment, and in his speech to the jury, notwithstanding the contention of the defendant's counsel, urged the contrary. The Trial Judge in his general charge reiterated the same principle. When he came to dispose of the defendants' request he did not, as we have already seen, specifically charge it, but contented himself with reading it. How, under these circumstances, a reviewing Court can say that upon this fundamental question the jury were not misled, we fail to comprehend.

Exception was taken to these expressions of the Trial Judge (p. 400, ll. 6 to 40), and error was duly assigned thereon (p. 410, ll. 20 to 40). These assignments are repeated in this Court, but we cannot at this writing point to the page where they appear in the book to be printed for this Court.

II.

The Trial Judge erred in permitting Assistant Prosecutor McCarthy to testify in the manner he did in rebuttal.

The defendant Unger (pp. 274, 281) was cross examined by the State with reference to certain admissions alleged to have been made by him to Assistant Prosecutor McCarthy, in an interview that took place in the prosecutor's office in Jersey City. This, of course, is on another occasion, and entirely distinct from the occurrences that took place between the defendants and Mr. McCarthy on election day at the polls.

Mr. McCarthy was called in rebuttal, and on pp. 327 and 328 was asked categorically whether or not the defendant Unger had made the specific admissions, which Unger had denied, and to which his attention had been specifically directed. Of course, no criticism attaches to this evidence. The trouble is, that on page 329, the State over the defendants' objection, asked Mr. McCarthy to detail the whole conversation at the same interview filling two pages (pp. 334 and 335), and containing many alleged admissions and statements by Unger, to which his attention had been in no wise directed, and which, of course, if to be used as admissions should have been introduced by the State in its main case. Colonel Vickers in answering this objection (p. 329, l. 32) says:

> "It is not in contradiction of anything that the defendant Unger said specifically, to which his attention was directed, but it is contradiction and it is proper rebuttal in respect to what the situation was as between the parties at the time of the conversation, which on the State's direct case was placed in one posture, and by the defense in another."

Again on p. 331, l. 13, after renewed objection Colonel Vickers said:

> "I think we would be entitled to show in this inquiry all the conversation in order to make clear to the jury the relationship between the parties at the time as to whether or not Mr. McCarthy was interrogating Mr. Unger, whether or not Mr. Unger was volunteering information, I think it is relevant and material to show what the attitude of the parties was so that this jury may know whether to believe Mr. Unger or to believe Mr. McCarthy, a very important thing in this case. I believe the entire conversation is relevant and material."

On pp. 330 and 331 Mr. McCarthy then outlines how Unger admitted that he voted in this precinct, although he was not registered. On p. 333 the prosecutor was permitted to ask Mr. McCarthy to state "What took place between you and Unger which brought up the name of Morris Dorman?" and then (pp. 334-335) McCarthy gives a long answer with reference to several new matters, including the fact that one Peter O'Reilly appeared to have voted, although he was dead; to the fact that the Committeeman Kane had sent fifteen men down to vote on the names of certain individuals whose names appeared on a list that Kelly, one of the defendants, had given to Kane; to the fact that Unger had stated there were not one hundred honest votes cast in the district; that some of these fifteen men voted four times, and some of them five times, McCarthy stating:

> "I said, 'Good Lord, what did you permit anything like that to happen for?' He said 'I don't know'."

Mr. McCarthy further testified (p. 335):

> "Then he showed me the names, two or three names in these books, which he picked out. He said, 'I can show you a whole lot.' He said 'the registry itself is rotten.' I said 'what do you mean by that?' I had spoken to him about Dorman's name looking as if it compared with the signature of Morris Dorman on the registry. I told him I had not taken it off. Neither I had, when I compared the signatures. Because that name did look to me sufficiently similar. 'Well,' he said, 'the registry itself is rotten.' I said 'what do you mean by that?' He said, 'They added names to the registry.' I said 'Who?' He said, 'The crowd.' I said, 'What crowd?' He said, 'The fellows around there.' I said, 'Who are they?' He said, 'I don't know who they are.' I said, 'Yes, you do.' He said, 'No, I don't know who they are'."

