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WRIT OF ERROR

Filed November 13, 1913.

NEW JERSEY COURT OF ERRORS AND APPEALS.

NEW JERSEY, SS. *The State of New Jersey to the Chief Justice and other Justices*

(SEAL) *of Our Supreme Court of Judicature,*

Greeting:—

Because in the record and proceedings and also in the giving of judgment in a certain plaint which was in our said Supreme Court of Judicature before you, on a certain indictment pending in the New Jersey Supreme Court, in which said indictment JAMES S. NIXON is defendant, and in which said indictment he is accused of violation of the election law, and whereof he was convicted, manifest error hath intervened, to the great damage of the said defendant, as by his complaint we are informed, we being willing that the error, if any there be, should in due manner be corrected and full and speedy justice be done in his behalf, do command you distinctly and openly to send, under your seal, the records and proceedings aforesaid, with all things touching and concerning the same, also the entire record of the proceedings had upon the trial of the said cause to our Court of Errors and Appeals on the twenty-fourth day of November, inst., together with this our writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to the law ought to be done.

WITNESS, our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton aforesaid, the seventh day of November, nineteen hundred and thirteen.

DAVID S. CRATER, *Clerk.*

ALEX. SIMPSON, *Attorney.*

JUDGMENT AND RETURN

Filed November 13, 1913.

NEW JERSEY SUPREME COURT,
November Term, A. D., 1913.

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

JAMES S. NIXON,
Plaintiff in Error.

In Error to Hudson Quarter Sessions.

Rule on Affirmance.

This case having been duly argued at the February Term of this Court by Alexander Simpson, of Counsel for the plaintiff in error, and Robert S. Hudspeth, of Counsel for the defendant in error, and the Court having considered the same, and finding no error in the record and proceedings in the Hudson Quarter Sessions;

It is thereupon, ordered and adjudged that the judgment of the Hudson Quarter Sessions, removed by the writ of error in this cause, be affirmed with costs; and that the record be remitted to the Hudson Quarter Sessions to be proceeded with according to law.

Entered Nov. 13, 1913,

On motion of

ROBERT S. HUDSPETH,
Attorney of Defendant 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. (SEAL)

OPINION

Filed November 7, 1913.

NEW JERSEY SUPREME COURT,

February Term.

THE STATE,

vs.

JAMES S. NIXON.

Error to Hudson Quarter Sessions.

Argued before Gummere, Chief Justice, and Justices Bergen and Kalisch.

For Plaintiff-in-Error, Alexander Simpson.

For the State, Robert S. Hudspeth, Prosecutor of the Pleas.

PER CURIAM:—

The plaintiff-in-error, together with three others, was convicted under an indictment charging them with fraudulent conduct as election officers at the primary election held in September, 1911. The indictment contained two counts. The first averred that the defendants did make a false, fraudulent and incorrect return of the canvass of the votes cast at such primary election. The second count charged them with falsely counting ballots cast at that election, and making false returns in court on that counting. Nixon is the only person who prosecutes the writ of error. The case comes up under the 136th section of the Criminal Procedure Act.

The first reason upon which a reversal is sought is based upon the refusal of the court to quash the indictment on the motion of the defendant. The

ground of the motion was that the indictment charged the defendants with "making a false return," and that this did not apprise them of what was alleged against them.

We think both counts of this indictment are good. The supplement to the General Election Law, passed October 28, 1907 (Section 3), provides that the Board of Registry and Election in each election district of every county in this state shall include the results of such primary election * * * in the statement which they are now required by law to transmit to the municipal clerk, and the said municipal clerk shall forthwith transmit the results to the County Clerk who shall canvass said returns, etc. From this provision it is evident that the statement of the result of the election is a return of the count of the votes. The 5th section of the Act provides that "The provisions of this Act shall be construed in conjunction with the provisions of the Act to which this is a supplement (viz. the General Election Law, and the several supplements thereto and amendments thereof) except where inconsistent therewith." The 191st section of the General Election Law provides that "If any member of any district Board of Registry and Election shall at any election * * * wilfully and designedly make, or sign, any false or untrue statement or certificate of the result of any such election * * * he shall be deemed and taken to be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $500, or imprisonment at hard labor for a term not exceeding two years, or both." The indictment charges the offense struck at by Sec. 3 of the supplement and Sec. 5 by ingrafting the 191st section of the General Law into the supplement makes the offense criminal.

The next reason urged for setting aside the conviction is based upon the refusal of the trial court to direct a severance of the defendants at the trial. This application was addressed to the discretion of

the court, and it is not made apparent to us that by reason of its refusal the plaintiff in error suffered any manifest wrong or injury. The conviction cannot be set aside, therefore, for this reason.

The next ground of reversal is directed at the charge of the court to the jury. The court while speaking of the obligation of the whole membership of the Board of Registry and Election to count the ballots in both the Republican and Democratic boxes, said "The evidence presented clearly discloses that this course was not pursued at the primary." The pith of the objection is that it was for the jury, not the court, to determine what was disclosed by the evidence. But, assuming the soundness of this proposition, the statement was plainly harmless, for immediately after having made it, the court proceeded to say "But this violation of the law, you have no direct concern with. I mention it to you in order to get the matter clearly in your minds. But the indictment you are trying does not deal with that situation. The indictment does not charge a violation of the law in this particular. I call your attention to this because the defendants cannot be convicted for omissions, or for negligence, under this indictment, but for the specific charges laid in the indictment."

The other grounds for setting aside this conviction were urged upon us by counsel for the plaintiff in error; but as neither of them is raised by any of the reasons for reversal, they are not properly before us for consideration.

The judgment under review will be affirmed.

NEW JERSEY SUPREME COURT.

NEW JERSEY, ss:
L. S.

The State of New Jersey to the Court of Quarter Sessions in and for Hudson County,

GREETING:

Because in the record and proceedings and also in the giving of judgment in a certain indictment in your court, in which said indictment James S. Nixon was a defendant with others, and in which said indictment he was charged with a violation of the election laws and a violation of his duty as a member of a Board of Elections at the primary held in Hudson County in September, 1911, and of which crime charged in the indictment he was convicted, manifest error hath intervened, to the great damage of the said James S. Nixon, as by his complaint we are informed, we being willing that speedy justice should be done in his behalf, do command you if judgment hath been given that you distinctly and openly send under your seal the record and proceedings aforesaid, with all things touching and concerning the same, also the entire record of the proceedings had upon the trial of the said cause to our Supreme Court of the State of New Jersey, on the 26th day of December next, together with this writ, that the record and proceedings aforesaid be inspected, and we may further cause to be done thereupon what of right and according to the law ought to be done.

WITNESS, WILLIAM S. GUMMERE, ESQ., our Chief Justice at Trenton aforesaid, the 5th day of December, in the year, Nineteen hundred and eleven.

WM. RIKER, JR.,
Clerk.

ALEXANDER SIMPSON,
Attorney.

NEW JERSEY SUPREME COURT.

THE STATE, Defendant in Error, vs. JAMES S. NIXON, Plaintiff in Error.	In Error.

STATE OF CASE.

Alex. Simpson, Attorney for Plaintiff in Error, Office and P. O. Address, No. 586 Newark Avenue, Jersey City, N. J.

Writ presented in open court December 7th, 1911.

ROBERT CAREY,

Judge.

The answer of Robert Carey, Esquire, Judge of the Court of Quarter Sessions, holden 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, at the day and year within contained, in a certain schedule to this writ annexed as within I am commanded.

ROBERT CAREY,

Judge.

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 Monday, the ninth day of

October, in the year of our Lord one thousand nine hundred and eleven, and as yet of the September Term, A. D. 1911, of said Court, before Honorable Francis J. Swayze, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Honorable John A. Blair and Honorable Robert Carey, Judges of the Court of Common Pleas in and for the said County of Hudson, according to the form of the Statute in such case made and provided, by the oaths of Dr. John D. McGill, Foreman, and Joseph E. Bernstein, George T. Bouton, Carl Alfred Burhorn, John H. Coyle, Gilbert L. Crowell, Jr., Edward J. Fox, Edward M. Gardner, Dr. Charles A. Gilchrist, Hugh Hartshorne, Henry Hinse, Rudolph O. Koven, Valdemar Lassen, Frederick J. Meystre, Dr. John Nevin, Adam Riesenberger, Frederick A. Schwartz, Louis Sherwood, Benjamin L. Stowe, Arthur C. Stratford, James B. Throckmorton, Bernard Vissetti, Rutherford H. Walker, 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.

J. D. McGILL, Foreman.

And the foregoing being presented to the said Court on the twenty-fourth day of October, in the year of our Lord one thousand nine hundred and eleven, with Bills of Indictment, Numbers 78 to 102 inclusive, it is ordered by the said Court that the same should be handed to the Court of Quarter Sessions for trial and disposal according to law, and the said Bill of Indictment so as aforesaid included as Bill Number 78 for Misdemeanor as charged upon James J. Reilly is in words as follows:

HUDSON OYER AND TERMINER.

September Term, A. D. 1911.

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 James J. Reilly, James S. Nixon, John F. Blaney and William C. Patterson, late of the City of Jersey City, in the County of Hudson, and State of New Jersey, being then and there election officers in and for said City of Jersey City, and then and at the time hereinafter stated being and constituting the Board of Registry and Election, in and for the Primary Election for nominees and candidates for members of the General Assembly, for the office of Sheriff of the County of Hudson, and for the office of Mayor of the City of Jersey City and for divers other offices, then and there, to wit: on the twenty-sixth day of September, A. D., one thousand nine hundred and eleven, by them, the said defendants, held in and for the Seventh Election District of the First Ward of the said City of Jersey City, and that the said James J. Reilly was then and there Judge of the said Board of Registry and Election, and the said James S. Nixon was then and there the inspector of the said Board of Registry and Election, and the said John F. Blaney and the said William C. Patterson were then and there respectively the clerks of the said Board of Registry and Election.

And the Grand Inquest, aforesaid, upon their oath, aforesaid, do further present that the said James J. Reilly, James S. Nixon, John F. Blaney and William C. Patterson, being the members of and constituting the Board of Registry and Election as aforesaid, and as such, did, on the twenty-sixth day of September, A. D. one thousand nine hundred and eleven, at the said City

of Jersey City, and in the said County of Hudson, and within the jurisdiction of this Court, wilfully violate an act, entitled, "An Act to Regulate Elections" (Revision of eighteen ninety-eight), and the acts and supplements thereto and amendatory therof, in that they, the said James J. Reilly, James S. Nixon, John F. Blaney and William C. Patterson, as such Board of Registry and Election, as aforesaid, did make a false, fraudulent, and corrupt return of the canvas and count of the votes cast at the said Primary Election; and that they, the said James J. Reilly, James S. Nixon, John F. Blaney and William C. Patterson, as such Board of Registry and Election did not return the correct number of votes received by each person as a candidate for nomination for office, in the following particulars, to wit: that the said defendants did return and certify that Alexander J. Clements, for the office of Sheriff of the County of Hudson, received at the said Primary in the said Seventh Election District in said First Ward in said City of Jersey City, one hundred and forty-two of the votes there cast, whereas in truth and in fact, as by the ballots then and there and at the said Primary Election cast it appears the said Alexander J. Clements received a large number of votes less than said one hundred and forty-two votes, to wit: seventy votes less than said one hundred and forty-two votes shown by the said return made by the said defendants; and that the said defendants did return and certify that Nicholas P. Wedin, for the office of Sheriff of the County of Hudson, received eight votes of the votes cast at the said Primary in said Seventh District, in said First Ward of the said City of Jersey City, whereas in truth and in fact, as by the ballots then and there and at the said Primary Election cast it appears the said Nicholas P. Wedin received a large number of votes more than said eight votes, to wit: thirty-one votes more than the said eight votes shown by the said return made by the said defendants; and that the said defendants did return and certify that James F. O'Mealia, for the office of Mayor of the City of Jersey City, received three votes of the votes cast at

the said Primary in said Seventh District of the said First Ward in the said City of Jersey City, whereas in truth and in fact, as by the ballots then and there and at the said Primary Election cast it appears, the said James F. O'Mealia received a large number of votes more than the said three votes, to wit: four votes more than the said three votes shown by the said return made by the said defendants; and that the said defendants did return and certify that Mark A. Sullivan, for the office of Mayor of the City of Jersey City, received sixty-four votes of the votes cast at the said Primary in the said Seventh District, in the said First Ward of the said City of Jersey City, whereas in truth and in fact, as by the ballots then and there and at the said Primary Election cast it appears, the said Mark A. Sullivan received a large number of votes more than the said sixty-four votes, to wit: forty-one votes more than the said sixty-four votes shown by the said return made by the said defendants; and that the said defendants did return and certify that H. Otto Wittpenn, for the office of Mayor of the City of Jersey City, received ninety-three votes of the votes cast at the said Primary in the said Seventh District in the said First Ward of the said City of Jersey City, whereas in truth and in fact, as by the ballots then and there and at the said Primary Election cast it appears the said H. Otto Wittpenn received a large number of votes less than the said ninety-three votes, to wit: forty-five votes less than the said ninety-three votes, shown by the said return made by the said defendants, contrary to the form of the Statute in such case made and provided and 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 James J. Reilly, James S. Nixon, John F. Blaney and William C. Patterson, being and constituting the Board of Registry and Election in and for the Primary Election then and there held in and for the Seventh District of the First Ward of the City of Jersey City for nominees and

candidates for members of the General Assembly, for the office of Sheriff of the County of Hudson, for the office of Mayor of the City of Jersey City and for divers other offices, and then and there and at the time hereinafter set forth acting as such Board of Registry and Election, and then and there conducting the Primary Election on the twenty-sixth day of September, A. D. one thousand nine hundred and eleven, at the said City of Jersey city, in the said County of Hudson and State of New Jersey, and within the jurisdiction of this Court did then and there commit wilful fraud in the discharge of their duties as such Board of Registry and Election as aforesaid, by then and there falsely counting the ballots cast at the said Primary Election aforesaid, in that they, the said James J. Reilly, James S. Nixon, John F. Blaney and William C. Patterson, unlawfully and fraudulently did falsely count divers ballots, the number of which is to the Grand Jurors unknown, by making false returns in accord with said false count, they the said James J. Reilly, James S. Nixon, John F. Blaney and William C. Patterson then and there well knowing that the said count and the said returns were not then and there true and lawful, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

PIERRE P. GARVEN,

Prosecutor of the Pleas.

A TRUE BILL. J. D. McGill, Foreman.

PIERRE P. GARVEN,

Prosecutor of the Pleas.

PRESENTED OCTOBER 24, 1911, AND HANDED DOWN TO THE COURT OF QUARTER SESSIONS.

John F. Crosby, Clerk.

And afterwards, to wit, on the twenty-fifth day of October, in the year of our Lord one thousand nine hundred and eleven, at a session of the Court of Quarter Sessions, of the County of Hudson, aforesaid being now of the term of September in said year before the Honorable Robert Carey, 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 said County of Hudson, here Cometh the said James S. Nixon, under the custody of Andrew Sandowich, his bail, in whose custody he had been before committed for the cause aforesaid, who being brought to the bar here in his proper person by his bail aforesaid, and having heard the indictment read, and forthwith being commanded of and concerning the premises in the said indictment above specified, and charged upon him, how he will acquit himself thereof, he saith he is Not Guilty thereof and therefore for good and evil he puts himself upon the Country, and Pierre P. Garven, Esquire, Prosecutor of the Pleas for said County who prosecutes for the State of New Jersey in this behalf, doth the like.

Therefore let the said indictment be continued until and a Jury come here before the Honorable Robert Carey, Judge as aforesaid of the Court of Quarter Sessions aforesaid on the first day of November in the year of our Lord one thousand nine hundred and eleven, being as yet of the term of September in the year of our Lord one thousand nine hundred and eleven of Twelve good and lawful men of this State and resident in said County of Hudson, over the age of twenty-one years, 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 James S. Nixon, to recognize upon their oaths whether the said James S. Nixon be Guilty of the Misdemeanor in the indictment aforesaid charged against him or not guilty thereof because as well the said Pierre P. Garven, Prosecutor of the Pleas of the County of Hudson aforesaid, who prosecutes for the State of New Jersey, in this behalf, as the said James S. Nixon have put themselves upon the same Jury and the same day is given to the parties aforesaid at the same place.

At which time, that is to say on the First day of November, A. D. one thousand nine hundred and eleven at Jersey City aforesaid, in the County of Hudson, aforesaid, before the Honorable Robert Carey, Judge as aforesaid, constituting and holding the Court of Quarter Sessions as aforesaid here cometh as well the said Pierre P. Garven, Prosecutor of the Pleas as aforesaid, who prosecutes as aforesaid, as the said James S. Nixon, under the custody of Andrew Sandowich, his bail, to whose custody he has been meanwhile hitherto committed and who being brought to the bar here in his proper person by his said bail and the Jurors of the jury by the Sheriff of the County of Hudson aforesaid for the purpose empanelled and returned, to wit:

Thomas Weldon, Edwin Crawford, Louis Lemkull, George Fait, Edward Whitney, Cornelius K. Kelly, Patrick Cogan, Michael Burns, Albert Beckman, Charles Terree, Washington Ellison, Michael Brown, being called, come who being chosen, tried and sworn to speak the truth of and concerning the premises. And thereupon the trial of the said issue commenced before the said Court and jury and was continued during the day of the date as last aforesaid, and at which day the said issue after a charge from the Court was submitted to the said jury and the said jury in charge of the officers of said Court duly sworn for that purpose, were taken to a private room to consider of their verdict. And afterwards, to wit, on the last day aforesaid at the City of

Jersey City aforesaid the said jury return into Court in charge of said officers sworn as aforesaid to keep them in charge and then and there in the presence of the said Pierre P. Garven, Esquire, Prosecutor of the Pleas as aforesaid, and of the said James S. Nixon do say that the said James S. Nixon is Guilty of the Misdemeanor as in the aforesaid indictment is charged against him and thereupon the said James S. Nixon is committed to the custody of his said bail there to remain until the seventh day of December in the year of our Lord one thousand nine hundred and eleven at which said last mentioned day the said James S. Nixon being produced in and before the said Court at the City of Jersey City aforesaid by the said Bail and being in his custody.

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 James S. Nixon be and is sentenced to be confined in the Jail at the County Farm in Hudson County, for the term of One Year, at hard labor, and to pay a fine of Two hundred and fifty Dollars ($250) and then to stand committed until the costs of this prosecution are paid.

Judgment entered and signed this December 7th A. D. 1911.

ROBERT CAREY,

Judge.

Attest:

JOHN F. CROSBY,

Clerk.

HUDSON COUNTY OYER AND TERMINER.

THE STATE, vs. JAMES J. REILLY, JAMES S. NIXON, JOHN F. BLANEY, WILLIAM C. PATTERSON.	Misdemeanor.

Transcript of shorthand notes of testimony taken on the 1st day of November, 1911, before Hon. Robert Carey.

APPEARANCES:

George T. Vickers and James W. McCarthy, Esqs., Assistant Prosecutors, for the State.

Messrs. Lane, Simpson, Melniker and Ernst, for defendants.

GEO. P. KELLY,
Official Stenographer,
Eighth Judicial Dist. of N. J.,
Court House, Jersey City, N. J.

Received by Mr. Swope, May 3, 1912, at 3 p. m.

HUDSON COUNTY OYER & TERMINER.

CAREY, J.

THE STATE vs. JAMES J. REILLY, JAMES S. NIXON, JOHN F. BLANEY, WM. C. PATTERSON.		Misdemeanor. Trial.

Trial of above cause before Honorable Robert Carey and a jury, November 1, 1911.

APPEARANCES.

George T. Vickers and James W. McCarthy for the State.

Merrit Lane, for defendants Blaney and Patterson.

Alexander Simpson, for defendant Nixon.

Aaron L. Melniker and Myron C. Ernst, for defendant Reilly.

MR. VICKERS: I move the case and ask for a jury.

MR. SIMPSON: I want to move to quash the indictment on behalf of the defendant, Nixon. The indictment does not charge any crime. The indictment states that these men made a false return, but it does not state that that return was in writing. It does not state that this was the return meant by the statute. It does not state to whom the return was made; it simply says that they did falsely re-

turn. They might have returned to me or to Major Vickers. Second, there is no obligation on them under the law as I read it to make any return, but to canvass the vote. Third, that the court is without jurisdiction because no valid indictment is before it, the indictment not having been found by a grand jury summoned, organized and sworn as provided by law, by the sheriff of the county.

MR. VICKERS: To the last objection the state excepts on the ground that there is nothing before the court to show that the statements set forth are facts.

MR. SIMPSON: It is of record. The record of the court is before it, I suppose.

THE COURT: I will deny the motion. The court will not pass at this time upon the propriety of the motion but will deny it.

MR. LANE: On behalf of the defendants, Patterson and Blaney, I move to quash the indictment on the grounds as stated by Mr. Simpson, and I also move to quash upon the ground that there is nothing in the law which requires a return, and that there is no such crime under the primary act—there can be no such crime under the primary act—as making a false return. Also on the ground that the grand jury which found this indictment was not in accordance with law, and I offer to prove the record if your Honor desires any further proof of the record than the record itself, of the fact that the jury—

THE COURT: Was drawn by elisors?

MR. LANE: Was drawn by elisors, and that the court appointed elisors after disqualifying the

sheriff, without disqualifying either of the coroners or both of them.

THE COURT: What you want is to offer the record as proof.