After Mr. McCarthy had finished this diatribe, defendant's counsel moved that the testimony be stricken out. The motion was denied and an exception taken (p. 336). To add to the injustice, as the record discloses (p. 364, l. 32), Prosecutor Hudspeth, in summing up, quoted from this very evidence with reference to Unger having voted, although not registered, commenting upon the matter as being in "absolute disregard of the law. Unger goes from the place into his own district and votes, and they don't even take the trouble to put him on the poll book, but let his vote go in the box." Whereupon it appears that Mr. McCarter said:

> "I desire to have it recorded that that remark has been made by the Prosecutor in summing up. That was the evidence we objected to strenuously and we think it was illegally admitted. We desire to have it appear on the record that he has used it in summing up."

It further appears, on the same page, that Judge Hudspeth further proceeded, in his summing up, to read a portion of the evidence of Mr. McCarthy, to which we have adverted and which was objected to, and as to which a motion to strike it out was overruled.

It is not, as we have seen, pretended that this evidence of alleged admissions by Unger of matters not even charged in the indictment, was contradictory of anything that Unger had said, or that his attention had been in any way directed thereto. If the State, in its principal case, had asked McCarthy to detail this alleged conversation, objection would have been made to it as irrelevant to the other defendants, and to Unger himself, because it in no way related to the crime charged. While we are well aware of the rule of discretion in the court in adhering strictly to the rule of rebuttal testimony, nevertheless that discretion should never be exercised when it results in manifest harm and injury. How could the defendants escape being greatly injured by this testimony, emanating from the mouth of the forceful Assistant Prosecutor? In presenting it, the State simply took advantage of the opportunity to have the Prosecutor state at least a dozen things that Unger in a private interview with McCarthy is said to have stated about the conduct of that election, which not only involved Unger, but the other defendants, and as to a large part of which there was no charge or pretense of complaint, prior to the giving of the testimony by McCarthy.

The Supreme Court declined to interfere with the discretion of the Trial Judge in the admission of this evidence. We contend, in view of the fact that the witness was the Assistant Prosecutor, whose zeal and forcefulness we have already adverted to, and of the use made by the Prosecutor himself of the evidence in summing up, that there was such gross abuse, under all the circumstances, of the Court's discretion (the case being here under Section 136), that there should be a reversal.

The 16th and 17th causes for reversal (pp. 416, 417) refer specifically to this matter, and we strenuously urge that this alone is sufficient to cause this verdict to be set aside.

III.

There was error in the Trial Judge's refusal to charge the defendant's thirteenth request to charge.

This request read as follows (p. 368):

> "13. The Assistant Prosecutor of the Pleas, as such, has no authority to instruct the Boards of Election how to perform their duties; and any instruction or advice he gave them was not authoritative, nor entitled to more credence than that of any other intelligent man. The statute imposes upon the Secretary of State the duty of issuing instructions, and the board was under no obligation to obey any instructions that Mr. McCarthy may have given."

It appears (pp. 256, 259 and elsewhere) that during the election in question, Assistant Prosecutor McCarthy went to the polls presided over by the defendants, and entering the polling place behind the partitions, undertook to instruct the board as to their duties. On p. 258, l. 12, the defendant Unger was asked:

> "After Mr. McCarthy came down there and told you if a voter presented himself and said that was his signature in the registry book that you had to take his vote; that understanding that, you did not ask any person who did present himself thereafter whether the signature in the registry book was his? A No, sir; we did not.
>
> Q You did not? A No, sir."

Also p. 259:

> "Q Not having known Mr. Patrick Looney, he coming in to vote, Mr. McCarthy having told you that if a man said the signature was his in the signature book, why didn't you ask Mr. Looney whether it was his signature in the signature book? A For the simple reason his name appeared in the signature book, the name he had signed, and we allowed him to vote.
>
> Q It didn't make any difference to you, what Mr. McCarthy had said to you with reference to a man owning his signature in the signature book, did it, yes or no? A No, sir.
>
> Q You knew Mr. McCarthy was Assistant Prosecutor of the Pleas? A Yes.
>
> Q And that he was finding fault at that time with the method in which you were concluding that election, didn't you? A No, sir; I didn't.
>
> Q Did you think he was commending or criticising your manner when he was dealing with that poll book? A I don't know what his mind was.
>
> Q You didn't know his mind. He didn't express it, did he? A No.

Q He didn't say to you, turning to the voters' signatures, tell you they were all written in one hand, they were fakes, or something to that effect, did he? A Not to my knowledge.

Q Do you remember any such thing happening? A No, sir.

Q Did he make any criticism at all with regard to the way the names appeared there? A Not that I know of."

So also, the defendant Kelly (p. 293, l. 22) was asked:

"Q Now, then, Mr. McCarthy, or the man with him, pointed out some signatures, and then Mr. McCarthy gave some advice with regard to taking a man's vote provided his signature agreed; isn't that so? A I don't exactly remember hearing him say that.

Q Don't remember that part of it? Well, you served once before on an election, didn't you? A Yes, sir."

On page 256 the defendant Unger was cross examined as follows:

"Q Did Mr. McCarthy at that time take this poll book and examine it? A Yes.

Q Did he turn to page B, under Boatmen, and examine it? A He turned to some page.

Q Do you remember what page? A No, sir; I don't.

Q You don't remember it? A No, sir.

Q But, do you remember, you say now, he said to you if a man said, 'That is my signature,' you were obliged to take his vote? A Yes.

Q That is what Mr. McCarthy told you? A Yes.

Q When he said, 'If a man says that is my signature,' to what was he referring so far as you could tell? A The signature in the registry book.

Q From what Mr. McCarthy said no matter what a man said in the poll book in your presence, if he said, 'That is my signature in the registry book,' the board had to take his vote, is that so? A Yes.

Q There is no doubt in your mind about that? A None at all.

Q Well, Mr. McCarthy having told you that, did you ask anybody, any of these voters, whether the signatures in the signature book were their signatures, or was his signature? A If a gentleman came in and said his name was so and so, and it appeared in the registry book we would have to allow him to vote."

On page 344 Mr. McCarthy testified as follows:

"Q It appears in this case you were at the polls during this election. A I called at the polling place, yes.

Q Did you go in? A Yes.

Q Did you see the election officers? A Yes.

Q In what capacity did you go there? A In my capacity of Assistant Prosecutor.
Q Were you a watcher? A No.
Q An agent? A No.
Q Don't you know the law forbids anybody inside the enclosure except the election officers, the watchers, the agents and challengers? A I know that not to be the law."

On p. 271 it appears that Mr. McCarter, one of the defendants' counsel, asked:

"Is Mr. McCarthy, under the Election Act, an officer of these boards?"

at which inquiry the Assistant Prosecutor expressed his surprise, and the Court directed the cause to proceed without wasting further time.

Now, Mr. McCarthy actively conducted the prosecution of this case (having been especially charged with its preparation, p. 341, line 30), and testified two or three times; and a great point was made throughout the trial, and in the summing up, of the alleged contumacious failure of the defendants to observe the instructions that Mr. McCarthy gave them during election; and this gave rise to the thirteenth request above. The Court, however, refused to charge as requested, ignoring the whole subject, whereupon an exception was taken to the refusal (p. 399, line 20), and error is assigned thereon (p. 409, line 33).

We think there was harmful error in this refusal. It is true that the 38th section of the supplement to the Election Act of April 20th, 1911 (p. 329) provides that if the Prosecutor of the Pleas shall be notified by any officer, or other person, of any violations of any of the provisions of that act it shall be his duty forthwith to diligently inquire into the facts of such violation, and if there be reasonable ground for instituting a prosecution it shall be his duty to present a charge, with all the evidence which he can procure, to the grand jury. We know of no rule or statute, however, which justifies the Assistant Prosecutor in constituting himself an instructor of election officers, and justified him in directing election officers how they should conduct the election.

The 61st section of the General Election Act (revision of 1878), requires the Secretary of State to prepare a pamphlet of instructions for election officers, and to furnish a sufficient supply to be distributed to the Board of Registry and Elections, so that the provisions of the act can be fully carried out. The

whole statute is silent as to the right or duty of the Prosecutor or his assistant to instruct election officers, and no one can measure the extent of the injustice done by the persistence of the State in the idea that Mr. McCarthy was justified in entering the polling place and supervising the conduct of this election, and also instructing the board in their manner of conducting it.

On page 345 Mr. McCarthy was asked:

> "Q Is there any provision of the law that authorized the Assistant Prosecutor to be inside the enclosure on election day? A I don't know of any particular provision."

He admits (p. 347, at line 12) that he did tell the board how they should proceed, although he denies having given them the specific instructions to which they referred.