MR. LANE: I offer the record, that is all.

THE COURT: As it appears on the files of the clerk, relative to the drawing of the grand jury?

MR. LANE: Yes.

THE COURT: What do you say as to that, Mr. Prosecutor?

MR. VICKERS: I don't suppose I can deny the record, and I don't want to ask counsel, or put the court to the waste of time, to produce the record—whatever the record shows—

THE COURT: Whatever the record shows is considered as being offered by you in the way of formal proof.

MR. LANE: Yes.

THE COURT: I will deny the motion.

MR. LANE: I pray an exception on the record.

THE COURT: There is very serious doubt whether you may have an exception.

MR. LANE: I know that, but I ask an exception.

THE COURT: The court will determine later on as to whether or not the exception will be granted. There is a question whether you do not get the bene-

fit, if there is any benefit to be obtained, upon the whole record.

MR. LANE: But since the Supreme Court in passing upon the act, has practically said that in some way or other you have got to express your dissatisfaction with the court's ruling, I ask that my exception be noted.

MR. SIMPSON: I would like to make the same motion for Mr. Melniker, who appears for Mr. Riley.

THE COURT: The same course will be taken. The motion is a motion to quash the indictment. That is the motion—to quash the indictment. The motion is denied.

MR. SIMPSON: I would like to ask for a severance for my client, Nixon, on the ground that he was an inspector. He was the man that took the ballots out of the box and announced them to the clerk. There must be a conflict of defenses because Nixon will say, "I read them right" and the clerk will say, "No, you read them wrong, and I took them as you read them." There ought to be a severance.

MR. LANE: I think your Honor ought to have before you a motion on behalf of the defendants, Blaney and Patterson, for a severance, on the ground that they are the clerks and there is no duty cast on them to make a return.

MR. VICKERS: As to the reasons assigned for a severance, it seems to me they are all matters of law which the court can deal with in its charge, and that nothing can be gained by trying these cases separately. No defenses are denied either or any of the defendants. The presumption of law is

that these defendants acted as a whole, as a body, and therefore the state is of the opinion that the defendants should be tried as a board, as a body, that a severance would tend to jeopardise the interests of the state, because there may be acts incumbent upon one of the members of the board which are not incumbent upon another, and in separate trials might be irrelevant, whereas in trying them all as a whole, these matters would become relevant.

MR. SIMPSON: They are not indicted for conspiracy, but each individual is indicted because he has failed to do what he ought to have done as judge or as inspector or as clerk.

MR. VICKERS: As a board.

MR. SIMPSON: I don't think there is any force in the Prosecutor's argument. Manifestly he can only prove against Nixon that he was an improper inspector, against Blaney and Patterson, that they were improper clerks. Their responsibilities come from their respective positions. I say it is a case where your Honor has ruled many a time that where there were antagonistic defenses—it is proper that there should be a severance. There could not be a clearer case of antagonistic defenses. It seems to me it is a clear case which appeals to your discretion to give these men a fair trial, to see that each stands upon his own footing. Major Vickers is like a hunter shooting into a flock of birds —"If I shoot into four men, I may get one."

MR. VICKERS: I don't know whether counsel is afraid of the charge or the markmanship. It seems to me that the law casts a duty upon these men. (Interrupted.)

MR. LANE: Which section?

MR. VICKERS: You have it there.

MR. LANE: No, I haven't.

MR. VICKERS: I think it is section 319 of the general election law. It casts a duty upon this board as a whole to make a certain certificate. It is "that it is correct"; it doesn't say anything about "that it is correct and true, so far as I am concerned, as clerk" or "as inspector." The selection of the judge, the inspector and the clerks is an action taken by this board after it is constituted by law as a board. Primarily there are a board upon whom the duty is cast by the law of making a true return. Now, whether they have done that, what their responsibility is, is a matter for the jury to determine, having the whole board, the whole facts, it seems to me, before it, and under your Honor's charge.

THE COURT: Mr. Lane, have you read section 89 of the act?

MR. SIMPSON (Replying to Mr. Vickers): Yes, but they are indicted in an omnibus charge, for making a false return.

MR. LANE (Replying to the Court): It does not say anything about the return, if your Honor please.

THE COURT: I am talking about the collective functions of the officials.

MR. LANE: I would like to have put on the record—which I think I am entitled to at any stage of the proceedings—I ask now a bill of particulars from the state as to what section of the act concerning elections it is alleged that these defendants violated.

THE COURT: We will pass upon one proposition at a time.

MR. LANE: I don't know that we can pass upon the other one without knowing what the state claims.

MR. VICKERS: The state's claim is set forth in the indictment.

MR. LANE: The indictment says we have violated the whole act.

THE COURT: The question whether there may be a severance is another proposition. There are two counts in the indictment.

MR. VICKERS: One count charges that they did make a false, fraudulent and corrupt return of the canvass and count. I take it that where the law casts upon this board the duty of certifying that the return as to each individual candidate is a correct and true return that that means something when it says that, that it obligates them to so certify.

MR. SIMPSON: Of course it does, but does it mean that the clerk can make a false return for the judge, and the judge a false return for the clerk?

THE COURT: The jury are excused until after recess.

MR. VICKERS: We stand upon the indictment. It charges that these men all violated the law. If they are charged with doing something which there was no obligation upon them to do then it could not have been false and fraudulent and corrupt. That is the issue. It is very narrowly and closely drawn by the indictment itself.

THE COURT: The point is that the defense of these men may be entirely antagonistic.

MR. VICKERS: But your Honor must conclude that where the law says they shall make a certificate and that that certificate shall be true and correct, that when that certificate is made it is alleged that it is corrupt and false, the duty is on each and every one. That is what is charged.

THE COURT: It is not a question of whether or not the duty is cast upon them all. Mr. Simpson says there were different duties cast upon different individuals.

MR. VICKERS: Will your Honor assume that to be so?

THE COURT: I don't assume anything. I have nothing before me but this indictment. That is all we have before us on this question of a severance.

MR. VICKERS: What is there antagonistic about the situation which is presented in the indictment, that one man was the judge, another man an inspector, and another a clerk? One man says, "I did right," and the other says, "No, you did not, you did wrong." Isn't it for the jury to determine at one time having these men before it, the same jury having the same situation which is inevitably to come up before it in the case of each defendant? Why will it not serve the ends of justice best to have one jury to pass upon the cases of all of the men?

THE COURT: I am inclined to deny the application for a severance. It is addressed to the discretion of the Court.

MR. SIMPSON: I ask for an exception.

THE COURT: I will investigate the matter at recess more thoroughly, and if I come to any different conclusion I will announce it. My inclination is to deny the motion. I cannot conceive how you are entitled to an exception. If you can demonstrate to me that you are entitled to an exception, I will grant it to you, but otherwise I will not.

MR. LANE: I haven't asked for an exception yet, but I make a motion for a severance on behalf of the defendants Blaney and Patterson, and I offer to prove before your Honor that the defenses which will be made by the various defendants will be adverse and contradictory.

THE COURT: The Court will not hear any such proof at this time.

MR. LANE: I ask an exception.

THE COURT: I will not allow the exception. The application for a severance appeals to the discretion of the Court, therefore the exception comes within the same rule.

MR. LANE: You have my application on the record.

MR. VICKERS: Is there any different situation raised by the motion of Mr. Lane than was raised by the motion of Mr. Simpson?

MR. LANE: I have stated my motion. Before we adjourn for recess may I put upon the record a motion to compel the State to give the defendants a bill of particulars?

THE COURT: The Court will take proof as to the character of the defenses to be interposed, so that there may be no impropriety in the determi-

nation of the Court on the motion for a severance in this case.

MERRITT LANE, being sworn, on his oath testified as follows:

I am the attorney for William Patterson and John F. Blaney, who are two of the defendants in this indictment, and who served as members of the Board of Election in the Seventh Precinct of the First Ward, as Clerks. There are also included in the same indictment the judge of election and the inspector, Mr. Nixon and Mr. Reilly. The duties which are cast upon the members of the Board of Election by the Election Act—(interrupted).

MR. VICKERS: I object to this testimony on the ground that it calls for a conclusion.

THE COURT: I will hear it.

MR. VICKERS: The witness is not testifying from his own knowledge. He is testifying as to facts set forth in the indictment which the Court is able to judge as well as the witness.

THE COURT: I will hear it.

The Witness: (continuing) are separate and distinct. The duty of the judge is as follows: (I will read).

THE COURT: You need not state the law, because you will have to assume that the Court knows the law.

THE WITNESS: I assume that the Court knows the law.

THE COURT: State the reason why you are entitled to a severance.

THE WITNESS: That is what I am trying to do.

MR. VICKERS: Counsel has offered to prove that the defenses are antagonistic. I do not think that opinion is proof.

THE WITNESS: I am going to state that I intend to prove—(interrupted)

MR. VICKERS: This proceeding is to prove that the defenses are antagonistic, not to tell us what you intend to prove.

THE COURT: Tell us how the defenses are antagonistic.

A. The defenses on the part of the defendants whom I represent will be that the votes as called out by the judge of elections were properly tallied by them, that they have nothing to do with the calling out of the votes.

THE COURT: The law fixes their liability.

THE WITNESS: I am now telling your Honor what my defense is going to be.

THE COURT: But your defense must be the fact. The defense must be a fact, not the law. The law implies certain duties. If you state just what attitude you take, I can pass upon the question whether or not you should have a severance. You say they correctly tallied the votes.

THE WITNESS: They correctly tallied the votes.

MR. VICKERS: As announced, you mean.

THE WITNESS: As announced. They didn't see the ballots. They didn't have the ballots. They did not know whether the ballots in the box differed from the result as announced by the judge of election. They had nothing to do with calling out the votes, or with the inspection of the ballots.

MR. VICKERS: It seems to me that there appears conclusively not to be any antagonistic defense.

THE COURT: You don't want to ask the witness any questions?

MR. VICKERS: No.

THE COURT: Is that all you wish to present in behalf of your motion?

MR. LANE: Yes.

THE COURT: The Court will determine it on the resumption of the case.

Recess.

AFTERNOON SESSION.

THE COURT: I will deny the motion for a severance.

MR. SIMPSON: I ask an exception.

THE COURT: I do not think you are entitled to an exception.

MR. LANE: I make the same motion and I ask for an exception.

THE COURT: The State against Rossell, 62 New Jersey Law, I think disposes of the objection.

MR. LANE: I move that the State furnish us forthwith and before the case is actually opened for trial, with a bill of particulars, and in that bill of particulars that they set forth specifically what provisions of the Act to regulate elections (Revision of 1898) it is alleged that the defendants Blaney and Patterson violated, as set forth in the first count of the indictment; also what provisions of the Act it is alleged that the same defendants violated, as set forth in the second count; also what the State intends to contend was the duty cast upon the two defendants Patterson and Blaney that they did not perform.

MR. VICKERS: I understand that the motion is made on behalf of Mr. Lane's clients. The State contends that there is no authority for such a motion at this time, and unless the Court directs the State to respond to that request it will not do so.

THE COURT: I will not make any order in the premises.

MR. LANE: You will allow me an exception?

THE COURT: If you are entitled to one.

The jury is called and sworn.

Mr. Vickers opens to the jury.

MICHAEL I. FAGEN, a witness produced on behalf of the State, being sworn, testified as follows:
Direct examination by Mr. Vickers:

Q. You are the City Clerk of Jersey City? A. Yes.

Q. And were on the 26th of September last? A. Yes.

Q. You have been how long? A. Four years, going on the fourth year.

Q. As City Clerk did you, on or about the 26th of September last, receive from the Election Board of the Seventh District of the First Ward, the returns of the result of the primary then and there held?

MR. LANE: I object as leading and calling for a conclusion.

THE COURT: Objection sustained. You attempt to characterize what he received if he received anything. I assume the objection is good.

MR. VICKERS: In what manner am I characterizing it?

THE COURT: By describing it as a certain document.

Q. As City Clerk is it your duty to receive the election returns from the Election Boards after the holding of the primary election?

MR. LANE: I object. It is a matter of law, and he cannot testify as to the duties which are fixed by the statute.

THE COURT: The law fixes the duty of the City Clerk.

Q. Did you as City Clerk receive the election returns after the promary held on the 26th day of September last? A. Yes.

Q. I show you a paper writing and ask you whether that bears your signature? A. Yes.

Q. And was this received by you? A. Yes.

Q. When and from whom, and in what manner? A. It was received on the night of September 26th, along

with the primary box from the election officers.

Q. When you refer to a primary box do you refer to the primary box which I here show you?

MR. LANE: I object. It is leading.

THE COURT: It probably is leading.

MR. VICKERS: I will withdraw the question.

Q. What primary box do you refer to? A. The primary box before me, if that is the primary box.

MR. SIMPSON: He says, "If that is the primary box."

Q. Will you examine this box and see whether it is the primary box to which you had reference in your previous testimony? A. This return was with the primary box for the Seventh District of the First Ward, and that primary box is labelled the same as the primary box of the Seventh District of the First Ward, as I received it from the election officers on that night.

Q. Are the election officers in any way indicated by the return, as you designate the paper, which is before you and which has been signed by you?

MR. LANE: I object. It speaks for itself.

THE COURT: I assume the paper will speak for itself.

Q. By reference to the paper can you say whether or not the primary officers to whom you have reference are the defendants here in Court in this case?

MR. LANE: I object. It does not appear that he has to refresh his recollection by any paper.

THE COURT: I will allow you to refer to the document.

MR. LANE: I ask an exception.

THE COURT: The Court must insist that only one counsel be on his feet to speak at once.

A. I really couldn't state, and I would like to explain my answer if it is permissible.
Q. I have no objection.

MR. LANE: I haven't any.

Q. Explain. A. I received one hundred and fifty-four returns in the boxes all at one time, and the men are in line and it is absolutely impossible for me to state from whom I receive them, or who the individuals are. As a matter of fact there are two of the election officers, if those are the ones, that I never remember having seen before in my lifetime.
Q. How many election officers brought the returns that you have referred and that you have before you and the box, into your possession? A. From the habit, two; that is, from the custom, or what the law requires, two and the police officer.
Q. And that was so? A. In this case, yes. In other words, I don't wish to appear as testifying as to the identification of people that I can only identify by guesswork.
Q. Which are the two of the defendants that you do not recollect as seeing?

MR. LANE: I object.

MR. VICKERS: He has already testified that he recollects seeing two election officers on that night.

THE WITNESS: No, not on that night.

THE COURT: He has not testified so. You may reframe the question.

Q. When you testified as you did before with respect to the two election officers, who did you mean, as not having seen them on that night?

THE COURT: He said he had never seen them before.

MR. VICKERS: He had never seen them before —that means that night.

A. I don't recollect seeing any one of the four men on that night specifically, and I only know two of the men, Blaney and Patterson.

Q. And the other two you don't know? A. The others I have no knowledge of.

Q. No knowledge? A. No acquaintance, or remember seeing the gentlemen before.

Q. You know Blaney and Patterson; can you say whether or not they were the two who as you say under the law brought the ballot box to your place? A. No, sir, I cannot say it because not only myself but eight other men in the office received ballot boxes on that election night. I may have seen them, and some other man in the office may have seen them and I might not. I may have been in some other part of the office that night.

Q. Together with this return and the ballot box in question did you receive this book which I show you, which is called "Primary Registry, September 11th and 26th, 1911, Seventh District, First Ward?" A. Yes.

Q. And this return, this ballot box and this registry —did you produce them under the subpoena before the Grand Jury of this County recently, within the last two weeks? A. Yes.

Q. From where did you produce this ballot box, the return and the book? A. From my office.

Q. At the time of the production of these articles were they and each of them in the same condition in which they were at the time you received them from the election officers and the policeman? A. Yes.

MR. SIMPSON: I object, on the ground that he has not identified this box at all, not having made any scrutiny of it at all. They have laid no foundation to show that he knows that they were in the same condition. He says there were eight men receiving these things.

THE COURT: I will allow the question.

MR. SIMPSON: I ask an exception.

MR. LANE: I ask an exception.

Q. I call your attention to the certificate or paper writing and printing in the back of this book, and ask you whether that certificate is furnished by you to the Board of Registry and Election? A. Yes.

MR. SIMPSON: I object. I did not know the question was finished. I object on the ground that it is irrelevant and incompetent.

THE COURT: He has already answered it. I will let it stand. Its materiality is not yet apparent to the Court, but I will let it stand.

Q. I call your attention to the last page of this book, and ask you whether the writing there was in this book at the time that it was turned in to you as you have described? A. Yes.

Q. Is it from this and from the paper which you have called the return, that the official returns of the result of the primary election were made up by you?

MR. LANE: I object. It is irrelevant.

MR. SIMPSON: It does not make the slightest difference in the case what he did with the return.

THE COURT: I will sustain the objection.

MR. VICKERS: I will withdraw the question.

Q. Is this paper which you have identified as bearing your signature the official return of the primary election held in the Seventh District of the First Ward of the City of Jersey City, on the 26th day of September, 1911, of the so-called primary election?

MR. LANE: I object. There is no such thing as an official return. There is no requirement in the act, no provision in the act—(interrupted)

THE COURT: I will overrule the question. I think it is leading. I think it may be reframed.

Q. Well, what is this paper?

MR. SIMPSON: I object. It speaks for itself.

THE COURT: I will allow him, if it has any special character, to state what it is.

MR. SIMPSON: He is not qualified to show what the paper is.

MR. LANE: I interpose an objection that the question is immaterial, irrelevant and incompetent.

THE COURT: I will allow the question.

MR. LANE: I ask an exception.

Q. Well, what is this paper? A. It is the returns of the Seventh District of the First Ward of Jersey City of the primary held on September 26th, 1911, as it is on file—was on file—in my office.

Q. As a matter of fact, although it is here now, it is part of the files, the records of your office, isn't it, so?

MR. SIMPSON: I object.

THE COURT: I suppose that is a legal conclusion.

MR. VICKERS: No, it is not a legal conclusion; I want to identify the paper.

Q. Is this the paper which is, as a matter of fact, although it is physically present here in Court now, is a part of the papers and files of your office? A. Yes.

Q. The official papers regarding the primary election held on the 26th of September, 1911?

MR. LANE: I object.

THE COURT: Objection sustained. Let him state what it is.

Q. All right; state what it is.

MR. LANE: I object, on the same ground as before.

THE COURT: I will allow the question.

MR. LANE: I ask an exception.

THE COURT: He has already stated what it is.

MR. SIMPSON: It has not been offered yet.

Q. When you say that this is the return, will you explain to the Court and jury what you mean by that?

MR. LANE: I object.

THE COURT: I will allow the question.

MR. LANE: I object on the ground that whether or not it is a return is fixed by the law.

THE COURT: I will allow the witness to explain what he means by "the return."

MR. LANE: I object on the ground that it is incompetent, immaterial and irrelevant.

THE COURT: I will allow it.

MR. LANE: I ask an exception.

A. A statement of the result of an election is a return.

Q. And did you receive that in the manner that you have described as the return of the primary election, as the return of the Board of Registry and Election of the primary election held on the 26th day of September, 1911, in the Seventh District of the First Ward of Jersey City?

MR. SIMPSON: I object. His psychological condition can be of no value.

THE COURT: I will sustain the objection. The fact that he received it is pertinent, but what his notion of it is, is not relevant.

MR. VICKERS: Here is a man upon whom the law casts a duty. It is just as much—it is as important to show that he did that as City Clerk as it would be to show, in presenting a deed by the Register of Deeds of the County, who still had the deed in his possession, that he received it, received it as a deed.

THE COURT: Received it as a deed, yes, but that is all.

MR. VICKERS: I am asking him whether he as City Clerk, the man upon whom the duty rests, to receive the return, whether he received it.

THE COURT: I will overrule the question on the ground that it calls for a conclusion and an opinion from the witness. He may state what he did, and the things he did will speak for themselves. the things he did are material. As to what he may think he did, it is not material.

MR. SIMPSON: That is our objection.

THE COURT: He has already testified he received that document, whatever it is, he described the document.

Q. From the Seventh District of the First Ward of Jersey City, have you a return in your office, a return showing—being the result as certified by the Board of Registry of election for that District, for that primary held on the 26th day of September, 1911?

MR. LANE: I object on the ground that that is not the way to prove the return, or the way to prove a written document.

MR. VICKERS: It is the way to prove a fact.

MR. LANE: Nor the way to prove a fact.

MR. SIMPSON: I make the same objection.

THE COURT: I will sustain the objection.

Q. Will you produce, if you have it, the return of the Board of Registry and Election for the Seventh District of the First Ward of Jersey City for a primary held on the 26th day of September, 1911?

MR. LANE: I object on the ground that there is no such thing known as a return. That is not the way to show—(interrupted)

THE COURT: I will allow the question.

MR. LANE: I ask an exception.

MR. SIMPSON: I make the same objection, and the additional objection that he is going into the contents of this without offering it. It is not the best evidence.

THE COURT: He asked him to produce something he described. If he has it I will permit it.

MR. LANE: I ask an exception.

MR. SIMPSON: I ask an exception.

A. Yes.

Q. Have you? A. Yes.

Q. And this paper which you have produced, is it the paper which you received, as you have testified heretofore?

MR. SIMPSON: I object to the form of the question. It characterizes testimony, and he has not any right to characterize what he has testified to.

THE COURT: I will allow it, simply to identify the paper.

MR. SIMPSON: I ask an exception.