Now, in view of the forceful character of Mr. McCarthy, and the zeal displayed by him in the preparation and conduct of this case, surely the defendants were entitled to have the Trial Judge instruct the jury upon the matter requested in the thirteenth request, and not to have the jury left with the view, urged both by the State and Mr. McCarthy himself in his evidence, that it was his right and duty to do just as he did, and that the defendants' guilt was accentuated by their refusal to follow his instructions.

The Supreme Court, after referring to this bequest to charge, which was refused, disposed of the matter as follows:

> "But it is not error to ignore or refuse a request for instruction upon a matter immaterial to the issue. Com. *v.* Adams, 168 Mass. 101, 71 N. E. 78.) And we think the question whether the Assistant Prosecutor had or had not authority 'to instruct the Board of Election how to perform their duties,' was not material to the issue at the trial."

As we shall see, the Supreme Court and the Trial Judge both sustained the propriety of certain evidence, to which we shall later advert, upon the theory that an essential element of the defendants' alleged crime was their intent in doing the acts complained of; and the State claimed that this intent was manifested plainly by the contumacious refusal of the defendants to follow the instructions of the Assistant Prosecutor. Under such circumstances, the question whether the Assistant Prosecutor had or had not authority to instruct the Board of Elections how to perform their duties was very material to the issue.

IV.

There was manifest injustice to the defendants in the refusal and failure of the Trial Judge to grant their request for a mistrial, because it appeared that an attache of the Prosecutor's office under the direction of the Judge, accompanied the jury to the hotel where they were confined, and ate, slept and conversed with them.

See the evidence of John James (pp. 306 to 311). Mr. James, a zealous clerk in the Prosecutor's office, had served subpoenas in this case for the State, and was enabled to report to the Prosecutor the conversations he overheard while retired with the jury, although not sworn or regularly designated by the Court for that purpose. It is extraordinary, if an agent of the Prosecutor, without any sworn duty in the premises, can be permitted to be closeted with the jury in the trial of a case of this importance, and overhear all their discussions, and be in a position to apprise the Prosecutor of any weakness or flaw that the discussions of the jury show they believe to exist in the case made by the State. The very object of confining this jury in the custody of sworn officers of the court was to prevent their having communication with anyone. To that end, Mr. James' testimony shows, that the telephones leading to the rooms in the hotel which they occupied were cut off, yet all the time they were confined, without the knowledge of the defendants, Mr. James, at the suggestion of Judge Tennant, was with the jury mingling and conversing with them, and overhearing their conversation. While it is true that the jurors all say that they did not discuss the merits of the case with him, and he likewise states that he did not discuss the case with them, it appears (page 318) that the case was discussed by the jurors in his presence, while the jury and he were eating at the same table. It is submitted that there was a plain violation of duty in this regard, and an error made by the Trial Judge, out of abundant caution, in sending this clerk of the Prosecutor with the jury.

In *State* v. *Doty,* 32 N. J. L. 406, the Court said:

> "The law strictly forbids all intercourse, of every description, upon the subject of the cause on trial, between jurors and all other persons. To effect this end, the Court commits them in charge of one of its sworn officers. The consequence must be, therefore, that any attempt to invade this seclusion is illegal and a palpable violation of judicial authority. It may be some extenuation, but certainly cannot be a vindication of such conduct to say that

> no effort was made, by the illegitimate communication, to turn the juror from the line of his duty. The legal inhibition is against all intercourse with the jury during their consultation, and it is manifest any sequestration short of this would be entirely illusory, for it is certain if the door was thrown open, that no mode could be devised so that only proper intelligence would be permitted to pass."

The law requires that if juries are confined during the progress of a trial they should be placed in the custody of sworn officials, whose duty is defined by the statute, and incorporated in the oaths that they take. In this case, not only were there four court officers specially designated and sworn to take charge of this jury during its isolation, but an unsworn clerk of the Prosecutor's office was in the company of the jury throughout the several nights that intervened during the trial of the case, mingling and eating with them. In a civil suit the fact that a clerk of one of the parties had that privilege would be, we submit, sufficient ground for vitiating any verdict that followed. The Court would not for an instant tolerate the presence in the jury room of a clerk of one of the counsel engaged in the trial of a civil suit. When a jury is in isolation during the progress of a trial, they necessarily discuss the case, and the presence of the ununiformed clerk of the Prosecutor with the jury was, we contend, a great violation of the proprieties.

The case at bar was considered to be of sufficient importance to justify the Court in separating the jury. They were admonished of the importance of the case, and sympathy was expressed for the fact that the circumstances were such as to require their isolation.

In *People* v. *Knapp,* 42 Mich. 267, the presence of an officer during the deliberation of the jury was held to be such an irregular invasion of the right of trial by jury as absolutely to vitiate the verdict in all cases, without regard to whether any improper influences were actually exerted over the jury or not.

So in *Kansas* v. *Snyder,* 20 Kansas 306, where the bailiff who had charge of the jury, introduced and examined as a witness on behalf of the State, and had testified to material facts as against the accused, his presence in the jury room during the deliberations of the jury was held fatal to the verdict.

In this case, as soon as the presence of James with the jury was discovered (p. 305), a motion for a mistrial was made, and obedient to the direction of the Court Mr. James was called,

and, among other things, testified that his instructions from Judge Tennant were (p. 313):

"Q By whom were you assigned? A Judge Tennant requested me to go.

Q Did the Prosecutor or any of his assistants have anything— A No, sir.

Q To say to you, or give you any instructions regarding what you were to do? A No, sir.

Q —what your duties were? A No, sir.

Q Did the Prosecutor, or any of his assistants, have anything to do, so far as you know, with the assignment? A No, sir; I was not directed by any of them. That was Judge Tennant sent for me, and told me to go out, look after this work that he assigned me to.

Q State as nearly as you can what directions you received from him as to what you were to do. A I got those instructions from Judge Tennant.

Q What is that? A I got those instructions from Judge Tennant.

Q What were they? A To look after the telephones, to see that the telephones were not interfered with in the rooms, go see about the telephones in the rooms, and to notify the proprietor that no calls were to be received by any outside parties, or anybody to communicate with the jurors over the telephone, and to see that nobody approached the jurymen and spoke to them about the— anything, any conversation had with them. And I have."

Nothing whatever had occurred to justify the inference that the defendants proposed, or in any way hoped to communicate with the jury and the defendants, we contend, were greatly prejudiced not only by the presence with the jury for two or three nights, and several meals, of the Prosecutor's clerk or detective, but also by the disclosure that the Court deemed it necessary notwithstanding that four officers were detailed to be with the jury, to detail Mr. James, specially, to guard them from outside interference. But one inference could be drawn and that was that the defendants had hoped somehow or other improperly to communicate with the jury.

In *State* v. *Terry,* 99 Atl. Rep. 128, 72 N. J. L. 375, during the progress of a criminal trial, the Judge ordered certain parts of the testimony of witness to be stricken from the record, and directed the jury to pay no attention thereto, upon the ground that it was not worthy of belief, at the same time ordering the witness to be taken into custody by the constable. This was held to be error, and a new trial was granted. If the conduct of the Trial Judge in *State* v. *Terry* improperly

prejudiced the jury, what shall we say as to the facts in the case at bar, which was one of great public interest and of sufficient importance to require the isolation of the jury?

In *Roberts* v. *Georgia,* 72 Ga. 673, 678, the Court held that the verdict should be set aside and a new trial granted, because the Sheriff had deputized a person who was not sworn, to have charge of the jury, and this decision has recently been reaffirmed in *Washington* v. *The State,* 138 Ga. 370, 75 S. E. Rep. 263.

The whole record is here pursuant to the 136th section of the Criminal Procedure Act (p. 404), and (p. 416, l. 29), the refusal of the Trial Judge to direct a mistrial for this reason is assigned as a cause for reversal. While, of course, the conduct of the Trial Judge in matters of this kind is largely discretionary, yet when the whole record is brought up and the Court is satisfied that injustice has been done, it must, and will, set aside the verdict. *State* v. *Lewis,* 54 Vr. 161, 167.

The opinion of the Supreme Court says with reference to this:

> "We are bound to say that we think the conduct of the County Detective in thus mingling and conversing with the jurors is deserving of censure."

But adds that it is another question whether it should result in a reversal.