Q. And this paper which you have produced, is it the paper which you received, as you have testified heretofore? A. Yes.

Q. Have you in your possession any other paper being, or purporting to be, the return of the Board of Registry and Election for the Seventh Election District of the First Ward of Jersey City, of the primary election of September 26th, 1911?

MR. SIMPSON: I object on the ground that it is entirely outside of this indictment. The indictment is for making a false return, whatever it may be. The indictment does not tell us to whom it was made.

THE COURT: I will allow the question.

MR. SIMPSON: I ask an exception.

A. No, sir.

MR. VICKERS: I offer the paper in question in evidence.

MR. SIMPSON: We have the right to cross-examine on this paper.

MR. VICKERS: I have no objection.

THE COURT: I don't know that you have the right to cross-examine at this time, but I will grant you the privilege.

Cross examination by Mr. Lane:

Q. You testified that several clerks were receiving these returns on the night of the election, did you not? A. Yes.

Q. You cannot state now, can you, which one of the clerks received this particular piece of paper? A. No, sir.

Q. You said there were eight clerks? A. Yes.

Q. How many papers were filed at your office during that election night from the various election districts of Jersey City, approximately?

MR. VICKERS: I object to the approximate part of the question, unless the witness cannot state definitely.

THE COURT: I will allow the question.

MR. LANE: If he can state definitely, so much the better.

A. I can state it definitely, if you give me time to figure it. The Republican and Democratic primary book, this year's and last year's—that is four—this book is five, the old poll book is six, the return is seven, eight, about eight documents, I guess.

Q. How many? A. About eight documents from each Board, and two ballot boxes.

Q. How many districts were there in the City? A. One hundred and fifty-four.

Q. All of those were received between eleven o'clock that night and two or three o'clock in the morning? A. 8.45 the next morning.

Q. Where were these papers kept in your office? A. In my vault.

Q. I suppose that that vault is accessible to how many people? A. The entire office force.

Q. Where were the ballot boxes kept?

MR. VICKERS: I understand that this is only cross examination on the paper.

THE COURT: I will allow the cross examination to go further.

MR. VICKERS: I don't object as long as it is understood that I am not through.

Q. Where were the boxes kept? A. In the lower vault.

Q. That was accessible to the office force? A. Yes.

Q. The only way that you identify this box is, as I understood your testimony—(interrupted)

A. The same as you would identify it now, by looking at it now.

Q. The label on it says Democratic Ballot Box? A. Yes.

Q. It looks like the box used at the primary election? A. Yes.

Q. That paper, from the time it was brought to your office, has been out of your possession how long? A. A Week or ten days, since it was brought to the Grand Jury.

Q. And the ballot box the same way? A. The same way.

Q. You didn't have occasion to examine this ballot box and this paper between the time that they were received by your office on Election Night, and the time they were taken up to the Grand Jury, or did you? A. No, I did not.

MR. VICKERS: Did that question include the paper or the box?

MR. LANE: Both.

Q. Did I understand you to testify, Mr. Fagen, that that box as it is now produced, is in the same condition as it was at the time it left your possession as City Clerk? A. I don't know.

Q. You don't know whether it is or not? (No answer).

Q. You exercised over your office only general supervision? A. General supervision.

Q. And you are largely testifying from the custom in your office, are you not? A. Yes.

Q. Personally you could not, as to the physical—(I will withdraw that). You could not physically attend to all these things yourself, could you? A. No, sir, absolutely impossible.

Q. Therefore you cannot say—therefore, when you say that this paper which has been referred to, is a paper which was filed on Election Night, on that night, and that this is the box which was received by your office on Election Night, and that this book was a book

which was received along with the paper and the ballot box, you are testifying from appearances? A. I am testifying from the custom of the office.

MR. LANE: I object to the paper on the ground first that there is nothing in the statute which requires such a return to be made, and therefore the return is irrelevant and immaterial, and secondly, that the paper has not been properly proved, and it is therefore incompetent.

THE COURT: What do you say as to that?

MR. VICKERS: It seems to me it is clearly proved to be a paper from the files.

THE COURT: The point is he says there is nothing in the statute which requires the filing of it. Have you examined the statute?

MR. VICKERS: We are not charging these defendants with anything except as contained in the indictment.

THE COURT: I will admit it; if it appears to be irrelevant it may be stricken out.

MR. SIMPSON: I object on the ground that it is irrelevant, immaterial and incompetent, and not properly proven.

THE COURT: I will admit it now, and if it is proved to be irrelevant it may be stricken out.

MR. LANE: I ask an exception.

(It is marked S-1 in evidence, being a paper).

Re-direct examination by Mr. Vickers:

Q. This paper marked S-1 in evidence, is one of the one hundred and fifty-four papers you spoke of in answer to a question of Mr. Lane's? A. Yes.

Q. One such as this is filed from each one of the one hundred and fifty-four election districts of the City of Jersey City at the conclusion of the election or primary? A. Yes.

Q. And the book which you have heretofore referred to, and which I now again show you, is the book which you referred to in answer to Mr. Lane's question, as being the registry list which accompanied this paper S-1, and the ballot box of that election district; is that right?

MR. SIMPSON: I object. It is a misquotation of the testimony. The witness did not say anything of the kind. He swore he did not know anything about this paper.

THE COURT: I will sustain the objection.

Q. Together with the paper S-1, what if anything did you receive from the Board of Registry and Election from the Seventh District of the First Ward of Jersey City?

MR. LANE: I object on the ground that it is apparent from the witness's testimony that he cannot say he received anything from any district. All he can testify to is that certain clerks in his office received some papers. The Prosecutor cannot so characterize his testimony.

THE COURT: I will sustain the objection.

Q. What, if anything, have you produced from the files of your office as City Clerk which formed a part of the—(I will withdraw that). (Continuing)—which

was received in your office from the Seventh District of the First Ward of Jersey City subsequent to the primary of September 26th?

MR. LANE: I object on the same ground.

THE COURT: I will sustain the objection on the form of the question.

Q. What, if anything, did you produce from the files of your office in answer to the subpoena which you have heretofore referred to, before the Grand Jury of Hudson County, at the same time that you produced S-1, the paper S-1, and which was then turned over by you to the Grand Jury, having reference to the Seventh District of the First Ward of Jersey City?

THE COURT: You may answer the question.

A. I produced, in answer to that subpoena, a ballot box, Democratic ballot box and the Republican ballot box, for the Seventh District of the First Ward of Jersey City, a primary registry list, a Democratic and a Republican primary registry list, a return—I guess that is all.

Q. And were these articles that you have enumerated a part of the files and property officially received and held by you as City Clerk of Jersey City? A. Yes.

Q. And is the primary registry book which is now before you the primary registry book produced by you as you have testified? A. Yes.

Q. Now I ask you to examine this ballot box—I don't know whether you have already done it—and I ask you whether that is the ballot box which you produced at the time in question, together with S-1, the primary registry? A. I don't know.

Q. Will you look at it? A. There is nothing about that box, any more than any other box, that I could identify it as being the box I produced from that district and ward to the Grand Jury, but I did produce a box of

the Seventh District of the First Ward of Jersey City, to the Grand Jury—the Democratic box.

Q. The box which you then produced, the Democratic ballot box of the Seventh District of the First Ward, was in the Grand Jury room in your presence, was it not? A. I produced it.

Q. You produced it there? A. Yes.

Q. And had it there with you in the Grand Jury room? A. Yes.

Q. Did you make an examination of the box at that time, and find that one of the keys was bent and fast in the lock, as appears to be the case with this ballot box? A. Yes.

Q. Does that aid you in the identification of this particular ballot box as being the one you produced?

MR. LANE: I object. It is palpable that no such characteristic can aid anyone in identifying anything, because that can be done at any time, anywhere.

THE COURT: I will overrule the question.

Q. At the time you produced the particular box in question, will you say whether or not that box had a dark red tape, such as the one I here show you, with the tape running through the bent key in question, and sealed, as I indicate to you here, on the middle bolt, being the top of the box? A. I have no such recollection, in other words, I haven't any—don't remember of such a thing as that. It was not called to my attention, and neither did I see it or notice it.

Q. At the time you produced this box, you made an examination of the box, did you not, in order to say whether or not the box was in the same condition then that it was in when it was received by you in your office as City Clerk?

MR. SIMPSON: I object.

A. No, sir.

MR. SIMPSON: I will withdraw the objection.

A. Physically impossible.

Q. The box which was produced by you as you have testified, was it taped and sealed? A. Yes, every—(interrupted)

Q. Was this one? A. Yes.

Q. When you produced it before the Grand Jury was the box which you did produce in the same condition in which it was when it was delivered to you?

MR. LANE: I object. There is not a proper foundation for the question.

THE COURT: I will allow it.

MR. LANE: I ask an exception.

MR. SIMPSON: I object. Mr. Fagen has already sworn he never saw this box when it was delivered; it is apparent he cannot tell.

Q. When you produced it before the Grand Jury was the box which you did produce in the same condition in which it was when it was delivered to you?

MR. SIMPSON: I object further on the ground that there is no time fixed when it was delivered to him. The question might mean when his underclerk delivered it to him.

THE COURT: I will allow the question. You will have an opportunity to cross examine him on it.

A. Yes.

Q. From where in your office did you produce the box at the time you brought it before the Grand Jury? Where was it kept, in other words? A. It was kept,

from Election Night until it was produced before the Grand Jury, in my lower vault, along with a lot of other ballot boxes.

Q. That means the Republican and Democratic boxes from each one of the one hundred and fifty-four districts, three hundred and eight? A. Three hundred and eight boxes, all piled one on top of the other, in the lower vault.

Q. When you speak of the box which you produced having been kept in your vault from Election Night, to what Election Night do you refer? A. September 26th, the primary night.

Q. With respect to the ballots used on primary election day, by whom were the ballots prepared; at whose order and under whose direction? A. At mine.

Q. Were ballots delivered to the Election Board of the Seventh District of the First Ward for the primary election of September 26th? A. Well, I suppose so. There were ballots delivered to each district.

Q. Is there any other person than the City Clerk who has the delivery of the ballots in question in charge? A. The City Clerk must deliver them to the Election Board——

Q. Well, did you? A. ——and take a receipt for them.

Q. Did you; that is all I am asking you. Did you? A. I suppose I did. I don't like to testify to conclusions. I may seem to be hesitating, but at the same time I don't want to testify to what I don't know.

Q. How many ballots were delivered to each of the one hundred and fifty-four election wards for the primary election of September 26th, 1911?

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

A. Five hundred Democratic and five hundred Republican ballots.

Q. Were these ballots numbered? A. Numbered from one to five hundred consecutively.

Q. Numbered on the stub? A. Numbered on the stub.

Q. You have no personal knowledge of the contents of the box?

A. Absolutely none.

Q. You only know what the law requires should be there? A. Yes, that is all.

MR. VICKERS: I offer in evidence the primary registry.

MR. SIMPSON: I object.

MR. LANE: I object to it as immaterial and irrelevant and has nothing to do with this case.

THE COURT: How is it material?

MR. VICKERS: I take it, your Honor, that it is part of the return.

MR. SIMPSON: You cannot show any statutory authority for it.

THE COURT: It may be marked in evidence, and if it is not material I can exclude it.

(It is marked S-2 for identification.)

THE COURT: At present I will allow it in.

MR. SIMPSON: I ask an exception.

MR. VICKERS: I contend that it is part of the return, as the ballot box is a part of the return.

MR. SIMPSON: How is the ballot box a part of the return?

THE COURT: The Court will not take that

view. It may be part of the goods, the property returned, but the return, using that term in its usual meaning, means a report. I will allow it in for the time being. You may have your exception.

Cross examination by Mr. Simpson:

Q. What was the date you were subpoened to come before the Grand Jury with the box? A. About ten days ago.

Q. Is that the first time your attention was physically directed to this box? A. Yes.

Q. Up to that time you have no recollection of having seen this box, so you can point it out from the other boxes, have you? A. No.

Q. Then ten days ago was the first time you noticed this key was turned over in the lock, wasn't it? A. Yes.

Q. And this box was taken from three hundred and how many boxes? A. Three hundred and eight.

Q. —— that were in your office? A. Yes, in my vault.

Q. Anyone working in your vault had access to those boxes, anybody could go in there. A. Only the office force.

Q. How many? A. Seven.

Q. All loyal Democrats? A. No sir, Halstead and Browning are Republicans, veterans.

MR. VICKERS: Protected.

Q. When you got your subpoena from the Grand Jury, who did you ask to get this box for you, which one of the force? A. I couldn't remember that; there were three or four of them went to the lower vault along with myself and had to find it, pick it out from the pile.

Q. Where was it, underneath or on top? A. As I

recollect it, it was in about the third row, very near the back, very near the wall.

Q. How many boxes did you have to take away to get it? A. I should judge about thirty or forty boxes.

Q. Was this box on top? A. There was about four, —four boxes on top of it—three boxes on top of it.

Q. Did all of the other boxes have keys in the locks? A. Some had, and some had not.

Q. All the keys in them were bent like this? A. Any of them that had keys were bent over, yes.

Q. Did you seal this key with sealing wax? A. No, I didn't touch the box, I brought it up here the way it was.

Q. Did you notice whether it was bottom or top side up when it was taken from the pile? A. Same as it was there, locked side up.

Q. Locked side up? A. Yes, it had a tag on it and all.

Q. You don't know whether this is the box from the Seventh District of the First Ward except from the tag? A. No.

Q. You have never been inside the box to see whether the tickets agree with the local candidates running in the District and Ward? A. No sir.

Q. You rely on this printed tag when you tell us it is the box from that District and Ward? A. Yes.

Q. You relied on that when you produced it. When you produced it before the Grand Jury did it also have that delicate shade of pink red tape, or only the dark red? A. Only the dark red.

Q. This has been added since you produced it? A. I suppose so.

Q. You don't know about that? A. No sir.

Q. The Grand Jury have sealed up a lot of other boxes in the same way, haven't they? A. They have twenty-eight other boxes.

Q. They went to your office before they got them, and sealed them up? A. No sir, they did not. They had no right to do that until the boxes were here. I brought them here on subpoena.

Q. Did you notice when you were examining these boxes that the boxes could be opened by taking off the nuts? A. No sir, a Grand Juryman discovered that.

Q. You did not know that? A. No sir.

Q. You don't know that anyone in your office knew it? A. I don't know. I cannot answer for somebody else. I don't know what they knew.

Q. What time did you lock up your office the night this box was presented? A. The night it was presented to me, Election night?

Q. No, no, you say it was not presented until ten days ago.

MR. VICKERS: I object. He didn't say that.

Q. Do I understand you correctly as saying that you have no knowledge of your attention having been directed to this particular box until you received the Grand Jury subpoena and went to look for it? A. That is right.

Q. That is the fact; so that you have no knowledge about this particular box, as to what occurred to it on the night it was brought to your office, such as would distinguish it from all the other three hundred boxes, have you? A. Absolutely none.

Q. What time did your office lock up the night these boxes were delivered to your office? A. It was not locked up that night at all. The last box came in at eight-something, very near nine o'clock, in the morning. The office remained open all day. I was there nearly all day, until about half past nine Wednesday night.

Q. Were you there all night of Election night? A. All night and all day, up to Wednesday night.

Q. Didn't you sleep at all in the office? A. No sir.

Q. What time did you get there on Election day? A. About 7:45 Election night.

Q. Then you were not there until they began to bring in the returns, were you? A. I was there, the returns didn't begin to come in until nearly eleven o'clock.

Q. You left on the next night, Wednesday night? A. Yes.

Q. Who attended to putting these boxes in the vaults? A. My office force, the whole of the office force.

Q. You don't know who attended to putting this particular box in? A. No sir.

Q. Where is this vault located with reference to your office, in which these boxes were kept? Is it to the rear of your office or in front of your office? A. No, it is immediately below the front office.

Q. How is it reached, by going down stairs? A. A flight of stairs.

Q. Where is the door to this vault, downstairs or up stairs? A. It leads into another vault below my office forward. There is two lower vaults and an upper vault. It leads out into the upper vault.

Q. It has a combination lock? A. Yes.

Q. Who has the combination? A. I have.

Q. Who else? A. Halstead and Browning.

Q. Anybody else? A. No.

Q. Who opens it in the morning? A. Pardon?

Q. Who opens it up? A. I usually do.

Q. Do you know you have done so every night since the night this box was delivered to the Grand Jury? A. No sir.

Q. Sometimes you go away from your office? A. What do you mean by away?

Q. Sometimes you go before all the men go out? A. Yes.

Q. You are not always the last man out of the office? A. No sir.

Q. Halstead and Browning are both old men? A. Both old men.

Re-direct examination by Mr. Vickers:

Q. At the time that you produced the box, the two boxes, of the Seventh Election District of the First Ward, to the Grand Jury, those were the only two boxes

that you produced on that day; is that right? A. That is right.

Q. The Republican box you took away with you? A. Took it back again.

Q. On that day you only left one box in the possession of the Grand Jury? A. That is all.

Q. And the one box that you did leave was the box of the Seventh District of the First Ward, wasn't it?

MR. SIMPSON: I object. It calls for a conclusion.

THE COURT: Objection sustained.

Q. The one box which you did leave was the box which you produced, as the box of the Seventh Election District of the First Ward of Jersey City?

MR. SIMPSON: I object on the ground —— (interrupted.)

THE COURT: I will allow the question.

MR. SIMPSON: We are not bound by what he produced the box as.

THE COURT: I will allow the question for the purpose of identification.

A. Yes.

Q. Now, the twenty-eight boxes that Mr. Simpson has called your attention to, they were produced later on? A. Later on, a week ago.

Q. Later on? A. Yes.

Q. And those boxes were produced by you in the same manner, under subpoena? A. Under subpoena.

Q. And selected in the same way as the box in question of the Seventh District of the First Ward? A. Yes.

Q. From the same place? A. From the same place.

Q. Those boxes are now again in your office? A. Not yet.

Q. But if they are not, it is your fault? A. My fault, yes—— no, it is the Prosecutor's fault. I have been all day trying to get hold of them.

Q. So that the one box produced by you as the box of the Seventh District of the First Ward, and another box of the Fourth Ward of Jersey City, are the only boxes which the Prosecutor now has in his possession? A. No sir, he has thirty boxes in his possession.

Q. I mean —— those boxes have been turned over. You have been told you might come and get them.

MR. SIMPSON: I object.

THE COURT: He has already testified he has not received the twenty-eight boxes.

THE WITNESS: The boxes are not there yet.

Q. Not there; did you send a wagon for them? A. No.

Q. There were no boxes sealed up by the Grand Jury in your presence, were there? A. Absolutely none.

Q. So far as you know, except by testifying to conclusions, which you object to, no boxes were ever sealed up by the Grand Jury; is that right? A. As far as I know.

Q. Except by testifying to conclusions, which you object to, no boxes were ever opened by the Grand Jury? A. I don't know if I will testify to any conclusions that I will make. I will testify to facts. I don't know what the fact is you want.

Q. Mr. Simpson asked you whether this box was opened by the Grand Jury, and you readily answered him, and I wondered whether you realized you were testifying from conclusions, because you know nothing about it; isn't that a fact? A. I don't know anything about it; that is the fact.

Re-cross examination by Mr. Simpson:

Q. You don't know what has happened to this box since you ceased to have it? A. No.

Q. Can you give us the names of the men whose duty it was to put the tags on the boxes, to identify them? A. Election night?

Q. I don't mean Election night; can you give us the names of the men whose duty it was to put the tags on the boxes to identify them? A. Mr. Mears and Mr. Halstead.

Q. Are they here? A. No sir.

BY THE COURT.

Q. You stated that the ballots that were used in the primary election were prepared under your supervision? A. Yes.

Q. And distributed from your office? A. From my office.

Q. Now, were the ballots for each district the same or was there a difference in the ballots distributed by you for use in the various election districts? A. Each and every ballot in Jersey City was different from any other ballot.

Q. What is that? A. Each ballot in each election district was different from any other ballot in the City.

Q. In what respect? A. That it was consecutively numbered.

Q. As far as the names on the ballot itself were concerned, the names of candidates, was there any difference in the various district tickets? A. Yes.

Q. Each district different from any other? A. Each district different from any other, inasmuch as there were county committeemen from both parties running in each district that would not be running in any other district.

Q. Were these tickets, distributed by you, designated by you in any way as to what district they belonged to? A. They were numbered for district and ward.

Q. That would show upon the stub of the ballot itself? A. And the consecutive number also on the stub.

Q. (By Mr. Vickers.) But not on the ballot? A. The number of the district and ward on the ballot.

Q. (By Mr. Simpson.) How long before the election were the ballots sent out? A. The day before.

Q. Five hundred to each district? A. Five hundred Democratic and five hundred Republicans.

Cross examination by Mr. Lane:

Q. The sample ballots were sent out how long before? A. Ten days before.

Q. They were exactly the same, but a different color? A. A different color.

Q. They were distributed by you to each registered voter, so there was no difficulty in anybody getting hold of them? A. Yes.

Q. You know nothing about the actual distribution of the ballots personally; you didn't hand them over personally to the voters, did you? A. Custom, and what the law imposes upon me I do, and I know has been done.

Q. There is no number on the ballot, is there? A. No sir.

Q. The number is on the stub? A. The number is on the stub.

Q. And the five hundred ballots were exactly the same, for use in any one election district? A. Yes.

Q. (By Mr. Vickers.) But the five hundred ballots for each election district were different from any other election district of the one hundred and fifty-four; is that so? A. Yes.

MR. LANE: We admit that.