If during the progress of a civil suit a zealous clerk of one of the counsel in the case had associated himself with a jury in the manner that the Prosecutor's clerk, Mr. James, did in this case, the Trial Judge would undoubtedly have interrupted the trial, if apprised of it, or set the verdict aside, if it later came to his knowledge. Counsel in a case have a great advantage in possessing inside information with reference to the views of the jurymen as the case progresses. Points upon which they are in doubt may be strengthened, or wrinkles may be ironed out to suit the exigencies ascertained by the clerk, and presumptively disclosed to his employer. Here no one questions that Mr. James heard the jurors discuss the case. Indeed, he admits he did. Neither he nor the prosecuting officers deny that he reported what he heard to the Prosecutor, and we insist that a criminal case, involving the liberty of the defendants, should not be permitted to be conducted in a way that admittedly is worthy of censure, and which, we think, requires a reversal.

V.

There was also error in the Court's permitting The State to prove that (a) at the election in question persons were permitted to vote who were registered, as residing at places where they did not, in fact, reside; and (b) that others voted who were not registered.

Valentine Hill was called (pp. 68, 79, 80 and 81) to show that his company owned the premises Nos. 111 to 121 Ninth street, in Jersey City, and that no one lived there at the time of the election, whereas persons were permitted to vote, being registered from that location. So, William M. Small (p. 149) was called to show that certain persons who were registered as living at his lodging house did not reside there on the day of election. No proof was offered to show that defendants knew of these facts. Objection was made to all of this proof (pp. 73, 75, 150 to 155). Again, Mr. McCarthy was permitted to testify that the defendant Unger admitted he had voted without being registered (pp. 331, *et seq.*), and (p. 364) comment was made upon this fact in the summing up.

It is deemed that these facts were irrelevant and that their admission was tantamount to endeavoring to prove the existence of the crimes charged in the indictment by proving, or attempting to prove, that during the same election other violations of the Election Law occurred.

A proper consideration of this matter involves an accurate realization of the offences for which the defendants were indicted. As we have already seen, the first count charged the defendants with knowingly and fraudulently receiving the votes of persons who the defendants knew impersonated and voted upon the names of others. The second count charges them with aiding or abetting persons to vote upon names other than their own, and the third count is based upon the alleged wilful neglect and refusal of the defendants to carry into effect the provisions of sections 46 to 48 of the Geran Act, requiring in certain elections the comparison of the signatures upon the registry and poll-books respectively, and the challenge of voters in certain cases.

It must be remembered that the defendants are not indicted for conspiracy. In fact, the Trial Judge charged (p. 376, l. 38):

> "You should take up in this case the guilt or innocence of the defendants separately. This is not an in-

> dictment for conspiracy, and what one has done, as you may find, is not to affect the other or others. As to each one, before finding a verdict of guilty, you should be satisfied by the weight of the evidence, beyond a reasonable doubt, that the defendant under consideration was guilty of at least one of the counts of the indictment. If you do not so find you should find as to that defendant not guilty."

Now, the Election Act necessarily provides for a division of labor among the election officers. The 19th section of the Revision of 1898 provides that the four members selected as the District Board shall elect one of its members as Judge, another as inspector, and the other two members shall be clerks of election. By the 67th section of the said act the clerk is required to keep the poll-book, and the 80th section requires the inspector standing at the entrance of the enclosure to handle the ballots. Section 61 of the Geran Act specifically divides the labor between the different members of the board, as does also section 46.

An examination of the evidence at pages 38, 52, 53, 202, 207, 255, 262, 263, 282, 285, 286, 294 to 297 will show that the defendants did divide the labor in accordance with these requirements. Indeed, with the cumbersome machinery of the Geran Act it would be impossible for all of the board personally to participate in all of the formalities. It is, therefore, perfectly obvious that a proposing voter personally unknown to the board, and appearing to be duly registered at a given address, and presenting the same signature on the poll-book that appears upon the registry book could be permitted to vote entirely innocently, although the voter did not, in fact, live at the place where they were registered, unless it was shown, which the proofs in this case do not even hint at, that the defendants knew of such false registration. So, too, the fact if it be a fact, that Unger voted, although not registered, might have occurred, and the inspector, handling the ballots, be entirely innocent thereof. It, therefore, follows that there is no such relation between these other crimes and the offenses with which the defendants are charged in the indictment as justified proof of the former.

The general rule, of course, is that on a prosecution for a particular crime, evidence which in any manner shows or tends to show the accused has committed another crime, wholly inde-

pendant of that for which he is on trial, even though it is a crime of the same sort, is irrelevant and inadmissible.