MR. SIMPSON: We admit that; there is no question about that.

Q. Do you know how many of these ballot boxes were made? A. There was two for each election district in Hudson County, I understand.

Q. You don't know personally; they were not made under your supervision? A. No.

Q. Under the supervision of the Board of Freeholders? A. I know I had three hundred and eight.

Q. Three hundred and eight? A. And forty-six more.

Q. Forty-six more? A. Forty-six extras.

Q. Forty-six that were not necessary? A. Forty-six that were not necessary.

Q. They were extra ballot boxes? A. Yes.

Q. Where are those forty-six now? A. I have possession of them.

Q. Have you got the whole forty-six? A. Yes.

Q. When did you count them last? A. I never counted them.

Q. (By Mr. Vickers.) You don't know whether you have the forty-six; were the forty-six not in use kept in the same place? A. In a separate vault away down the hall.

Q. (By Mr. Vickers.) They are for emergency? A. Emergency.

Q. (By Mr. Simpson.) *Any* emergency, I suppose? (No answer.)

Q. Did you say there were five hundred ballots printed, or distributed, for each district? A. Five hundred printed.

Q. Five hundred printed under your supervision? A. Under my supervision.

Q. (By Mr. Vickers.) Five hundred printed and distributed? A. —— and distributed; every one distributed.

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

Direct examination by Mr. Vickers:

Q. Were you present in the Grand Jury room when Mr. Fagen, the last witness, produced a Democratic bal-

lot box purporting to be from the Seventh District of the First Ward? A. I was.

Q. Did you see that box opened? A. I did.

Q. Did you see it closed? A. I did.

Q. Did you see the contents of that box taken from the box? A. I did.

Q. Did you see the contents of the box returned to it?

MR. SIMPSON: I object. This is testimony of what occurred before the Grand Jury.

THE COURT: I will allow it.

A. I did.

MR. LANE: I object furthermore, on the ground that it is palpably leading.

THE COURT: I will allow it. Objection was made after all the questions had been answered.

MR. LANE: With one of the Prosecutors on the stand and one on the floor.

THE COURT: No comments.

Q. Did you see the box closed after the contents were examined?

MR. LANE: I object. It is leading.

THE COURT: I will allow it.

A. I did.

MR. LANE: I ask an exception.

THE COURT: There is no exception.

MR. Lane: I pray an exception.

THE COURT: You may not have the exception.

Q. I asked you whether this box which is here was the ballot box which at that time was produced before the Grand Jury, in the Grand Jury room, by Michael I. Fagen, City Clerk, as the ballot box of the Seventh District of the First Ward?

MR. LANE: I object. The question is leading, the witness is not qualified, and the question is incompetent.

THE COURT: The question may be leading. You may ask him the question by modifying the last portion of it, by striking off any reference to the ward and district.

Q. I ask you whether this box which is here, was the ballot box which at that time was produced before the Grand Jury in the Grand Jury room, by Michael I. Fagen, City Clerk?

MR. LANE: I make the same objection; it is leading, and the witness has not been qualified to testify whether that particular box is the same ballot box.

THE COURT: I will allow the question.

MR. LANE: I ask an exception.

MR. VICKERS: I have no objection to his cross examining the witness as to his qualification.

MR. LANE: I don't think he can qualify. I don't intend to cross examine him.

THE COURT: Proceed.

A. That is the box.

Q. How do you know that is the box? Will you describe how the box was wound? A. When Mr. Fagen brought it into the Grand Jury room the box was wound with that tape, red, and my impression is it was sealed on the middle, on the middle of the top.

Q. Will you examine it, step here, and see whether it was sealed as it is now? A. Yes, that is the seal, that seal was on it.

Q. Was this key in it? A. Yes, as it is now.

Q. And the tape running through it? A. The tape running through one of the holes of the key.

Q. And the tape that is on here now, this light colored tape, and the seals to which I call your attention, on the corners, and where this paper is, here (indicating) were they put on there in your presence? A. They were.

MR. LANE: I object to the question. It is leading.

THE COURT: I will allow the question as it stands.

Q. I ask you whether the box now —— I will withdraw that; do you know where this box has been since it left the Grand Jury room and up to the time it was produced in Court here today? A. It has been in a vault, in a filing case, in the Prosecutor's office.

Q. Who took it there? A. I and yourself.

Q. Was it then sealed as it is now? A. Yes.

Q. Has that been under lock and key, has that been locked up since that time? A. It has been; I have had the key.

Q. Was this box —— describe to the Court and the jury how the box was sealed, the manner of sealing it at the time just previous to its coming into your possession, and previous to your taking it to the vault.

MR. SIMPSON: He has already done that.

MR. LANE: Under leading questions he has already done that.

THE COURT: I will allow the question.

A. After the ballots had been returned, and the other matter returned into the box, the box was closed, and in the presence of the Grand Jury, yourself and myself, the Grand Jury sealed the box up; that is to say, you wound the tape around with one of the other Grand Jurors and someone holding the match, and I held the match, and ——

Q. And you burned me. A. I burned you. Two seals here, one on the side and one on the top.

Q. I call your attention to the seals here and ask you whether you saw that sealed with a seal ring given to me at that time by Mr. Stratford, a member of the Grand Jury? A. Yes, I did.

Q. You notice that the seal bears here, this seal bears a mark of a crest; that is right? A. Yes.

Q. And likewise here? A. Yes.

Q. And on the side? A. And on the side.

Q. And that is the condition in which it was taken from the Grand Jury room at that time? A. It is.

Q. Will you say whether or not the articles which were taken from the box after Mr. Fagen left the Grand Jury room, whether they were returned into the box in your presence, and before the sealing of the box, in the manner as indicated and described by you? A. They were.

Cross examination by Mr. Lane:

Q. Did you bring the box up to the Court room today? A. No, I did not.

BY MR. SIMPSON:

Q. You say the contents were taken out in the Grand

Jury room, how were they taken out, through the top or through the bottom? A. Why the box——after it was opened the box came apart.

Q. How was it opened? A. It was opened from the bottom by one of the Grand Jurors.

Q. Who took the nuts off? A. One nut here (indicating), this nut was off, and these were unscrewed and the bottom came off.

Q. In that way they took the contents out? A. Yes.

Q. At no time they opened the top and took the contents out? A. No.

MR. VICKERS: It could not be opened.

Re-direct examination by Mr. Vickers:

Q. Was that bottom taken off before or after the cutting of the tape? A. Before or after the cutting of the tape?

Q. The tape—red tape. A. They broke the tape; first tried to get in the top and they broke the tape off and then unscrewed it from the bottom.

Q. I call your attention to this tape and ask you whether that is all the tape there was, or all there is left of it. A. That is all there was left of it.

Q. The box was wound? A. Yes.

Q. (By Mr. Simpson.) You say your memory is refreshed by Mr. Vickers; what did Mr. Vickers say to you when you returned here, from the witness stand?

MR. VICKERS: I object.

Re-cross examination by Mr. Lane:

Q. You say there was more of this red tape on this box? A. I wouldn't say that.

Q. Under the leading question of Mr. Vickers you said there was; I want to know. A. That is all there was left of it.

Q. Was there any more when it was produced before the Grand Jury? A. I will tell you in a minute—if it goes around. (Witness attempts to wind the tape about the box.)

Q. Where is that tape? A. I don't know.

MR. VICKERS: I have sent for it. I have it.

Q. Why wasn't the tape that went all the way round the box kept with the tape? You were so careful about sealing it up, why didn't you keep the tape? A. I was not paying any particular attention to the tape.

Q. Why not? it is part of the box. A. Yes, I suppose so.

Q. And it indicated, if it was all the way around the box, that the box had not been disturbed? A. Yes.

Q. Didn't you consider it important to show that the box had not been disturbed? A. Yes.

Q. Why didn't you keep the tape then? A. When the box was brought in the tape was intact, all the way around the box. It was only broken when the Grand Jury attempted to open it.

Q. Why didn't you keep the balance of the tape and affix it to the box, so that you could come here and testify? A. I didn't break the tape. I didn't break the tape; it was broken by a Grand Juror. What he did with it I don't know.

MR. VICKERS: I have sent for the red tape, if Mr. Lane is so anxious about it.

MR. VICKERS: I offer the box in evidence, before disclosing its contents, preparatory to offering its contents.

THE COURT: It may be received in evidence.

MR. LANE: I object.

MR. SIMPSON: I object.

MR. VICKERS: Not with the contents—the box itself.

MR. LANE: I object. It is not properly proven to be the box of the Seventh District of the First Ward; it is irrelevant, immaterial and incompetent.

THE COURT: I will reserve that until the box has been opened, if you intend to open it.

MR. LANE: Will you allow me an exception?

THE COURT: I have not admitted it in evidence yet.

MR. VICKERS: Then will the Court rule with respect to the contents of the box?

THE COURT: I don't know what the contents are.

MR. VICKERS: We will assume that the Court recognizes that this is a ballot box, and we contend that the contents are not as represented. We want the ballots counted. Will the Court direct the jury to count them?

THE COURT: Will you offer the box in evidence now?

MR. VICKERS: I want to know whether I should open it here, taking the Court's time. I want to know the Court's pleasure with regard to the counting of the ballots.

THE COURT: I will admit the offering of the box in evidence.

MR. LANE: I ask an exception on the ground that it is irrelevant, incompetent, and immaterial.

MR. VICKERS: We desire to have the box opened and the contents examined.

THE COURT: You may have that done. Can't counsel agree as to the procedure, not waiving any rights, so as to avoid any tedious delay?

MR. SIMPSON: You will allow me an exception to the ruling admitting the box in evidence?

THE COURT: Yes.

MR. VICKERS: Will the box be opened in the Court room or in the Jury room?

THE COURT: In the Court room.

MR. VICKERS: The State desires that the ballots shall be counted. Who shall do it? Certainly the State's attorney cannot do it.

THE COURT: You may note the fact that the box has been opened in the presence of the jury.

(The box is opened.)

THE COURT: Counsel will have to stand on one side so that the jury can see what is being done with the box.

MR. VICKERS: May I have it on the record, that from the box is now taken a cigarette box which appears to have been perforated in the center, a number of slips appearing to be stubs strung on the needle and thread, with a button—a button and a thread—what purports to be a tally sheet (which Mr. Simpson has examined carefully), a number of unused ballots, what purports to be, appear to be, numbered ballots, numbered with blue pencil on the back, and which have perforations.

I will ask Mr. McCarthy to take the stand again.

Q. What appear here to be ballots marked with blue lead pencil, were they strung on a thread, needle and thread, and button, such as I show you here, at the time they were taken out of the ballot box in the Grand Jury room? A. Yes.

Q. Afterward, not re-strung again, but put in as they are now? A. As they are now.

Q. And this sheet which I show you here, which is designated as the official Democratic Primary tally sheet of the Seventh District of the First Ward of Jersey City, N. J., September 26th, 1911, was that taken from this ballot box at the time it was opened in the Grand Jury room in your presence? A. It was.

MR. VICKERS: I now offer the contents, the tally sheet, stubs, the ballots, the unused ballots, and all that now appears to have been in the inside of the box in evidence.

THE COURT: It may be admitted.

MR. SIMPSON: I object on the ground that it is irrelevant and immaterial.

MR. LANE: I make the further objection that they have not been proved.

THE COURT: It may be admitted.

MR. LANE: I ask an exception.

MICHAEL I. FAGEN, recalled.

Direct examination by Mr. Vickers:

Q. Will you examine the unused ballots and these ballots which have been said to have been strung in this

box, and the stubs, and say whether or not those are the official primary ballots printed under your direction, delivered by you, for use of the Seventh District of the First Ward for an election or primary on September 26th, 1911? A. Yes.

Cross examination by Mr. Lane:

Q. How do you know? A. The fact that they are similar to all of the rest that were printed and delivered under my direction.

Q. There is nothing to prevent any printer from making a fac-simile of that? A. Absolutely nothing, capable of being printed by anyone that has a press.

Q. (By Mr. Simpson.) Who were these printed by actually? A. Public Printers of Jersey City, a corporation, on Montgomery Street, near Varick, or Monmouth Street.

Q. (By Mr. Vickers.) And it is a crime to print more than are ordered, or to print without order?

MR. SIMPSON: I object. It is a matter of law.

MR. VICKERS: I desire to have the jury, or whomever the Court may designate, to tally and count these ballots.

THE COURT: Can't that be determined upon without wasting a lot of time, reserving any legal rights?

MR. SIMPSON: We all understand it is a tedious job. I am perfectly willing to have the bunch of ballots go in and let the jury count them.

THE COURT: That is out of the question.

MR. VICKERS: The ballots have been counted and the exact number is given in the indictment,

by videlicit, so that it could not make any difference as to the exact number.

THE COURT: Can't counsel go over the ballots and count them?

COUNSEL: It would take probably two hours.

MR. LANE: I will agree that so far as my clients are concerned, the indictment properly sets forth the tally of the ballots as they now appear in the box.

MR. SIMPSON: That is all right, but it seems to me though—— who made the count for you? If Mr. McCarthy will state that he made the tally and the Grand Jury counted them, that will be satisfactory to us, I should think.

THE COURT: His testimony of the fact will not be admitted unless it is admitted by counsel.

MR. SIMPSON: Somebody has done this counting, and whoever did it, let them testify, without objection for my part.

MR. VICKERS: Then I will recall Mr. McCarthy.

THE COURT: You all accept his statement?

COUNSEL: Yes.

JAMES W. McCARTHY, recalled.

Direct examination by Mr. Vickers:

Q. You have the tally which was kept by you at the time these ballots were counted in the Grand Jury room? A. Yes.

Q. Is this the tally which you kept? A. That is the tally I kept, yes.

Q. Will you give the names of the candidates, the ballots for whom were counted, and the result of your tally? A. This is a tally made only for candidates for Sheriff and for Mayor, and the tally showed that Wittpenn received forty-eight votes of the votes counted, and Sullivan one-hundred and five, O'Mealia seven; for Sheriff, Clements received seventy-two of the ballots counted, Wedin thirty-nine, Bergkamp five, Groth twelve, and Lankering twenty-two; Ambry, candidate for Mayor, received one vote.

THE COURT: As I understand it, counsel for all the defendants accept this testimony in lieu of a formal counting of the ballots in open Court, and consent that the statement made by the witness is correct as to the contents of this box, and as to the condition of these ballots as offered.

Cross examination by Mr. Simpson:

Q. Who did the actual counting in the Grand Jury room? A. More than one man. One counted; it was really an election board, one counted and one examined, and two kept tally.

Q. How long did it take you? A. I think it took us one hour and a half.

Q. Four men actually at work? A. Yes, two tallying and one counting, and one to see that he read off correctly; and we agreed to a ballot, as to the number. The Grand Juror who kept tally with me agreed with me. His figures agreed with mine.

BY THE COURT.

Q. One of the Grand Jurors read off the list? A. Yes, and the other watched him as he did.

Q. As he called it off, to see that he called it off correctly? A. Yes.

Q. And you recorded it? A. Yes.
Q. And a Grand Juror recorded it? A. Yes.
Q. And the two tallies corresponded? A. Yes.

THE COURT: I understood that counsel agreed to this.

MR. LANE: Yes, except that I want to cross examine him.

Cross examination by Mr. Lane:

Q. You didn't see the ballots? A. No.
Q. Neither did the other Grand Juror who kept tally? A. No.
Q. It took you an hour and a half to tally the votes? A. I shouldn't want to say that exactly, approximately that.
Q. An hour and a half for sheriff and mayor alone; you didn't tally the vote for other officers? A. No.
Q. It took you an hour and a half? A. It may have been an hour.
Q. One hour is long enough for my purpose. A. Yes, it may have been more.
Q. You did it as nearly as you could in the way an election board would do it, did you not? A. Yes, I think that was understood.

THE COURT: I will take a recess until eleven o'clock tomorrow morning.

MR. VICKERS: Will your Honor, as the Court, take charge of the ballot box?

THE COURT: The Clerk of the Court may take possession of the ballot box and its contents, and may take it into custody and place it in the vault.

MR. LANE: I will stipulate that we will raise no question that the box has been tampered with.

Adjournment to November 2nd, 1911, at eleven o'clock.

HUDSON COUNTY OYER AND TERMINER.

CAREY, J.

THE STATE

vs.

JAMES J. REILLY,

et al.

Continuation of the trial of above cause before Honorable Robert Carey and a jury November 2, 1911.

APPEARANCES:

George T. Vickers and James W. McCarthy for the State.

Merritt Lane for defendants Blaney and Patterson.

Alexander Simpson for defendant Nixon.

Aaron L. Melniker and Myron C. Ernst for defendant Reilly.

JOSEPH STOEBLING, a witness produced on behalf of the State, is called.

MR. VICKERS: This man is Clerk of the Hudson County Board of Elections, and called for the purpose of proving that this is the registry book. I understand that counsel for the defendants are willing to admit on the record that the defendants were the board of registry and election, that they constituted the board in the Seventh District of

the First Ward, and are the persons named in the certificate S-2.

MR. SIMPSON: I will admit that even if they did not technically qualify. They certainly acted as a board there, and as far as I am concerned I am willing to admit that they were the election officers regularly appointed under the law to hold that registry.

MR. VICKERS: And who made the return, S-1?

MR. SIMPSON: Yes.

MR. VICKERS: Is that agreed to?

MR. MELNIKER: I will submit to superior numbers.

THE COURT: Is it agreed to, Mr. Lane?

MR. LANE: I don't know about who made the return S-1. I will admit that the signatures of Blaney and Patterson on S-1 are the signatures of Mr. Blaney and Mr. Patterson.

MR. VICKERS: And the balance of the stipulation, that they are the Board?

MR. LANE: Yes, I have never questioned the fact that they are the Board.

THE COURT: Let us get this stipulation on the record so the Court can understand it.

MR. SIMPSON: I admit that James S. Nixon, one of the defendants, signed this return S-1, and that he acted as an inspector on the Board of Registry and Election of the Seventh District of the

First Ward on the 26th day of September.

MR. LANE: I make the same admission with respect to Blaney and Patterson.

THE COURT: Mr. Melniker makes the same admission for the defendant Reilly.

MR. VICKERS: That covers them all. I ask that it appear on the record from S-1 that the return shows two votes for Bergkamp, one hundred and forty-two for Alexander Clements, three for Groth, seven for Adolph Lankering, and eight for Nicholas P. Wedin.

MR. SIMPSON: That is not the indictment.

MR. MELNIKER: Whatever is in the indictment, not the return.

MR. VICKERS: As to O'Mealia, Sullivan and Wittpenn, they are named in the indictment. I will withdraw this witness.

State's case closed.

DEFENSE.

JAMES S. NIXON, one of the defendants, being sworn on his own behalf, testified as follows:

Direct examination by Mr. Simpson:

Q. How old are you? A. Thirty-one years old.
Q. Where do you live? A. 150 Sussex Street, Jersey City.
Q. How long have you lived in Jersey City? A. All my life.

Q. Are you married? A. Yes.

Q. Have you any family? A. Yes.

Q. Before the primary election of September 26th, what was your business? A. I was formerly employed by the Adams Express Company.

Q. You lost your position through the strike, did you? A. Yes.

Q. Before this election did you take the regular examination, civil service examination, and were you employed as an election officer? A. Yes.

Q. Up to that time you had never been an election officer? A. No, never before.

Q. You knew nothing about it. Were you Democratic or Republican? A. Democratic.

Q. You assisted in holding this primary? A. Yes.

Q. Where was it held? A. 183 Grand Street.

Q. A barber shop or a saloon? A. A vacant store now; I think the popcorn man had it.

Q. What time did the primary open? A. Seven o'clock in the morning.

Q. What did you do? What were your duties until the box closed? A. Inspector of election.

Q. You opened at what time, did you say? A. Seven o'clock.

Q. You closed when? A. Nine o'clock.

Q. When you closed was there any other box beside yours in the place? A. The Republican box.

Q. Who had charge of it? A. The Republicans.

Q. Who were they? A. Reilly and Mr. Patterson.

Q. You and Blaney were the Democrats? A. Yes.

Q. Both boxes were opened at the same time, weren't they? A. Yes.

Q. Who began to count the Republican votes? A. Patterson and Reilly.

Q. Who counted the Democratic votes? A. Myself and Blaney.

Q. What part did you take in counting the votes? I show you one of the ballots. Take this ballot for instance which has been voted. Show us what you did when you took that out of the box—— that is marked

61 on the back. A. I would call it off as the votes appear.

Q. Do it exactly. A. "Thomas F. A. Griffin, Charles E. S. Simpson, Charles M. Egan, Thomas F. Martin, James C. Agnew, Max Davis, Joseph M. Branegan, Thomas M. Donnelly, Adolph C. Carsten, Philip Steuerwald, William S. Davidson, Benjamin Heyman. For sheriff Sandy Clements."

THE COURT: What is this?

MR. SIMPSON: I want him to show the jury just what he does.

A. "Coroner, Edward C. Zeiger; Mayor, Mark A. Sullivan; President of the Board of Aldermen, James E. Kelly; Street and Water Board, Joseph W. Griffin; Alderman, Michael J. Callahan; Constable, John H. Masker."

Q. On all the ballots you read did you read all the marks? A. Yes.

Q. Was there anyone there checking you whether you read anybody for whom marks did not appear? A. Yes.

Q. Who? A. Blaney.

Q. Is this the paper he was marking? Do you know whether this is the one or was it one like this? A. One like that. I couldn't swear that is the one.

Q. Did Blaney do it all the time? A. I believe no. Patterson relieved him once or twice.

Q. How did he do it if he had his own box to attend to? A. After he finished.

Q. After he finished he helped Blaney count? A. Yes.

Q. I suppose it was tiresome work. What time was it finished? A. About 11:30.

Q. You started about nine? A. About nine.

Q. Was it 11:30 or after? A. I couldn't swear, it was around that time.

Q. Were the ballots put back in the box? A. Yes.

Q. I am ahead of my story—was there anything there

to show the result of that election? Was this paper signed by you to show the result of the election—"James S. Nixon"? A. Yes.

Q. Where did you get the knowledge which made you believe this was correct when you signed it? A. Judging the board was all right, I signed it that way.

Q. Because it agreed with this—— (indicating)? A. —— tally.

Q. Who made this paper up? Who wrote it up? A. I couldn't say.

Q. You don't know which of the four wrote it up? A. No sir.

Q. Was it done immediately after you finished your counting, or was anything done between the time you finished your counting and the time you signed this? A. Fifteen or twenty minutes, I should judge.

Q. Reilly was the first one to sign it? A. Yes.

Q. Do you know whether he is the man that made it up or not? A. No sir, I don't; I couldn't swear.

Q. Now, the ballots you read, did you read them correctly? A. Yes.

Q. Did you intentionally falsify your reading of them so that when a ballot read Sullivan you gave the vote to Wittpenn, or vice versa? A. No.

Q. Did you intentionally read a vote on a ballot that was not marked on that ballot? A. No sir.

Q. Did you intentionally tell the man who was tallying the votes that the vote was for someone else when it was not? A. No sir.

Q. You read all the votes you read correctly? A. Yes.

Q. At any time during the proceeding did anyone else read the ballots beside yourself? A. Yes.

Q. At what time was that? A. In the neighborhood of about 10 or 10:30.

Q. After you had been working for an hour and a half? A. Yes.

Q. You got tired and took a smoke, did you? A. Yes.

THE COURT: Don't lead the witness.

Q. What did you do? A. I rolled a cigarette of Durham tobacco.

Q. While you were rolling it were any Democratic ballots read off by anybody else? A. Yes.

Q. By whom? A. Norton.

Q. Have you any idea how many while you were rolling a cigarette? A. Four or five at the most.

Q. Not many? A. Not many.

Q. Before you began your duties as election officer were you instructed by the Court that appointed you or by anyone else, as to what your duties were? A. No sir.

Q. Was there anybody on that Board whom you knew had been election officers before? A. There was two.

Q. Who were they? A. Mr. Reilly and Mr. Patterson.

Q. You relied on them, did you, to see that everything was all right? A. Yes.

THE COURT: You are leading the witness.

Q. Now, some of these ballots,— Mr. Fagen testified yesterday, that these ballots are all numbered. Is that a fact? Are there any of the ballots not numbered? A. Yes, they ain't all numbered, no.

Q. I show you number 327. There is no number on that, is there? A. No.

Q. 328 next. Did you find many cases of ballots being there that were not numbered? A. Up to around 250 we discovered they were not numbered at all.

Q. Up to 250. Here is another one I notice, number 334. There were numbered and unnumbered ballots, were there? A. Yes.

Cross examination by Mr. Vickers:

Q. Did you hand any unnumbered ballots to the voters? A. No, we discovered—— I discovered them myself when I handed them out and I put it up to the Board, and they said to put them underneath.

Q. So the ballots that were used and marked, canvassed and counted by your Board, were all numbered ballots? A. Yes.

Q. If there were any unnumbered ballots they were returned into the box and sealed up after you had finished the canvass of the votes; is that right? A. Yes.

Q. Did you make any inquiry as to who wrote this return? (indicating.)

MR. LANE: Does the State want an admission as to who wrote it? I will admit who wrote it if you want me to.

MR. VICKERS: No.

A. I didn't at the time, no. I didn't inquire who wrote it out.

Q. Did you after it was written, compare it with the tally sheet? A. No sir.

Q. Not knowing who had written it, did you think that it was your—that your duty was done when you simply signed it, without checking it up at all?

MR. SIMPSON: I object. It is not proper cross examination. It is not a question of what his duty was. He is specifically indicted for falsifying a return. He is not indicted for negligence or carelessness, but for a positive act.

THE COURT: I will allow the question.

MR. SIMPSON: I object on the ground also that it is incompetent, immaterial and irrelevant, and not proper cross examination, also outside of the line of his direct examination.

THE COURT: I will allow the question.

MR. SIMPSON: I ask an exception.

THE COURT: Exception allowed. It is signed and sealed accordingly.

(Seal)

Q. Not knowing who had written it did you think that your duty was done when you simply signed it without checking it up at all? A. The same as the rest of the Board, yes.

Q. The Board all did the same thing? A. Yes.

Q. During what space of time, for how long a time, did Norton take your place in reading the ballots? A. While I rolled the cigarette.

Q. How long? A. It couldn't be any more than five or six or seven minutes.

Q. You think that in that time four or five ballots may have been counted? A. I couldn't swear to four or five.

Q. About how many, ten or twenty or thirty? A. No, it might not be four or five.

Q. Not more than four or five or six? A. Around that.

Q. Now then, Mr. Norton was running for County committeeman down town. A. He was a committeeman down there at the time.

Q. He was running? A. Yes.

Q. He was a committeeman and he was running. And he was the Clements man there. A. Not as I know of.

MR. SIMPSON: I object. It is incompetent, irrelevant and immaterial, and improper cross examination.

THE COURT: I will overrule the question at present.

Q. Mr. Norton received the highest number of votes (I will withdraw that). Mr. Norton received a higher vote than any other man running there, on the local ticket?

MR. SIMPSON: I object. It is not the best evidence. It already appears by the return how many votes he received.

THE COURT: I presume the return will show.

MR. SIMPSON: It does.

MR. VICKERS: Am I not entitled to test this man's knowledge as to the situation?

THE COURT: I will not allow it.

Q. The Mr. Norton to whom you refer as having assisted, is the man who is here credited with one hundred and fifty votes; is that right? A. I don't know anything about it.

Q. Won't you please look at it and say whether as an inspector at that election you can answer that question?

MR. SIMPSON: Is it the same Norton?—he wants to know.

THE COURT: Just a minute, Mr. Simpson, don't interrupt.

A. 150, on there, yes.

Q. That is the man you are talking about, who assisted in this election board while you were rolling your cigarette; is that right? A. Yes.

THE COURT: He was a candidate at the election? A. One of the committeemen.

Q. Now, was this one time that you have referred to the only time that Mr. Norton counted any of the ballots? A. Yes.

Q. Only once? A. That is all

Q. And only for a short period of time that you have described? A. Yes.

Q. Did he take your place and sit in the same position in which you had been sitting? A. Yes.

Q. And in which you afterwards sat? A. Yes.

Q. Did you remain in the room while you were rolling this cigarette? A. Right alongside of him.

Q. Where you could observe the method he employed in counting the ballots? A. Yes.

Q. Did he count the ballots in the same manner that you counted them? A. Yes.

Q. From whom did you receive the ballots? A. What do you mean—in the morning?

Q. No, no, after the box was opened.

MR. SIMPSON: I object on the ground that it assumes that he received them. As I understand it, he took them out of the box himself.

Q. Did you take them out of the box yourself? A. Yes.

Q. After reading them what did you do with them? A. Gave them to the man that strung them.

Q. Who? A. George Brennan, I think it was.

Q. (By the Court) Who? A. George Brennan.

Q. A man outside of the election board; is that right? A. Yes.

Q. Not a member of the Board. You had the judge of election; Mr. Reilly was there? A. Yes.

Q. If you will remove that cud from your mouth we may get along better.

THE COURT: Remove it at once.

Q. Reilly, the judge of the election board, was there at the time you handed these ballots to Brennan after you got through reading them; is that right?

MR. SIMPSON: I object. It is not proper cross examination, and the witness has already testified that the two Republicans—I think Reilly was one of them—were counting their own box. He could not have been there.

THE COURT: I will allow the question.

MR. SIMPSON: I further object on the ground that it is incompetent, immaterial and irrelevant.

THE COURT: I will allow it.

MR. SIMPSON: I ask an exception.

THE COURT: Exception allowed. It is signed and sealed accordingly.

(Seal)

A. They were at the Republican box.

Q. Who were? A. Reilly and Patterson. They were working their box while we were working ours.

Q. What was Blaney doing at the time you were reading the ballots? A. Tallying.

Q. Who strung the ballots for the Republican box?

MR. SIMPSON: I object. It is outside of the issue of this indictment, and it is not proper cross examination.

THE COURT: I will allow it.

MR. SIMPSON: I ask an exception on the ground that it is irrelevant, incompetent, immaterial and improper cross examination.

THE COURT: Exception allowed. It is signed and sealed accordingly.

(Seal)

A. I don't know.

Q. So that what happened there was that you read the ballots off and then folded them up; is that right? A. No, sir.

Q. You handed them out opened, in this manner

(indicating), handed them over to Mr. Brennan? A. Yes.

Q. Which Mr. Brennan? A. George.

Q. And Mr. Brennan folded them up? A. Yes.

Q. Did you watch him do it? A. I couldn't watch him and taking the ballots out of the box.

Q. Do you know whether or not Mr. Brennan marked any of these ballots before they were strung, and before you put them back into the ballot box?

MR. SIMPSON: He has not stated that he put them back into the box.

A. Yes.

Q. Did he? A. Yes.

Q. How did he mark them? A. In blue pencil.

Q. In the manner indicated here? (Showing witness a ballot). A. Yes.

Q. You had an opportunity to see that, didn't you? A. At times, not all the time.

Q. You don't know whether he marked all of them, do you? A. No.

Q. Do you know whether he marked any of them on the face of the ballot? A. No, sir.

Q. You don't know? A. No, sir.

Q. Did you pay any attention as to whether he did or not? A. Well, I was taking care of the box and taking the ballots and as I was handing them to him I would take another ballot out.

Q. Did you pay any attention as to whether Mr. Brennan was mutilating or attempting to mutilate the face of this ballot as you handed it to him? A. No, sir.

Q. In what position in the room were you while these ballots were being counted, at the time you were calling them off? A. Why, the table was sideways. Alongside of it was whoever had the tally sheet. We were on the end, alongside of the gas light.

Q. Who else was present outside of the members of the board? A. Mr. George Brennan and Mr. Norton.

Q. At the time you were counting these ballots? A. I could not say.

Q. Do you know anybody who was there? A. There were quite a few there, yes.

Q. Isn't it a fact that while you were counting these ballots you were sitting in a chair up close against a wall, and that you took each of these ballots in this manner, holding your right hand over the edge of the ballot, and running it down along like this (indicating)? A. No, sir.

Q. Were you sitting up against the wall? A. No, sir.

Q. How far from the wall were you? A. In the neighborhood of two or three feet.

Q. Mr. Norton was in the same position while he was counting them? A. Yes.

Q. What do you say your business was? A. I was formerly expressman, as I am now, with Merchants Refrigeration, the last four or five weeks.

Q. Your eyesight is good, is it? A. Not extra.

Q. Did you have any difficulty in reading those ballots? A. Do you want me to read it?

Q. No, I don't. Did you have difficulty in reading this ballot, or one like this? A. No, not in the daytime.

Q. Did you have any difficulty that night in reading it? A. I don't think so.

Q. Did you experience any difficulty in reading it that night? A. I did some, on account of the gas, very poor gas there.

Q. Did you ask Mr. Blaney to read the ballots in your place? A. Yes.

Q. Did Mr. Blaney read the ballots? A. No, sir, he said he would keep tally. I merely asked him to have a smoke, smoke a cigarette.

Q. Did you ask him to read the ballots instead of yourself, and you would keep tally? A. No, sir.

Q. Did you tell Mr. Blaney at that time you were having trouble with your eyesight? A. No, sir.

Q. In the express business you used your eyes at

night, didn't you? A. Not much, after seven o'clock.

Q. While you were in the express business they didn't stay out after seven o'clock? A. Around the first of January we stay out from seven until midnight.

Q. How long is it since you were in that business? A. Seven or eight months since I have been in it, since the last strike.

Q. Did you have any difficulty in reading the numbers and figures on the express sheet? A. At times.

Q. You did. And did you know that before you took this job as an election officer? A. At times, yes.

Q. You knew it. Did you make it known to anybody before or at the time of your appointment as election officer?

MR. SIMPSON: I object. He is not being tried for defects, but for a wilful violation of the election act.

THE COURT: I will allow it.

MR. SIMPSON: I ask an exception on the ground that it is improper cross examination.

THE COURT: You must make your objections in the proper form of law.

MR. SIMPSON: I make my objection on the ground that it is incompetent, immaterial and irrelevant, and not proper cross examination.

THE COURT: I will allow the question.

MR. SIMPSON: I ask an exception.

THE COURT: Exception allowed. It is signed and sealed accordingly.

(Seal.)

Q. Did you make it known to anybody before or at

the time of your appointment as an election officer? A. No, sir.

Q. How long have you known Mr. Norton? A. I think it was about a year last primary day.

Q. A year before that? A. Yes.

Q. You knew him when he ran at the last primaries? A. Yes.

Q. Were you an election officer at the previous primaries? A. No, sir.

Q. Were you interested with Mr. Norton in his campaign in the previous primary? A. No, I was opposed to him for committeeman.

Q. You mean he beat you out? A. Yes.

Q. You remained good friends? A. No, sir.

Q. You are bad friends? A. Yes.

Q. Were you on this 26th day of September of this year, bad friends?

MR. SIMPSON: I object on the ground that it is irrelevant and incompetent, and not proper cross examination, and outside the line of the direct examination.

THE COURT: I will allow the question.

MR. SIMPSON: I ask an exception.

THE COURT: Exception allowed. It is signed and sealed accordingly.

(Seal)

Q. Were you on the 26th day of September of this year bad friends? A. The same as we have been.

Q. On this night when you were counting these ballots, you and Norton were enemies? A. Yes.

Q. Do you know whether or not Mr. Norton on this 26th day of Septempber, was there at those primaries in the interest of Mr. Clements, the candidate for sheriff?

MR. SIMPSON: I object. It is irrelevant, in-

competent and not proper cross examination, and outside of the line of the direct examination.

THE COURT: I will allow the question.

MR. SIMPSON: I ask an exception.

THE COURT: Exception allowed. It is signed and sealed accordingly.

(Seal)

A. I do not.

Q. Do you know in whose interest he was there? A. I should judge, the Democratic organization. He was a committeeman for the organization.

Q. Do you know whether or not he was there in the interest of Mr. Sullivan, the candidate for Mayor? A. I could not say. I don't know who he was there for,—any particular person.

Q. Throughout the day, from seven in the morning until after you finished the counting of these ballots, Mr. Norton was continuously there, wasn't he? A. Yes.

Q. And throughout that entire day you had no opportunity did you, to find out, in whose interest Mr. Norton was there? A. No, sir.

(Mr. Melniker rises to cross examine the witness.)

MR. SIMPSON: I object to Mr. Melniker asking my client any questions. He cannot ask my client any questions.

MR. MELIKER: I want to ask a question on behalf of my client Mr. Reilly.

THE COURT: I will allow it.

MR. MELNIKER: I would be allowed to call him.

MR. SIMPSON: I ask an exception.

THE COURT: I will allow the exception. It is signed and sealed accordingly.

(Seal)

Cross Examination by Mr. Melniker:

Q. How many tally sheets were there provided for your board. A. Do you mean Democratic and Republican?

Q. Yes. A. Two; one of each.

Q. One Democratic tally sheet and one Republican sheet? A. Yes.

Q. During all of that election, the whole day, and during the count, did the Republican officers interfere in any way with the Democratic ballot box, or the delivery of the depositing or the counting of the ballots, or did the Democratic members of the board interfere with the Republican box in any way? A. No, sir.

Q. Did the members of the Democratic party in that board take care of their own box— A. Yes, sir.

Q. —and of their own count, and the Republicans take care of their own box and count? A. Yes.

Q. Mr. Norton was there all day, wasn't he?

MR. SIMPSON: I object. This has all been gone into by the State.

THE COURT: It has been testified to.

Q. Was Mr. Norton a challenger on that day?

MR. SIMPSON: I object.

THE COURT: I will allow the question.

A. I don't know.

Q. Didn't he act as challenger?

MR. SIMPSON: I object. It calls for a conclusion of law.

THE COURT: I will allow the question.

MR. SIMPSON: I ask an exception.

THE COURT: Exception allowed. It is signed and sealed accordingly.

(Seal)

A. He acted as committeeman.

Q. Didn't he act on behalf of Sullivan; didn't he in the course of the day, challenge on behalf of Sullivan? A. Not as I know of.

Q. Wasn't he engaged during the day in controversy in which he espoused the cause of Mr. Sullivan?

MR. SIMPSON: I object.

THE COURT: I will allow the question.

MR. SIMPSON: I ask an exception.

THE COURT: Exception allowed. It is signed and sealed accordingly.

(Seal)

A. I couldn't say; he was there as a Democratic committeeman.

Q. Was there a Democratic challenger there outside of Mr. Norton?

MR. SIMPSON: I object. It is irrelevant, immaterial and incompetent, and improper cross examination.

MR. MELNIKER: I want to show that there was a Democratic challenger there who represented —(interrupted)

THE COURT: I will overrule it.

Q. When you were counting the ballots were not there men standing over your shoulder and watching you count them? A. Yes.

Q. Wasn't one of those men representing the Wittpenn end of the ticket? A. No, sir.

Q. Wasn't one of those men representing the Sullivan end of the ticket? A. Yes.

Q. Weren't they watching every ballot you counted? A. No, sir.

Q. Did any of them make any protest against any ballot you counted? A. No, sir.

Q. There was a crowd always around you? A. Yes.

Q. There were a number of men watching you count those ballots? A. Yes.

Q. During the count at any time did anybody protest against any ballot?

MR. VICKERS: I object. It seems to me a very clever method of leading the witness to bring out the defense, by Mr. Melniker, who is counsel for one of the defendants, in the most outrageous manner leading this witness. The State even on cross examination would not be permitted to do so.

MR. SIMPSON: This is cross examination.

Q. Mr. Reilly didn't at any time interfere with the count of the Democratic votes, did he? A. No, sir.

Q. He was counting the Republican votes while you were counting the Democratic votes? A. He had to count a very light vote.

Q. Did you see him sign this return? A. No, sir.

Q. All you know about is his signature as it appears on it? A. Yes.

Q. Have you ever served on a board before?

THE COURT: He said no.

A. No.

Cross Examination by Mr. Vickers:

Q. Who was it that was looking over your shoulder while you were counting ballots? A. Mr. Norton stood on my left hand side.

Q. Who else? A. That is all.

Q. You have just sworn there were two or three people. A. There were two or three people around me. I don't know whether they were verifying my ballots or not.

Q. You just swore they did in answer to Mr. Melniker's cross examination?

MR. SIMPSON: I object. He cannot now go on and cross examine on the cross examination.

THE COURT: I will allow it.

MR. SIMPSON: I object on the ground that it is incompetent.

THE COURT: I will overrule the objection.

MR. SIMPSON: I ask an exception.

THE COURT: Exception allowed. It is signed and sealed accordingly.

(Seal)

Q. You just swore in answer to Mr. Melniker's cross examination, that one of these men looking over your shoulder represented the Wittpenn end.

MR. SIMPSON: I object. He said there was no one representing Wittpenn, but there was someone representing the Sullivan end of the ticket.

Q. —representing Sullivan, and that there were several persons looking over your shoulder watching you

count those ballots. Now, who were they, outside of Norton? A. I don't know who they were.

Q. Who was it, representing Sullivan? A. I don't know who was representing Sullivan.

Q. How do you know then, that the person representing Sullivan was looking over your shoulder? A. I only said there were three or four around my shoulder. I don't know what they were doing, looking over my ballots, or what they were doing.

Q. Do you remember swearing in answer to Mr. Melniker's question whether there were persons looking over your shoulder watching you count the ballots, you said yes; do you remember? A. Yes.

Q. Is it true? A. They were watching me; I don't know whether they were watching the counting of the ballots or not.

Q. Is it true there was anybody watching you count the ballots? A. Yes.

Q. Who? A. Mr. Norton stood on the left hand side of me.

Q. Who else? A. I don't know who they were; I was busy.

Q. Who represented Sullivan? A. Norton represented the organization.

Q. Who represented Sullivan? A. I don't know.

Q. Who was it then standing back of you that represented Sullivan? A. I don't know who they were. I know there were three or four; I don't know who.

Q. Do you mean to say there were three or four persons standing back of you while you were reading off these ballots who represented the Sullivan interests there? A. I don't know whose interests they represented. They were standing around me there.

Q. Have you just said in your previous answer there were three or four who represented Sullivan? A. I said Mr. Norton, I believed, represented Sullivan.

Q. In answer to a question on that subject (I will withdraw that). Now, you say you were two or three feet away from the wall; is that it? A. Yes.

MR. SIMPSON: I object. He has been over this before.

THE COURT: I will allow it.

MR. SIMPSON: I ask an exception.

THE COURT: Exception allowed. It is signed and sealed accordingly.

(Seal.)

Q. Outside of Mr. Norton, who were the two or three persons back of you in that space of two or three feet to the wall? A. They were around; some of them on the other side of the table, some of them this side of the table, or towards the wall.