State v. *Hendrick,* 70 N. J. L. 41;
Bullock v. *The State,* 65 *Id.* 557;
State v. *Snover, Id.* 289;
State v. *Jackson, Id.* 105.

There are, of course, many exceptions to this general rule which are recognized as founded on as much wisdom and justice as the rule itself; nevertheless, the courts have always held that the general principle should not be departed from, and the exception applied, save under conditions which clearly justified the departure.

The opinion of Dixon, *J.,* in *State* v. *Raymond,* 24 Vr. 260, has always been recognized as containing a scientific exposition of the rule, with its exceptions. The exception noted in that opinion, upon which the State, in offering this evidence and the Trial Judge in allowing it, relied, was, in the language of Justice Dixon:

> "When the acts charged to be criminal may reasonably be innocent, and are criminal only when performed with a certain intent or with knowledge of a certain fact; in such case, other acts of the defendant, though criminal, may be adduced to prove that he had such specific intent or knowledge. In this category stand the decisions with regard to the utterance of counterfeits, the making of false pretences, the reception of stolen goods, the publication of libels, and, probably, occurrences claimed by the defendant to be accidental."

In exposition of this exception Justice Dixon further says:

> "And in general it may be said that whenever the defendant's guilt of an extraneous crime tends logically to prove against him some particular element of the crime for which he is being tried such guilt may be shown.
>
> But it must not be supposed that the defendant's propensity to commit crime, or even to commit crimes of the same sort as that charged, can be put in evidence to prove his guilt of the particular offense, for however reasonable would be the deduction that, when a pocket is picked in a group of persons, of whom only one is addicted to picking pockets, he is the offender, his singularity in this respect could not, under our legal theory, figure as proof of his guilt. There must appear, between the extraneous crime offered in evidence and

> the crime of which the defendant is accused, some other real connection, beyond the allegation that they have both sprung from the same vicious disposition."

This Court in *Harris* v. *D. L. & W. R. R. Co.,* 48 Vr. 278-283, in speaking of the opinion of Justice Dixon, in *State* v. *Raymond,* said:

> "We there recognize the general rule that upon the trial of a person for one crime evidence that he was guilty of other crimes is not relevant, but we held also that an exception was to be made when the acts charged to be criminal may reasonably be innocent and are criminal only when performed with a certain intent or with knowledge of a certain fact; in such case other acts of the defendant, though criminal, may be adduced to prove that he had such specific intent or knowledge. Justice Dixon added: 'And in general it may be said that whenever the defendant's guilt of an extraneous crime tends logically to prove against him some particular element of the crime for which he is being tried such guilt may be shown.' "

In *State* v. *Deliso,* 46 Vr. 808, Justice Garrison, speaking for the Court of Errors upon this question, said:

> "Hence the distinction to be borne in mind between evidence that traces this natural phenomenon to its criminal debacle, and testimony as to isolated and entirely unconnected transactions, is that the latter merely tends to show the criminal character and predisposition of the accused, whereas the former has a direct relevancy to his state of mind when the given offense was committed. It is, therefore, the general rule that evidence of the former class is irrelevant, while proof of the latter sort is held to be admissible. The different treatment accorded to these two sorts of testimony does not wholly rest upon, and cannot, perhaps, be entirely justified by strict logic. Like so many other so-called rules of evidence, the rejection of one of these lines of proof and the acceptance of the other is due, in part at least, to the exigencies of the mode of trial and to the recognized necessity of placing some limit to the subjects of inquiry into which the jury shall be required to go. Be this as it may, one cogent reason for the rejection of testimony as to unconnected crimes is the impracticability of trying a defendant for such unconnected crimes with a view to reading his guilt thereof if established into the specified crime with which the jury is directly concerned. In regard, however, to the other class of testimony, no such impediment exists, the question there is not the establishment of the defendant's guilt in respect to such isolated transaction, but the state of mind therein

> evidenced by him, if it is shown to have been carried forward and exhibited in a criminal act so nearly related in time, place and circumstance that the mental state involved is practically continuous."

Now, in view of the fact that persons who appeared to be registered, and who were personally unknown to the members of the Election Board (they not being shown to have had knowledge of the illegal registration), could innocently be permitted to vote, what relation did evidence of such have to the offense for which the defendants were indicted? There is no charge of conspiracy here. The false registration might have been known by none of the members, or by one or two, yet evidence of voting upon false registration was admitted against all upon the theory that it showed the state of mind of all.