Q. Was there anybody in back of you? A. Two or three.

Q. Back of you? A. Two or three; I don't know who they were.

Q. Back of you? A. Yes.

Q. In addition to Mr. Norton? A. Yes.

Q. Was there at this polling place a railed enclosure? A. No sir.

Q. There was no rail? A. No. What do you mean, when we were counting the ballots?

Q. I mean was there a rail during the progress of this primary? A. Only the two tables—whether you would call that a rail.

Q. There was no rail? A. No sir.

Q. During the day did you use the tables as a rail in the place of a rail, to keep people from coming behind? A. Yes.

Q. Did you know that you did not have any right while this count was going on, to permit people to go back of you, back of that rail, when the vote was being counted, any more than during the day when the vote was going on?

MR. MELNIKER: I object. That is not so; that is not the law.

THE COURT: I will sustain the objection.

Q. Did you make any rule or any insistment that only members of the board and challengers should be permitted behind these tables or this rail made of the tables, during the counting of the ballots?

MR. MELNIKER: I object.

THE COURT: Objection sustained.

Q. During the counting of the ballots was the door of the place where this primary had been held locked? A. Not as I know of.

Q. Don't you know it is a fact that the board did have the door locked, and the public was not permitted into the room even? A. No sir.

Q. Do you say it is not a fact? A. I say I don't know whether the door was locked or open. I was busy, engaged in counting the ballots. I don't know.

Q. How far from the door was the table where you were engaged counting the ballots? A. About three feet, four feet.

Q. If your head was only two or three feet from the wall—was there only two or three feet in front of you, to the door? A. Well, it run kind of—(interrupted).

Q. Diagonally, slanting? A. Yes, from the table.

Q. You were right handy to the door, where you were sitting. A. Three feet.

Q. So you could see the door? A. Yes.

Q. Was it opened or closed? A. I couldn't see the door, I had my back to the door. The door was over here (indicating), and the table right here, and I had my back to the door. I couldn't tell whether it was open or closed.

MR. SIMPSON: That is my case. I have no further witness.

JOHN F. BLANEY, one of the defendants, being sworn on his own behalf, testified as follows:

Direct examination by Mr. Lane:

Q. Where do you live? A. 108 Sussex Street.
Q. How old are you? A. Forty years old.
Q. Are you married? A. Yes.
Q. You were one of the members of this board of election? A. I was, yes.
Q. Democratic? A. Yes.
Q. What position did you hold on the board? A. Clerk.
Q. What did you do with respect to the counting of the ballots? A. My position was to keep tally.
Q. Did you keep tally? A. I kept tally, yes.
Q. Where is the tally sheet? I show you a paper which has been referred to, and offered in evidence, and I ask you whether that is the tally sheet on which you kept tally? A. Yes.
Q. That sheet represents what? Just tell us how you kept tally. A. It represents the tally as the names were called off by the inspector.
Q. (By the Court) Who was the inspector? A. James Nixon.
Q. Is there any change or any difference between that tally sheet and the names as he called them off, to your knowledge? A. No; I don't catch that meaning.
Q. Does the tally sheet correctly indicate the names as he called them off? A. Yes, so help me God.
Q. Never mind that. It represents them as he called them off. Did you knowingly put down any name or put down any mark on that tally sheet, not as he called the names off? A. No.
Q. The report or the return that was made up—I suppose as a matter of fact, the papers speak for them-

selves. If the Court please the return is in accordance with the tally sheet. I wanted to show—

MR. VICKERS: I don't know that it is. If you have examined it I will not dispute it.

Q. Is there anything on this return S-1 which differs from the vote shown on the tally sheet, to your knowledge? A. No.

Q. Do you know of any inaccuracies in this return S-1? A. No, I do not.

Q. Did you permit any act during that election that was in violation of the law as you understood it? A. Not to my knowledge.

Q. Did anybody keep tally with you? A. Yes, a gentleman by the name of Mr. Brennan.

Q. His first name. A. James.

Q. How did he keep tally with you? What do you mean? Tell us what happened actually, how you kept that tally and how he—— A. He sat right at my foot, sat on a small stool there, and he marked down as he called them, marked the ballots as he called them.

Q. Where did he mark them? What did he mark them on? A. On a piece of paper.

Q. Was it on any of these papers here, or a separate paper? A. I don't know if it was any of these papers or not.

Q. Was it on this paper (indicating)? A. No, that is the paper I done the marking. That is the official tally sheet.

Q. You had this tally sheet, with the exception of how many votes? A. Except twenty or thirty, while Mr. Patterson relieved me.

Q. Mr. Brennan marked, as you say, on a separate sheet of paper, the vote as called off by the judge? A. I presume he did, yes.

Q. Was there any conversation after the count was over as to his tally and yours? A. No; only when I announced my tally he said it was right.

Q. Was there anyone else who kept tally at the same time? A. I don't know.

Q. Anybody else that you know? A. I don't know.

Q. Did you see any of these ballots as they were counted? A. No sir.

Cross examination by Mr. Vickers:

Q. This Brennan you speak of, who kept his own tally; is he the father of George Brennan, who has been spoken of, who strung the ballots? A. Yes, he is his father.

Q. Will you explain to the jury how this polling place was arranged, where you sat, how your table was arranged, where the box was, and so on. A. You mean before the count started?

Q. During the day, that is, before the count. A. Well, we were in a room there and tables ranged along just like this here (indicating), and the Democratic box on one side and the Republican on the other.

Q. Were these tables along the side of the room, or at the back end of the room? A. They were out from the wall, space enough for us to sit behind.

Q. On the side of the room? A. No, in the center of the room.

Q. Were you during the day while you were doing your work—were you facing, that is to say, the judge of election as he sat at the ballot box, or stood at the ballot box, and the man who was operating the ballot box, was he facing towards the street? A. All hands were facing toward the door, yes.

Q. How far were those tables from the rear wall, that is to say, from the rear wall opposite the entrance door? A. We were quite a way back from the entrance door.

Q. Was the room as big as this court room? A. It was about half the length of this room.

Q. That is to say, the room was about as deep as from where I am to the jury? A. Yes, the tables were back here (indicating).

Q. If the door were here, where I am now standing— A. Yes.

Q. Then you had your tables along where the jury box is, and you were sitting behind the tables; is that right? A. That is right.

Q. This was a square room? A. Yes.

Q. You are sure about that? A. Yes, a square room.

Q. Did the tables remain there after the polls closed, did the tables remain in that same position. A. No.

Q. What did you do with them? A. We moved out under the light, so we could see better. There was more light in this part of the room than in that part; we moved out.

Q. Were the gas brackets on the wall? A. No, from the ceiling.

Q. Just explain from the position I have described here; if your tables were here (indicating), and the door where I am now standing, how did you move your tables? A. We moved out this way (indicating).

Q. Towards where you are, in the witness box? A. That is right.

Q. Did you sit behind them then, behind the tables in that direction (indicating)? A. Do you mean to tally?

Q. Yes. A. No, I had to stand up, to tally.

Q. Were you on the far side of the table, outside of it? A. Yes.

Q. Towards the door? A. Yes.

Q. That is where you were tallying? A. Yes.

Q. Where was Nixon? A. He was counting the ballots at the box.

Q. How far were you from the box? A. I was from the end of the desk here (indicating). He was like at the end of the desk, I was about here (indicating).

Q. Was the box on the table? A. The box was on the table, yes.

Q. Assume the two tables were strung along here, where this jury box runs here (indicating); when you got ready to count the Democratic box, what did you

do—swing one end of this nearest table around, out this way, towards the light? A. No, both tables was under the light.

Q. What did you do when you got ready to count the ballots, what did you do with the tables? A. We swung the tables like here (indicating).

Q. And the man who kept the tally sheet— A. He stood right here (indicating).

Q. If this were the room here (indicating), and the tables being there (indicating), and they were shifted— A. To the side of the room.

Q. To this side, which would be represented by where you are now. A. Yes.

Q. The door being here? A. Yes.

Q. Were you on this side of the table, with your back towards the door? A. Yes—no, my face towards the door.

Q. How do you get your face towards the door? A. If the door is there (indicating), and I am standing here (indicating).

Q. You mean your side towards the door? A. Yes, facing the door, like that (indicating), marking the sheet.

Q. You were facing the table? A. My back was not towards the door, I am sure.

Q. I want to know your position. Is that correct? A. That is correct.

Q. As you were in the position you now describe tallying on this tally sheet, where was Nixon? A. He was up at the other end, calling off.

Q. Up at the other end of the table? A. Yes.

Q. Do you know whether or not the door of this room was closed and locked during the counting of the ballots? A. I certainly don't know. I had my hands full with the tallying.

Q. What is your business? A. Clerk.

Q. Was that putting down figures and keeping count anything new to you? A. Nothing new.

Q. I ask you whether one hundred and forty-two votes for Alexander Clements were read out to you by

Mr. Nixon and Mr. Norton. A. With the exception of the time when Mr. Patterson relieved me.

Q. You say that was about twenty ballots? A. Yes; otherwise it is right.

Q. Otherwise it is right. About what time was it when Mr. Patterson relieved you? A. Probably between half past ten and eleven, somewhere about; I couldn't just say what time.

Q. Can you tell by this (indicating)—that does not show—can you tell your marks from Mr. Patterson's? A. No.

Q. All lines look alike?

MR. SIMPSON: Some are indelible and some are black.

Q. (By Mr. Simpson): Which man used two pencils, or one black and the other indelible? A. I had both.

Q. Were you there during this counting of the vote for Alexander J. Clements for sheriff—where you there continuously for a longer period of time than is indicated by seventy-two votes on this tally sheet? A. I don't understand.

Q. Well, each one of these represents five votes? A. Yes.

Q. Were you there during the canvass and counting of this vote for a continuous period during which more than seventy-two votes were counted for Alexander J. Clements? A. Seventy-two votes?

Q. Yes, there are one hundred and forty-two votes credited here. I ask you whether you were there continuously during a sufficient time of that count to make more than seventy-two votes? A. I was there during all the count.

Q. I mean, were you tallying? Were you tallying these? A. Oh, I don't know about that.

Q. —before Mr. Patterson relieved you? A. I don't know when he started in to tally.

Q. (By the Court) How long did Mr. Patterson tally? A. Twenty or thirty votes.

Q. (By the Court) Not more than that? A. Not more than that.

Q. (By the Court) Those twenty or thirty ballots? A. Yes.

Q. Is it possible, Mr. Blaney, that you made a mistake in the tallying of the vote of Alexander J. Clements for sheriff, to the extent of seventy-two in number, or any considerable portion of that number? A. No.

Q. If those ballots which are here and which came from this ballot box, show that in reality only seventy-two votes were cast for Mr. Clements for sheriff, did you make the mistake in this return? A. No, I did not.

Q. On this tally sheet, I mean. A. No.

Q. Are you sure of that? A. Yes, positive, sure of it. I marked them as they were called.

Q. Seeing here one hundred and forty-two votes tallied for Mr. Clements for sheriff, do you say that that number was—that more than seventy-two votes of that number was called out personally to you during this tally by Mr. Nixon? A. Yes.

Q. With respect to the vote of Mr. Wedin, if those ballots taken from this ballot box show that there were actually thirty-nine votes there cast for Mr. Wedin, will you say that during this entire canvass there were not thirty-nine votes announced for Mr. Wedin by Mr. Nixon to you? A. They were not announced.

Q. During the time that Mr. Patterson tallied for you where were you, in the room? A. I went to the toilet.

Q. How long did you remain there? A. A couple of minutes.

Q. When you came back did you stand around? A. I relieved him again.

Q. Immediately? A. Yes.

Q. You were not gone more than a couple of minutes, do you mean, altogether? A. That is all.

Q. During what period of time should you say, a limited time, that you were away from this tally sheet, from your operation on this tally sheet? A. Oh, well

if you figure that way, probably ten or fifteen minutes.

Q. That is what I want to find out. The tally sheet made by you appears to record sixty-four votes for Mark A. Sullivan. A. That is right.

Q. If those ballots show that there were one hundred and five votes cast for Mark A. Sullivan, can you say whether or not it is possible that you could have made the error that is indicated by that? A. No, that is as they were called.

Q. As they were called? A. Right there.

Q. If Mr. Nixon had called out to you one hundred and five votes for Mark A. Sullivan, less the number of votes that Mr. Patterson tallied, is it possible you could have made such a mistake as is apparent from that difference in the figures? A. No.

Q. You are positive? A. I am positive.

Q. On your oath, you say that that is not possible? A. Yes.

Q. Did you wilfully and corruptly make any difference in the vote called out and that recorded by you on this tally sheet? A. No.

Q. Had you any interest in advancing the candidacy of Mr. Clements over the candidacy of Mr. Wedin? A. None.

Q. If it is a fact that the ballots which come from this box, as has been testified, show only forty-eight votes for Mr. Wittpenn—did you tally any votes in excess of what was called out to you by Mr. Nixon. A. No.

Q. Did you tally any votes to the extent of ninety-three votes over and above forty-eight votes for Mr. Wittpenn, which were not called out to you by Mr. Nixon or Mr. Norton? A. No.

Q. The testimony which you have given with respect to your conduct and with respect to this tally sheet, does that apply to your actions while Mr. Norton was taking the ballots out, just the same. A. Well I—

Q. When he pulled them out— In other words, did you do any monkey work while Mr. Norton called them out? A. Monkey work?

Q. That is the way I characterize it—you know what I mean—I want to get it technically on the record, whether you did any of these things while Mr. Nixon was reading those ballots or while Mr. Norton was reading them. A. No.

Q. And the testimony you have given with respect to your conduct while Mr. Nixon was reading the ballots, does it apply to your conduct while Mr. Norton was reading the ballots? A. The same testimony.

Q. (By the Court) How many ballots did Mr. Norton read? A. Four or five, while Mr. Nixon made a cigarette.

Q. At the organization of the board you were one of the clerks were you? A. Clerk, yes.

Q. Before you started to work in the morning you organized? A. We organized the week before.

Q. That is right, at the primary before—at the registry day before, did you? A. Yes.

Q. At the time of your organization, you were sworn individually? A. Yes.

Q. Now, did you make any objection to Mr. Norton taking any of these ballots from the box and counting them, or having anything to do with this election? A. No, no objection.

Q. Can you explain that, your conduct? A. Well, I don't know whether there was an objection made to him when he counted them four or five while Nixon made a cigarette or not, because when I started to tally that sheet I just kept right on doing it. Whether there was any objection made by any members of the board or not, I could not say.

Q. But you knew that Norton was calling them off, you knew that? A. I knew he called off four or five ballots?

Q. Why didn't you stop until Mr. Nixon had made his cigarette? A. I didn't think.

Q. You knew that was the proper, legal and orderly way to do it, didn't you?

MR. SIMPSON: I object.

THE COURT: I will overrule the question.

Cross Examination by Mr. Melniker:

Q. Did Reilly at any time or in way assist or interfere with the count or the tally of the vote in the Democratic box? A. No.

Q. He did not? A. Not to my knowledge.

Q. Did the Republican members of the board at any time during the day assit in or interfere with the conduct of the election with regard to the Democratic box? A. No.

Q. And did the Democratic members interfere or assist in any way with regard to the election in the Republican box? A. No.

Q. Each conducted its own election at its own box? A. Yes.

Cross examination by Mr. Vickers:

Q. Do you know in whose handwriting S-1 is, this return, it is the official return? A. Is it the Democratic return?

Q. Yes. A. No, probably Mr.—(interrupoted).

Q. You don't know? Don't guess at it. A. No.

Q. (By the Court) Is it your handwriting? A. No.

MR. LANE: Mr. Patterson drew all of them.

Q. When was it, what time during the count, that Mr. Norton took Mr. Nixon's place? A. I don't know that.

Q. Do you know whether it was toward the very end of the count? A. Well, it might have been in the middle or near the end, I couldn't say.

Q. Do you know when you got through counting that box? When did you get through with it? A. Some time around twelve o'clock.

Q. What time did you take it to the City Clerk? A. Some time around one.

NOON RECESS.

AFTERNOON SESSION.

WILLIAM C. PATTERSON, one of the defendants, being sworn on his own behalf, testified as follows:

Direct Examination by Mr. Lane:

Q. You are one of the members of this election board? A. Yes.

Q. You acted at the primary election of September 26th? A. Yes.

Q. Democratic or Republican? A. Republican.

Q. What position did you occupy on the board? A. Clerk.

Q. What did you have to do with respect to the count of the Democratic ballot box, if anything? A. When the polls closed, we took charge of the Republican box, and counted the votes.

Q. What did you have to do with the count of the Democratic box? A. I tallied a few votes.

Q. How many? A. In the neighborhood, well, I should say, fifteen or twenty, something like that.

Q. About how long a time? A. About ten or fifteen minutes.

Q. At the time you were tallying, who called out the ballots? A. James Nixon.

Q. How did you tally with respect to the manner in which he called them out? A. As he called out the names I tallied them.

Q. Did you tally them as he called them out, or did you put something down other than he called out? A. I tallied them as he called out.

Q. Is that the only thing you did with respect to the Democratic box? A. The only thing, yes.

Q. Can you pick out on this tally sheet the votes that you tallied? A. No.

Q. You can't do it? A. The only thing I can identify that by is by the words Seventh of the First Ward. That is my writing.

Q. You can't distinguish which one of these marks you placed here? A. No, sir.

Q. That is your signature (indicating)? This signature on S-l, William C. Patterson, isn't it? A. Yes.

Q. At the time you signed that, did you know that that statement with respect to the number of votes cast for any of these candidates, was not in accordance with the vote as actually cast? A. No.

Q. What did you do with respect to it? A. I took them off, I filled that return out from the tally sheet.

Q. You made the return out yourself? A. Yes.

Q. You filled it out from— A. From the tally sheet.

Q. From this sheet here (indicating)? A. Yes.

Q. Did you know the vote as tallied on the tally sheet differed from the vote as actually cast? A. No, sir.

Cross Examination by Mr. Vickers:

Q. Now then, Mr. Patterson, before making out the return S-l, you examined this official tally sheet, did you not? A. Yes.

Q. Did you verify the figures? A. Yes.

Q. That is to say, you counted off to see whether the figures in the margin on the right hand, would correspond to the number of marks actually tallied here (indicating)? A. Yes.

Q. And the number of marks did correspond, did they, with the number of votes set out in the total column? A. Yes.

Q. Did you put down all of the votes that were read off for each candidate during the time while you were keeping this tally? A. I don't quite understand the question.

Q. Did you put down all of the votes that were read off for each candidate during the time while you were keeping this tally? A. As they were called off, yes.

Q. And you put them all down on here (indicating)? A. Yes.

Q. And did you put any down on here that were not called off? A. No, sir.

Q. Did you add to the tally sheet any votes that were not called off. A. No, sir.

Q. Did you take from any candidate by your tally any votes that were called off? A. No, sir.

Q. What is your occupation? A. Clerk.

Q. Are you familiar with this kind of work? A. Yes.

Q. You deal in figures? A. Yes.

Q. Did you mark down the vote as called off after the name of the proper candidate? A. Yes, as it was called.

Q. Did you do that job, while you were tallying, with care? A. Yes.

Q. Did you tally any of the votes called off by Mr. Norton? A. No, sir.

Q. All the votes that you tallied were called off by Mr. Nixon? A. By Mr. Nixon, yes.

Q. And that happened but once during the evening, during the day? A. I wouldn't be so certain about that. I am under the impression I relieved him later on for another ten votes, five, ten or fifteen, something like that.

Q. During the evening? A. I have that impression, but I am not positive of it.

Q. That is to say, your impression is that you relieved Mr. Blaney more than once during the tally? A. Yes.

Q. Were you present during the time that Mr. Norton took the ballots out of the box and counted them off, read them off? A. I didn't see Mr. Norton take the ballots out of the box.

Q. Did you see anyone there except Mr. Nixon handling the ballots as they came from the box? A. No, sir.

Cross Examination by Mr. Melniker:

Q. Did Mr. Reilly have anything to do with the count or the tally of the Democratic votes? A. No, sir.

Q. He participated in it in no way at all? A. No, sir.

Q. Did he or you, who were the other Republican member of the board, assist or interfere in any way with the votes in the Democratic box at any time during the day or during the count? A. No, sir.

Q. Except as you have said? A. Yes.

Q. The election was conducted by the Republican members taking care of their ballots all the way through, and the Democratic members taking care of their ballots? A. Yes.

Q. And you have been an election officer before? A. About eight years ago.

Q. That is the way it has always been done? A. Yes.

MR. VICKERS: I object.

THE COURT: I will sustain the objection. The answer may be stricken out.

MR. MELNIKER: I ask an exception.

THE COURT: Exception allowed. It is signed and sealed accordingly.

(Seal)

Q. There was only one sheet prepared for each box? A. Tally sheet?

Q. Yes. A. Yes.

Q. And Mr. Reilly had nothing whatever to do with the Democratic end of the election except to sign this return that has been offered in evidence? A. That is all.

THE COURT: Has Mr. Simpson any questions?

Where is Mr. Simpson?

JAMES J. REILLY, one of the defendants, being sworn on his own behalf, testified as follows:

Direct Examination by Mr. Melniker:

Q. Where do you live? A. 166 Grand Street.

Q. How long have you lived in Jersey City? A. On and off, twenty years.

Q. Are you married? A. Yes.

Q. Have you a family? A. Yes, a wife and three children.

Q. A wife and three children? A. Yes.

Q. Have you served on an election board before this election? A. Two years previous to this.

Q. In the conduct of this election did you in any way assist in or interfere with the vote or the box of the Democrats? A. No, sir.

Q. What did you do on that day? A. I took charge of the Republican box as fixed by law. The card we got from the City Clerk. Took charge of it day and night, closed the poll, took charge of it, called the ballots off to Mr. Patterson and tallied.

Q. How many tally sheets were provided. A. Two.

Q. One for each box, Democratic and Republican? A. Yes.

Q. You and Mr. Patterson took charge of the Republican box? A. Yes.

Q. What were you doing while the Democratic votes were being counted? A. While they were called we started calling also; both started.

Q. Both called at the same time? A. Yes.

Q. Both in the same room, within a few feet of each other? A. Yes.

Q. You did not assist in any way in the tallying of the Democratic vote at all? A. No.

Q. Did you have anything to do with it except to sign your name to that sheet they call the return? A. That is all, I didn't touch a Democratic ballot.

Q. How did you come to sign that? A. We all had to sign it.

Q. It was presented to you? A. Yes.

Q. You simply signed your name on it? A. Yes.

Q. In the method in which this election was con-

ducted as you say, by the two Democrats taking care of the Democratic box, and the two Republicans taking care of the Republican box, was that the method that was always pursued as long as you have been conducting primaries?

MR. VICKERS: I object.

THE COURT: Objection sustained.

MR. MELNIKER: I ask an exception.

MR. LANE: I ask an exception.

THE COURT: Exception allowed. It is signed and sealed accordingly.

(Seal)

Q. You made no attempt at any time during that day to participate in the tally or the count of the Democratic votes in the Democratic box? A. No, sir; none whatever.

Cross Examination by Mr. Vickers:

Q. After you had counted the votes in the Republican box, what did you do? A. Well, after I went over and looked to get the total vote with Mr. Patterson, we wrote that on the sheet which was to—(interrupted)

Q. The Republican sheet? A. Yes, on the Republican sheet.

Q. When did you get through canvassing and counting the Republican box? A. Well, I couldn't give no exact time, I should judge that we had finished probably an hour ahead of the Democratic.

Q. Do you recall how many ballots were cast? A. In our box—thirty-five.

Q. Did it take you only an hour less to canvass and count thirty-five ballots than it took them to count and canvass one hundred and ninety-nine—see if that is the correct figure, one hundred and ninety-nine? A. Well,

I had nothing to do with counting one hundred and ninety-nine.

Q. I say, did it take you only an hour less to count thirty-five ballots than it took the Democratic members of the board to count one hundred and ninety-nine—one hundred and sixty-four, pardon me? A. I say, I don't exactly say, I am only judging about the time. I didn't take notice of how long it took us nor how long it took them.

Q. Did it take you over an hour to count thirty-five ballots? A. Yes, I guess it did.

Q. Did it? A. I think so.

Q. Did it take you two hours? A. No, it didn't take us two hours.

Q. What time did you leave the polling place? A. I left when the balance of the board left.

Q. What time? A. Around twelve o'clock.

Q. Did you go to the City Hall? A. Yes.

Q. With the box? A. Patterson and I carried our box, and the Democrats carried theirs.

Q. What time did you get to the City Hall? A. I should judge it would take us about ten or fifteen minutes to walk over there from the polling place. Then we waited in line there until we could turn it in to the City Clerk.

Q. What time did you turn it in? A. Well, I don't know.

Q. Approximately? A. I can't tell you.

Q. The time was marked then and there, wasn't it? A. By whom?

Q. By the City Clerk. The time of delivery was marked down? A. I didn't see him mark it.

Q. You did not? A. No, sir.

Q. Do you know whether it was one o'clock? A. I should say it was before one o'clock; it was not one o'clock.

Q. So that you think it was about twelve o'clock when you got through your work at the polling place? A. Yes, I think so.

Q. About twelve o'clock. Now then, an hour or an

hour and a half before you left the polling place, and after you had finished with the Republican box, what did you do there in the polling place? A. Why, I started to get all the ballots together to put in the box with them that had been voted, to put them into the box, and all the paraphernalia that hadn't been used, and it up and got the box.

Q. What do you mean by the paraphernalia that hadn't been used? A. Such ballots as that (indicating).

Q. They had to go in the box, too, and did go in? A. Yes, they were in the big long box. We had to fold them up to get them in the box.

Q. All that, until you had closed your box, from the time you started to count at nine o'clock after the polls closed, how long did the whole business take you, until you were through with the Republican box, all but carrying it away? A. I couldn't give no specified time, but after that I stayed around there.

Q. During the time you stayed around there, you were with the Republican box when it was locked up, sealed up, if it was sealed up, what did you do in the polling place? A. Why, merely sat around there. I didn't do any work. I had nothing else to do as I thought.

Q. Did you go over and watch the count of the ballots by Mr. Nixon? A. No, sir.

Q. You didn't watch the tallying? A. No, sir.

Q. You took no interest in the election? A. No, sir.

Q. Then when you certified, as you did, on this return, that the foregoing is a true and correct statement of the result of the primary election, you certified to something you didn't know anything about, is that it? A. Well, as far as the Republican box was—I was positive of it.

Q. And so far as the Democratic box is concerned you knew absolutely nothing, did you? A. Nothing at all.

Q. Nothing at all. Then so far as the vote of any of

the Democratic candidates, for mayor, sheriff, assembly, or any other officer running on a Democratic ticket, you knew nothing about the correctness of those figures when you certified to this result; is that true? A. That is true.

Q. Did you see Mr. Norton counting any of the Democratic ballots? A. No, sir.

Q. How many persons were in the room at the time these ballots were being counted? A. Well, the board was there, and there was our committeemen, both of them, were there.

Q. The committeemen? A. Yes, they watched the ballot as I called it.

Q. Stood back of your chair? A. Yes, right alongside of it. I was standing in it.

Q. You were standing up? A. Yes; there were numerous voters in and out there. I couldn't call their names.

Q. They were on the outside of the tables, weren't they? A. Yes.

Q. There weren't any numerous voters standing around there while you were handling the ballot box, were there? A. I couldn't say there were, there were men standing, looking on, but they were men that had credentials to be there.

Q. There were not any numerous voters without credentials? A. There were possibly, outside the table.

Q. I am talking about back of the table. A. No, sir.

Q. As these tables were moved around toward the side of the room, after that were you working on the tables farthest away from the door or nearest the door? A. Farthest away.

Q. Was the table nearest the door shoved up against the further end of the room? A. No, it was not. Our table was up against the other and the ballot box stood on this end of the table, the Republican ballot box, I stood in front of it, the watchers stood on each side and the clerk right behind the table.

Q. Behind the table at your left side? A. Yes.

Q. Now then, come to the Democratic table. How far was that from the front of the room? A. I couldn't say.

Q. At the Democratic table were there persons back of the man who was taking out the ballots and reading them off? A. I couldn't answer that. My back was entirely to him, and interested in my own ballot box.

Q. After you were through with your ballot and your box, and while you were waiting around there, did you see anybody, watcher or anybody else, at the back of Mr. Nixon. A. No, sir, I never noticed anyone.

Cross examination by Mr. Melnicker:

Q. Did you knowingly or wilfully, or corruptly, falsify or participate in the falsification of the count or tally or return of this election? A. No, sir.

Q. Did you have any interest in the result of the Democratic count? A. None whatsoever.

Q. Were you interested for either one of the candidates? A. No, sir.

Q. Did you knowingly sign a false return? A. No, sir.

CHARLES STELL, a witness produced on behalf of the defendants, being sworn, testified as follows:

Direct examination by Mr. Lane:

Q. How long have you been a resident of Jersey City? A. All my life except about twenty years.

MR. VICKERS: I will waive qualification.

Q. Do you know Mr. William Patterson? A. Yes.

Q. Known him for a number of years? A. At least ten.

Q. Do you know that he was at one time deputy city treasurer?

MR. VICKERS: I object. It is immaterial. I am willing to save time——

Q. Do you know his reputation, the reputation of Mr. Patterson?

THE COURT: For what?

MR. LANE: General reputation.

MR. VICKERS: I object.

THE COURT: Objection sustained.

Q. —for truth and honesty? A. I have always considered him very truthful.

MR. VICKERS: That is not the question.

Q. Do you know his reputation for truth and veracity, yes or no? A. Yes.
Q. What is it, good or bad? A. Good.

No cross examination.

JOHN H. WARD, witness produced on behalf of the defendants, being sworn, testified as follows:

Direct examination by Mr. Lane:

Q. How long have you been a resident of Jersey City? A. All my life.
Q. You are a member of the firm of Nelson and Ward? A. Yes.
Q. Do you know Mr. Patterson? A. Yes.
Q. Do you know his reputation for truth and veracity? A. Yes.

Q. Is it good or bad? A. Good.

Q. How long have you known him? A. Intimately, for four years, since he has been our chief accountant and cashier.

Q. He has been employed by you? A. Yes.

Q. For that time? (No answer.)

No cross examination.

WILLIAM F. ELY, a witness produced on behalf of the defendants, being sworn, testified as follows:

Direct examination by Mr. Lane:

Q. How long have you been a resident of Jersey City? A. Since 1864.

Q. You have been city treasurer of Jersey City? A. Yes.

Q. Do you know Mr. Patterson? A. I do.

Q. How long have you known him? A. I have known him pretty intimately for about ten years.

Q. Do you know his reputation for truth and veracity? A. Yes.

Q. Good or bad? A. Good.

No cross examination.

PATRICK DOWD, a witness produced on behalf of the defendants, being sworn, testified as follows:

Direct examination by Mr. Lane:

Q. You live in Jersey City? A. Yes.

Q. Where? A. 108 Sussex Street.

Q. Do you know Mr. Blaney? A. Yes.

Q. How long have you known him? A. Over ten years.

Q. Do you know his reputation for truth and veracity? A. Yes.

Q. What is it, good or bad? A. Good.

No cross examination.

FRANK JUNGERMAN, a witness produced on behalf of the defendant, being sworn, testified as follows:

Direct examination by Mr. Lane:

Q. Where do you live? A. 108 Sussex.
Q. How long have you lived there in Jersey City? A. Three years.
Q. Do you know Mr. Blaney? A. I do.
Q. How long have you known him? A. Five years.
Q. Do you know his reputation for truth and veracity? A. I do.
Q. Is it good or bad? A. Very good.

No cross examination.

MR. LANE: I had some others, but they are not here now.

MR. VICKERS: That means you haven't got them.

MR. LANE: Yes, I have.

MR. VICKERS: Well, bring them here.

THE COURT: You may call them.

PATRICK LILLIS, a witness produced on behalf of the defendant, being sworn, testified as follows:

Direct examination by Mr. Lane:

Q. Where do you live? A. 71 Sussex Street.
Q. Do you know Mr. Blaney? A. Yes.

Q. How long have you known him? A. Probably three years or four.

Q. Do you know his reputation— A. Yes.

Q. —for truth and veracity? A. Yes.

Q. What is it, good or bad? A. Good.

No cross examination.

THEODORE LARUE, a witness produced on behalf of the defendant, being sworn, testified as follows:

Direct examination by Mr. Lane:

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

Q. How many years have you lived here? A. About fifty.

Q. Do you know Mr. Patterson? A. Yes.

Q. Do you know his reputation for truth and veracity? A. Yes.

Q. What is it, good or bad? A. Good.

No cross examination:

MR. LANE: I close my case.

JAMES T. BRENNAN, a witness produced on behalf of the defendants, being sworn, testified as follows:

Direct examination by Mr. Simpson:

Q. Where do you live? A. 219 Warren Street.

Q. How long have you lived in Jersey City? A. Fifty-eight years.

Q. Were you at the polling place at which the primary was held in the Seventh District of the First Ward on September 26th last? A. Yes.

Q. When they were calling out the Democratic votes did you keep any tally of it? A. I did, yes.

Q. How far, up to what vote? A. About sixty-four or sixty-five votes.

Q. Then what did you do? A. Went across the street, went out and across the street.

Q. To get a drink? A. Well, yes, admit it, yes.

Q. That is nothing to be ashamed of. A. I want to keep that to myself.

Q. You came back again? How long were you away? A. Maybe fifteen minutes, maybe twenty, I wouldn't be accurate.

Q. Then you came back—you missed all the votes while you were away? A. Well, I couldn't get them while I was away.

Q. How many men were in the room while they were calling out the vote? A. I couldn't say, they were in and out.

Q. There was nothing secret about the proceedings as far as you could see, was there? A. No, sir.

Q. Was there more than one person tallying—that is, did anybody tally officially beside Mr. Blaney? Did Patterson, did you see him take some votes down? A. Yes, some.

Q. Mr. Reilly didn't tally any votes for the Democrats, did he? A. Not as I saw.

Cross examination by Mr. Vickers:

Q. What did you keep this tally on? A. One of those cards they send out to voters to notify them they are not registered.

Q. A little larger than a postal card? A. Yes.

Q. Have you got one with you? A. I think I have.

Q. Have you got the tally with you? A. I didn't keep that. There is one of the cards. (Producing the card.)

Q. What did you do with the tally? A. Destroyed it.

Q. Just a card like that? A. Yes.

Q. On the back of that you kept tally? A. Yes.

Q. Whose tally did you keep on that? A. The mayor's.

Q. What mayor? A. Mayor Wittpenn's.

Q. That is the only tally you kept? A. Yes.

Q. After you went out the votes were coming kind of slow there, weren't they? A. I went out; I couldn't tell you.

Q. Just before you went out the votes were coming kind of slow, weren't they? A. I don't understand that question.

Q. I will withdraw it then. You came back after you had your drink and you went on with your tally again, didn't you? A. Yes; I asked the man that was tallying, what the count was, and I started from that.

Q. Then, when the thing was over, when you counted up your tally, didn't you say how many votes you had? A. No, I gave it up before it was over, within fifteen or twenty votes before it was over; I got disinterested and gave it up.

Q. You mean you were licked? A. Sir?

Q. You were licked, your candidate was licked? A. I felt so.

Q. Then you stopped tallying. Well, at the conclusion of the tally did you find out how many votes Mayor Wittpenn had gotten? Did you stay long enough to find out how many he did get? A. Oh, yes.

Q. And did you find out whether that agreed with the tally you had kept, so far as you had kept it? A. No, sir.

Q. Well now, in the light of the fact that Wittpenn got one hundred and ninety-three votes, and that was the largest number—ninety-three I mean—how did you come to get discouraged?

MR. SIMPSON: I object.

A. I didn't say I was discouraged, I said I lost all interest.

MR. SIMPSON: I object. It is not proper cross examination to ask him how he came to be discouraged. It does not appear who his candidate was. I object on the ground that it is immaterial, in-

competent and irrelevant and not proper cross examination.

THE COURT: I will allow the question.

MR. SIMPSON: I ask an exception.

THE COURT: Exception allowed. It is signed and sealed accordingly.

(Seal)

Q. You said a moment ago that you thought your candidate was licked? A. No, I did not.

Q. Then you misunderstood me. You said it on the record. A. I misunderstood you.

MR. SIMPSON: That was before he found out what the tally was.

THE WITNESS: I misunderstood you.

MR. VICKERS: Then I misunderstood you.

Q. Did you keep a complete talley for Mayor Wittpenn? A. No, sir, I did not, for the simple reason that I went out for fifteen or twenty minutes and lost the tally.

Q. You came back and ascertained how many votes he had at the time you came back? A. Yes.

Q. Then did you go on tallying? A. Within fifteen or twenty votes, I should judge, or ballots, later on, then I got tired and stopped counting. When the count was over I asked Mr. Blaney what the count was, and he told me.

Q. At the time you stopped counting, did Wittpenn have more votes than Sullivan according to the tally sheet? A. Yes.

Q. Then you stopped because your man had won? Isn't that it? A. Well, I lost all interest in it.

Q. (By the Court): Do you remember how many

votes you had tallied at that time? A. No, I don't.

Q. Your son was there too, wasn't he? A. Yes.

Q. It was your son who was stringing the Democratic ballots on the thread? A. Yes.

Re-direct examination by Mr. Simpson:

Q. You told Major Vickers that you stopped tallying the vote because you had got discouraged and you thought your man was beaten, and that is the reason you didn't complete the tally. Did you mean that or didn't you mean it? A. Well——

Q. Yes or no, no explanation, did you or not? A. I did.

(Mr. Lane rises to cross examine the witness).

MR. SIMPSON: I object to any cross examination by Mr. Lane.

THE COURT: I will allow it.

MR. SIMPSON: I ask an exception.

THE COURT: Exception allowed. It is signed and sealed accordingly.

(Seal)

Cross examination by Mr. Lane:

Q. Were you there at the time the tally was finally cast up—the vote was finally cast up? A. Yes.

Q. And present in the polling place during the whole of that time except some fifteen minutes when you went across the street? A. Once in a while I went in back to get a drink of water.

Q. You went where to get a drink of water? A. A few feet away in the back.

Q. During all of that time as I understand it, you kept tally? A. Yes.

Q. Except the fifteen minutes you went across the street?

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

Q. —and up until the last fifteen or twenty votes that were cast?

THE COURT: I will allow it.

A. Yes.

Recross examination by Mr. Vickers:

Q. Where were you during the time you were tallying with reference to the box? A. Part of the time I was sitting up——

Q. Sitting up? A. Standing up, rather.

Q. And the other part of the time? A. Sitting down.

Q. And where? I don't mean on your seat, but where were you, what part of the room? A. Well, the Republican table and box——

Q. Tell me about the Democratic box, that is the one you dealt with? A. You want to know where I was sitting down—I got to describe the polling place.

Q. With respect to the Democratic box, with respect to the position of Mr. Nixon? A. That is what I am trying to get at. The Republican table and box was East, or was East and West, and the Democratic box was North and South—and the table—and I was in between both with my face to the men calling off the box, calling off the ballots, and my back to the man tallying.

Q. Your back where? A. To the man that was tallying.

Q. To Mr. Blaney? A. Yes.

Q. How far were you from Mr. Nixon? A. Nixon?

Q. Nixon is the man that called off the vote. A. The length of the table.

Q. How long was the table? A. As near as I could judge, four feet.

Q. On the end of this four-foot table was the ballot box, is that right—on one end of it? A. On one end of it, yes.

Q. At that ballot box Mr. Nixon stood, is that right? A. Yes.

Q. At the other end of the table and opposite the ballot box and Mr. Nixon, you stood and sat alternately? A. Yes.

Q. And the distance between you and Mr. Nixon was about four feet? A. It wouldn't be that much between me and the box.

Q. Between you and Mr. Nixon was about four feet? A. Yes, I should judge three and one-half or four feet.

Q. Who else was there in the immediate vicinity of this ballot box? A. Mr. Norton.

Q. Who else? A. I can't exactly say, I didn't pay any particular attention.

Q. You paid attention enough to notice Mr. Norton. Who else was there? A. He was there in particular, but other men was in and out.

Q. Was there anybody there watching Mr. Nixon read off the ballots? A. I couldn't swear there was.

Q. (By Mr. Simpson): Will you swear there was not? A. No, sir.

THOMAS NORTON, a witness produced on behalf of the defendants, being sworn, testified as follows:

Direct examination by Mr. Simpson:

Q. Where do you live? A. 196 Grand Street.

Q. You are employed where? A. In the Register's office.

Q. Hudson County Register's Office? A. Yes.

Q. Were you Democratic committeeman for this ward that has been described here? A. Yes.

Q. Were you there in the interests of anyone? A. The Democratic organization.

Q. And the candidate of the Democratic organization, as far as you understood it, was Judge Sullivan, was it? A. For Mayor, yes.

Q. You were there to see that he got what he was entitled to as far as you could? A. Yes.

Q. Were you near Mr. Nixon when he read off the ballots? A. Standing on Nixon's left.

Q. Did you see them as he read them off? A. Yes.

Q. To the best of your knowledge did he read them correctly or falsify them? A. Read them correctly.

Q. You read some of them? A. Yes.

Q. Correctly? A. Yes.

Cross examination by Mr. Vickers:

Q. Where do you live? A. 196 Grand Street, at the present time. At the time of the primary I lived at 237 Van Vorst Street, but since the primary at 196 Grand Street.

Q. When did you move to that address? A. The first of October.

Q. You have lived there for a month now? A. Yes.

Q. In that house. Who do you live with there?

MR. SIMPSON: I object. It is not proper cross-examination.

THE COURT: I will allow it.

MR. SIMPSON: I ask an exception.

THE COURT: Exception allowed. It is signed and sealed accordingly.

(Seal)

A. Simply rooming there, with Mr. Miskel. He is the lessee of the place.

Q. There is a saloon in the premises?

MR. SIMPSON: I object. It is irrelevant.

THE COURT: I will allow the question.

MR. SIMPSON: I ask an exception.

THE COURT: It is allowed. It is signed and sealed accordingly.

(Seal)

A. Yes.

Q. You say you were at this polling place in the interests of Judge Sullivan? A. Yes, the Democratic organization, the full ticket.

Q. Were you there in the interests of Judge Sullivan? A. Surely.

Q. You were? A. I was.

Q. And in the interests of Mr. Clements? A. Well, he is—being one of the candidates, yes.

Q. You were? A. Yes.

Q. Were you watching the count while Mr. Nixon was reading off the ballots? A. Yes.

Q. And watching to see whether he correctly read them? A. Yes.

Q. You have had experience in this kind of work before, haven't you? A. As a committeeman, yes.

Q. And as watching the operation of an election and a primary? A. Oh, yes.

Q. You were not taking any chances, were you, as to whether Mr. Nixon correctly read them off? A. I don't quite get that.