It must be remembered that there is no proof that all the board participated in each formality of the act of voting. As we have already shown, the member of the Election Board who hands the ballot to the voter, and after its preparation by the latter, receives it from him and deposits it in the box, has his entire attention devoted to that procedure. He, therefore, would be entirely ignorant of the fact that a proposing voter is not registered, having to rely upon the statement of the particular member of the board at that time in charge of the registration book. Hence he could, with entire innocence, permit one to vote without being registered, and in the absence of a charge of conspiracy, it is obvious that the evidence with reference to some man having voted without being registered, is utterly irrelevant upon the question of his intent.

The record discloses many objections to evidence offered, and permitted, of the fact that voting was permitted by persons impersonating others than those named in the indictment. We can see how this evidence, upon the theory of criminal intent, was competent, but we think there is an obvious distinction between it and that to which exception is here made.

VI.

There was also error in the failure of the Trial Judge to charge the defendant's seventh request to charge (p. 367, l. 11).

> "7. The failure, if there were a failure, to O. K. the signature in the poll-book cannot be a ground of liability under this indictment."

The charge upon this point was as follows (p. 379, l. 5):

> "The failure, if there were a failure to O. K. the signatures in the poll book, cannot be a ground of liability under this indictment, **but the failure to O. K. may be considered by you as bearing on the other evidence in the case.**"

The evidence showed that in many cases the Election Officer having charge of the poll-book at the time of the voter signing his name, instead of strictly following the requirements of section 46 "by writing his initials after such signature," wrote the letters O. K. In many other instances there was an entire absence of the O. K. or the initials. In fact, the initials were never used, and much comment was made of that fact throughout the case (p. 209, l. 35; p. 250, l. 32). Objection was made at the time, and the request presented to the Trial Judge because of the view that the indictment in no way set up that omission or failure to comply with the act as a ground of liability or as an offense.

In this branch of the case we are concerned only with the third count of the indictment (p. 6, l. 30), the charge of which is that the defendants were the election officers at this special election, and did permit divers persons to cast official ballots in the ballot box, whereas the signatures signed by the said persons were neither the same as nor sufficiently similar to the signatures written of the names so registered as to identify said signatures, and that the defendants failed to chellenge the persons so voting, or to require an oath respecting the right of the voter to vote, and the defendants being charged with the duty of ascertaining, prior to receiving the votes of voters, the identity or the sufficient similarity of the signatures, and with the duty of challenging in the event of their failure so to ascertain, or of requiring the proposing voter to make the necessary oath or affirmation, did, in manner and form aforesaid, wilfully neglect and refuse to perform that duty. There is not a suggestion that the failure of the defendants to properly O. K. or initial the signatures was relied upon as an overt act of the defendants' alleged wilful neglect of duty. Hence it

was that the request, to the effect that the failure, if there were one, to O. K. the signatures could not be a ground of liability under the indictment was made. It seems to be the view of the Prosecutor that under the somewhat narrow charge contained in the third count of the indictment he could show any disregard of any other provision of the act.

Now, the Court, instead of charging the request with reference to the failure to O. K., as we have seen, added the clause:

> "But the failure to O. K. may be considered by you as bearing on the other evidence in the case."

What bearing did it have upon the other evidence in the case, and why should or could it be legitimately so considered?

The crime charged was the wilful permitting of persons to vote without comparing their signatures, and without challenging or requiring the voter to take the statutory oath. What bearing did the evidence that the person having charge of the poll-book failed to comply with another provision of the law, and perform a duty cast upon him alone, have upon the charge, and if he did so fail, are the other defendants not charged with that particular duty responsible therefor? Exception was duly taken (p. 398, 1. 40), and error is assigned thereon (p. 409, 1. 15).

The Supreme Court concluded that the addendum to the request was not erroneous because:

> "The evidence showed that in many instances the Election Officer having charge of the poll-book at the time the voter signed his name, instead of strictly following the requirements of section 46 'by writing his initials after such signatures,' wrote the letters 'O. K.' In many instances there was an entire absence of the 'O. K.' and the initials."

We insist that the whole point of our objection is missed by this declaration.

It is respectfully submitted that the judgment of the Supreme Court, affirming the conviction of these defendants, was erroneous and should be reversed.

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March Term, 1920.