Q. You were not taking any chances; you looked yourself to see? A. I did.

Q. Did you keep any tally yourself? A. No.

Q. Did you keep any tally of your own votes? A. My own, no; I was not interested in myself because I had no opposition.

Q. Did you keep any tally as to whether or not you were running ahead of your ticket? A. No, I didn't know anything about that until after the polls were

closed and I got the results. In fact I didn't know who was running ahead.

Q. Did you watch to see whether the candidates you were interested in were running ahead of those in opposition? A. I couldn't tell that.

Q. All you had to do was to look at the tally sheet.

MR. SIMPSON: I object. He has not testified he was looking at any tally sheet.

Q. All you had to do was to look at the tally sheet? A. I was not looking at the tally sheet, I was looking at the ballots.

MR. SIMPSON: It also appears that the tally sheet was not totalled up until the end.

THE COURT: Just a minute, Mr. Simpson.

Q. You know that by looking at the tally sheet, the total could be found from the number at the head of the column where the votes were being tallied, don't you? A. Yes, I know that.

Q. Sure. Now, how far was this tally sheet from the position in which you were in while you were watching Nixon count off? A. Well, I imagine about from here to the stenographer.

Q. Across the table that the last witness has described? A. Well, the table is low. There was nothing to obstruct my view.

Q. This tally sheet was on this table that the last witness has described, wasn't it? A. Yes.

Q. Do you say the table was more than three and one-half or four feet long? A. No, I don't.

Q. You stood the length of it, about three and one-half or four feet? A. Possibly; I couldn't tell you that. I didn't look to see how far it was.

Q. Were you also interested in Mayor Wittpenn's candidacy? A. I was not.

Q. Were you interested to see whether Judge Sullivan beat Mayor Wittpenn? A. Certainly.

Q. From what you saw there at that time, couldn't you have told that the count for Sullivan of sixty-four votes was not correct, and that the count for Wittpenn of ninety-three votes wes not correct, and that the candidate whose interests you were checking was being done?

MR. SIMPSON: I object, unless the time is fixed when he could see it, at the finish or when.

Q. At the finish and during the count—couldn't you tell that? A. During the count I was not paying attention to the tallying. I was simply looking to see that the ballots were called correctly.

Q. At no time during this entire tallying did you make any observation of the tally sheet whatever? A. I did.

Q. Did you? A. At the finish of the first one hundred votes I got the results and sent them up to the clubhouse.

Q. With your experience in election matters, couldn't you tell this tally sheet was not right at that time? A. Couldn't tell it was not right?

Q. Couldn't tell that your man Sullivan was being done? A. He was not being done.

Q. Do you say he was not done now? Do you now say he was not done? A. Why, surely.

Q. You do? A. Surely.

Q. Despite—were you in court yesterday? A. Yes.

Q. Despite it has been—it is an admitted fact that the ballots show—(Interrupted).

MR. SIMPSON: It is not an admitted fact. It is admitted that *these* ballots—

Q. —admitted that these ballots show one hundred and five votes for Sullivan, and the tally only shows sixty-four for Sullivan—? A. I don't know whether they are the same ballots or not.

Q. Oh, you don't? A. I don't.

Q. You have some doubt on that—? A. So much so that I know the ballots were read correctly.

Q. You are sure of that? A. Positive.

Q. You yourself read some of the ballots, didn't you? A. I did.

Q. Did you believe that to be in accord with law when you read these ballots?

MR. SIMPSON: I object.

THE COURT: I will sustain the objection.

MR. VICKERS: I have a right to know his motive in doing it.

THE COURT: You asked him what he believes.

I will overrule the question.

Q. Did you know whether or not this was in conformity with the law? A. I did not.

Q. Now then—have you any recollection you heard Mr. Groth's name read off there? A. I couldn't say. The only thing I knew was when the board got through tallying and I got the results.

Q. Well, how many votes according to their tally did Mr. Groth receive? A. I couldn't tell you now.

Q. By reference to this tally—it shows three votes? A. Well, then that is correct.

Q. If Mr. Groth's name had been called off more times than that, seven or eight times, would your attention have been attracted to this tally of three votes? A. No.

Q. It would not? A. No.

Q. You were not interested as to whether the organization candidate for sheriff beat Mr. Groth by that many more votes or not? A. I was simply there to see that the ballots were called out correctly, as they were; I wasn't paying any attention to the count, all I wanted to get was the result.

Q. You didn't enter into any conspiracy with Mr. Nixon, did you, to count the votes for Clements wherever they could be counted for him, and leave one or another of the shrievalty candidates out, did you? A. I did not.

Q. You hadn't any object in counting one hundred and forty-two votes for Mr. Clements, if the fact is that there were only seventy-four votes? Seventy-two votes are shown here on those ballots. You had no object in that had you? A. No object at all in it.

Q. You had no interest in giving Mr. Clements more votes than he was entitled to, if he got more votes than he was entitled to, did you? A. No interest at all.

Q. Is Mr. Clements a friend of yours? A. He is.

Q. Yes. How long has he been a friend of yours? A. Well, I guess around ten or eleven years.

Q. And if it is a fact that Mr. Clements, according to this official return, taken from this tally, got seventy-two votes more than he was entitled to, you know nothing about it, do you? A. I don't, absolutely nothing.

Q. Can you from what you saw and heard there, taking place there, at this primary election on the 26th of September, can you explain how it happened that Mr. Clements got seventy-two votes more than the ballots showed, if these are the ballots? A. I don't admit it, that he got seventy-two more votes.

Q. Of course you don't. You don't admit you know how it was done, do you?

MR. SIMPSON: I object. He assumes that it was done. That is the very point in the case.

THE COURT: I will overrule the question.

Q. If these are the ballots that were used can you explain how it is that Mr. Clements got seventy-two more votes than these ballots showed? A. No, I cannot.

Q. Can you explain, if these are the ballots, how Judge Sullivan got forty-one votes less than shown by this official tally? A. I cannot explain it at all, because I don't know what becomes of it.

Q. Could it be possible, Mr. Norton, according to your judgment, that you incorrectly saw the reading of forty-one ballots, so far as the votes for Mr. Sullivan were concerned? A. It could be possible, but as a matter of fact it was not.

Q. Then it is not possible, is it?

MR. SIMPSON: I object. He is arguing with the witness.

THE COURT: I will allow it.

Q. Then it is not possible that it happened, if you say as a fact that it didn't? A. It didn't happen.

Q. It didn't happen? A. No.

Q. On what do you base that statement under oath here? A. My eyesight and seeing the ballots.

Q. Then you now swear that Mr. Nixon could not have incorrectly read those ballots without your knowledge; is that what you mean to say? A. Yes.

Q. Understand my question—— A. Yes.

Q. To that you are now swearing. A. Surely; I am under oath.

Q. I want you to understand it. Don't let us have any mistake about this——

MR. SIMPSON: I object to this comment about being under oath and being mistaken.

THE COURT: Go on.

Q. You were in a position throughout the entire time that Mr. Nixon called off these ballots, to see whether or not what he did call off correctly represented what the ballots themselves were? A. Yes, right alongside of him.

Q. —with respect to the vote of each candidate? A. Yes.

Q. And you did observe with respect to each ballot which Mr. Nixon called off, whether it correctly repre-

sented what the ballot indicated, as to each voter? A. Yes.

Q. Is that right? A. Yes.

Cross examination by Mr. Lane:

Q. Who was there representing the organization, watching the tally of this vote? A. Democratic organization?

Q. Yes. A. Why, nobody watching; Mr. Blaney was tallying.

Q. I know, but while Mr. Nixon was calling out. Now, you were watching Mr. Nixon call out the votes? A. Yes.

Q. You were representing the Democratic organization and Mr. Sullivan, so you testified? A. Yes.

Q. Who was watching Mr. Blaney, anybody in your interest? A. No, sir.

Q. You were there alone representing the Democratic organization? A. Yes.

Q. (By Mr. Simpson): Mr. Blaney was a Democratic officer, wasn't he? A. Yes.

Q. And Mr. Nixon was a Democratic officer, wasn't he? A. He was a Democrat.

Q. He was a Wittpenn man? A. I am not positive, but I think so.

Q. (By Mr. Vickers): Who else was watching with you the count while Mr. Nixon was calling off the ballots? A. Well, I don't know; there were two or three standing on the other side, but who they were, I didn't pay any attention because they were changing. I was simply looking as Mr. Nixon was taking the ballot out and held it up I would look over this way (indicating) to see if he got it off right.

BY MR. VICKERS:

Q. On which side of Mr. Nixon were you? A. The left hand.

Q. Who was on his right hand? A. I don't know,

I didn't pay any attention, there were a lot of people in the room.

Q. Who was watching the reading of the ballots on his right hand side? A. I don't know.

Q. Was anybody? A. There was somebody.

Q. Do you mean to say you don't know who it was? A. I didn't pay any attention; I was not interested. All I was interested in was the ballot.

Q. That was not constant, there was not constantly a ballot up there in front of your eyes? Mr. Nixon had to reach down into the box to get a ballot each time? A. Yes.

Q. While he was reaching down into the box, you were not looking to see whether he was reading correctly? A. Not while he was—I couldn't do that.

Q. Well, during that time you did have an opportunity to see who was on his right hand? A. I didn't pay any attention, it didn't interest me at all.

Q. Do you know there were anybody there? A. There were some people there, changing around, a lot of people there.

Q. Was there anybody there constantly except yourself and Mr. Nixon? A. Constantly, I don't know.

Q. Why do you say they were walking around, changing around? A. They were walking around.

Q. Was there anybody changing from your side? A. No, I was against the wall.

Q. Against the wall? A. Practically against the wall.

Q. What do you mean? A. About like here (indicating).

Q. About five inches, six inches? A. Well, about like that.

Q. You were up against the wall as close as this, you say, and you had to stoop over to see the ballot; is that right? A. I was leaning over, this was (indicating).

Q. Were you leaning over Mr. Nixon's left shoulder while he was reading the ballot? A. Not his shoulder, it was his arm.

Q. Was anybody back of you? A. No.

Q. There was no chance was there from your de-

scription of it? A. They could be back of me.

Q. In this space you have described? A. No, there was the side; my side was toward the wall. My back was toward the window.

Q. Your back was towards the place where these other persons, as you say, shifted around, was it? A. They could be there, not directly back of me, but on the other side.

By MR. LANE:

Q. You were paying pretty close attention to the votes that were being read off by Mr. Nixon, to see that your candidate Mr. Sullivan got a square deal, weren't you? A. Certainly.

Q. How old are you? A. Forty.

Q. You have had experience in elections before? A. Well, yes.

Q. For how many years? A. About six or seven years.

Q. Been on election boards? A. No, never on election boards.

Q. Committeeman down there in that district? A. Yes.

Q. And you have actually interested yourself in each one of the elections during the last six or seven years, haven't you?

MR. SIMPSON: I object. Your Honor has ruled out Mr. Melniker's question.

THE COURT: I will allow the question.

MR. SIMPSON: I ask an exception.

THE COURT: Exception allowed. It is signed and sealed accordingly.

(Seal)

Q. In each instance as a committeeman? A. Yes.

Q. Looking out for somebody's interest? A. Looking out for the organization.

Q. You have become somewhat experienced in looking after the organization in the last six or seven years? A. I think so.

Q. You think so. And it is not possible, is it, that Mr. Nixon should have read off less than—only seventy-two votes for Clements, and one hundred and forty-two, or just twice as much, should be tallied for him, without your realizing that fact or that something was wrong? A. He couldn't do it, because I would see it and I wouldn't stand for it.

Q. You wouldn't stand for that, would you? A. No.

GEORGE BRENNAN, a witness produced on behalf of the defendants, being sworn, testified as follows:

Direct examination by Mr. Simpson:

Q. How old are you? A. Twenty-one.

Q. You are the young man that stuck these ballots on the string, aren't you? A. Yes.

Q. Where did you get them, to put them on the string? Who gave them to you? A. Mr. Nixon and Mr. Norton.

Q. Mr. Nixon gave you the most of them? A. Yes.

Q. After Mr. Nixon had called a ballot out he would hand it to you in this shape? A. Yes, just the shape you have it there.

Q. Then you would fold it up this way (indicating) and put the string through it? A. I would mark the number on the outside first and then string it.

Q. If you had wanted to, you could have looked over the ballot? A. Yes; I didn't have time to do it.

Q. There was no secrecy about it? A. No.

Cross examination by Mr. Vickers:

Q. You didn't make any marks on the face of these ballots? A. Only just on the backs of them.

Q. You didn't make any crosses down here (indicating)? You didn't vote for people in the margin of these ballots as you were getting them? A. Only the one I voted, myself.

Q. After the polls were closed you didn't make any mark here, indicating the votes, did you? A. No, sir.

Q. Will you look at these ballots and say whether or not those are your figures, sixty-five, sixty-six, sixty-seven, sixty-four, sixty-eight—look them over yourself—one hundred and twenty-six and so on. (Witness looks over the ballots.)

MR. SIMPSON: Do you want him to look at all of them?

MR. VICKERS: Yes, all of them.

MR. SIMPSON: I want him to understand you are wanting him to swear that these are his identical figures.

THE COURT: You must not interrupt.

MR. SIMPSON: I think I have the right to instruct the witness—

THE COURT: No, you haven't.

MR. SIMPSON: I object to the question as not sufficiently explicit to get a proper answer. He cannot swear to these identical figures.

A. Those are all mine, those numbers.

Q. Those identical figures in blue pencil, they are made by you? A. Yes.

Q. And made by you at the time you were stringing these ballots onto the string? A. Yes.

Q. And that was on the 26th day of September of this year, in the Seventh District of the First Ward; is that right? A. Yes.

Q. Take up the rest of these ballots here, and examine the rest of them, if you will. (Witness examines the ballots.) A. There is one, No. 65, I don't recognize.

Q. Those that you have now are all yours? A. Yes.

Q. Look at the others. (Witness examines other ballots.) A. I don't remember No. 164.

Q. Will you look at these (handing him others). (Witness hands them back after having examined them.)

Q. Those blue pencil figures that appear on the ballots that have been shown to you now, with the exception of the two you say you do not recognize, are your figures? A. Yes.

Q. Made by you as you have described at that time? A. Yes.

Re-direct examination by Mr. Simpson:

Q. What is there about your figures different from everybody else's figures in the world so that you can pick out your own figures? A. Well, I made them kind of small.

Q. Do you call these small? A. I had to make them in a hurry; he was handing them out in a hurry.

Q. You say there is something different in your figures from everybody else's figures by which you can tell them?

MR. VICKERS: I object. He did not say that.

THE COURT: I will allow it.

Q. What is there different from those two fives, from everybody else's in the world, that you can positively say those are your fives?

MR. VICKERS: I object. He cannot impeach his own witness.

MR. SIMPSON: This is new matter, not brought out by me.

MR. VICKERS: Mr. Simpson asked him what he did there, and that brought out the numbering. That he did not go into detail does not make it new matter.

THE COURT: I will allow the question.

Q. What is there different between those two fives, from fives made by anybody else?

MR. VICKERS: I object. It contains an unwarranted assumption of fact, that the five is different from all other fives.

MR. SIMPSON: Manifestly it must be different from all other fives or he couldn't say it was his.

THE WITNESS: I don't swear that my fives— (interrupted.)

THE COURT: I will allow it.

A. I don't say that my figures are different from anybody else's.

Q. But you say these are your figures? A. I say these are the figures I made.

Q. How can you say that if they are not different from anybody else's figures? A. That is the way I generally make my fives.

Q. Is there any identification mark you put on? A. No.

Q. These I pick out, you swear these are your figures?

MR. VICKERS: Are those the same ballots?

MR. SIMPSON: Let me examine him. He is my witness now, and I don't want to be interrupted.

MR. VICKERS: He is trying to impeach his own witness.

MR. SIMPSON: He has sworn to his own figures, says those are his own figures—an impossible thing—nobody else has ever done it in the history of the world, so far as I have ever—— (interrupted.)

THE COURT: Mr. Simpson, that will do.

MR. SIMPSON: May I ask him if he identifies these as his figures?

THE COURT: Yes.

THE WITNESS: I cannot say that one (indicating.)

Q. Can you say this one (indicating)? A. No.
Q. This one (indicating)? A. I would not swear positively; I think it is.
Q. That is a blank ballot. I just wrote it. Does that change your mind? A. Yes; it is like mine.

Re-cross examination by Mr. Vickers:

Q. What you mean is that Mr. Simpson tried to imitate your figures and therefore you would not swear that it is yours?

MR. SIMPSON: I object to his cross examining this witness.

MR. VICKERS: Whose witness is he, anyway?

A. I would not swear positively that it is mine.

Q. You think it is made to look like yours, do you?

MR. SIMPSON: I object.

THE COURT: I will allow it.

A. Yes; that is made something on the style of mine.

Q. Mr. Simpson handed you number 55 here, and then wrote 135, and you think he tried to, in this 135, fake that five which you did write, in the 55; do you mean? A. That is my answer. That is the way it looked.

Re-direct examination by Mr. Simpson:

Q. Do you think this one looks like yours (indicating)?

THE COURT: This examination cannot go on any further.

MR. SIMPSON: But this is new matter.

THE COURT: I will not allow it.

MR. SIMPSON: I would like to put my question and let your Honor rule on it.

Q. Do you think that this, showing the witness ballot numbered 41, is made to look like your figures? A. I don't say it is. I have got an idea that that is mine. I don't say positively it is mine. I have the idea it is mine.

Q. You have the idea about all the others? You don't swear positively that all the others are yours, do you? A. I don't swear all of them.

Q. How many of them will you swear positively? A. I can't say.

Q. Half of them? A. I can't say positively. I

will try to pick what I made out of it.

Q. (By the Court.) You have picked out all but two, have you, which you say you believe to be your writing? A. Yes; I marked from one to one hundred and forty something, one hundred and sixty-three, I believe it was. I marked them from number one to the end of the vote. I don't remember just how many votes were cast.

Q. (By the Court.) You marked all the votes that were cast? A. For the Democrats.

Q. (By Mr. Vickers.) You didn't mark them for the Republicans? A. No.

MR. SIMPSON: That is the case on behalf of my client.

MR. MELNIKER: I am through.

MR. LANE: I am through.

MR. VICKERS: I close the State's case.

The jury is excused until the following morning.

The jury having retired, the following motions were made:

MR. LANE: I move for the direction of a verdict of acquittal so far as the defendants Patterson and Blaney are concerned. I make the motion upon the same ground as I made the motion to quash the indictment—first; secondly, I make the motion upon the ground that there is nothing in the evidence from which the jury can be permitted to find that either of the defendants Blaney or Patterson wilfully and corruptly made a false return.

THE COURT: Why do you say wilfully and corruptly?

MR. LANE: Because the indictment is for the making of a wilful and corrupt return.

THE COURT: The first count.

MR. LANE: And the second count is for the making of a wilful and fraudulent count. I contend that those counts charge the same, the same crime, but if you should hold that the second count charges the making of a false count rather than the making of a false return, the rules which must be applied are the same, because the charge is that they made a wilful and false count, and the same elements must be present with respect to the second charge as with respect to the first charge.

THE COURT: Those are the only reasons?

MR. LANE: Those are the only reasons on which I ask for a direction.

MR. MELNIKER: I desire to make the same motion on behalf of the defendant James Reilly. The evidence shows that he did not participate in any way in the counting of the ballots in the democratic box, simply signed the return when it was handed to him after the election, which was conducted by the two republican members of the board taking exclusive charge of the republican box and the two democratic members of the board taking exclusive charge of the democratic box; and that Reilly at no time either assisted in nor participated in the count or the tally of the democratic votes. There is nothing in the evidence that he wilfully, corruptly or knowingly did anything in contravention of the law. There is nothing in the evidence to substantiate the charge in the indictment that he wilfully and corruptly falsified either the count or the tally or the return; the evidence on the other hand shows conclusively that he did not participate

in any way; that after he got through counting the republican votes he stopped and did nothing further—carried the republican box to the city hall, and had nothing whatever to do with the democratic votes and the counting of the votes, on which this indictment is founded. I do not see how there is any evidence in the case whatever, upon which the jury could find him guilty. I therefore ask for a verdict in his favor.

CONTINUATION, NOVEMBER 3D, 1911.

APPEARANCES:

Mr. Vickers, for the State.

Mr. Lane, for the defendants Blaney and Patterson.

Mr. Simpson, for the defendant Nixon.

Mr. Myron C. Ernst (in the absence of Mr. Melniker) for the defendant Reilly.

MR. SIMPSON: I want to make a formal motion for the acquittal of the defendant Nixon on the ground that there is a fatal variance between the indictment and the proof, and also on the ground that no crime has been proven.

MR. ERNST: On behalf of the defendant Reilly, there does not seem to be anything in the case that fastens anything upon Reilly. If there was anything which had been shown that Reilly was aware of the false return, if there was a false return, or that he could in any way himself have known of the exact number of the ballots, or if your

Honor would feel that even though he did know, even though they all conspired, and every man knew it, under this indictment you could not hold Mr. Reilly. I think it would be an injustice to allow the case to go to the jury.

MR. VICKERS: I think that this primary was under the law, conducted, I mean, under section eighty-seven ——

THE COURT: Sections 87 to 90.

MR. VICKERS: That means, if it means anything, that the ballot box should be taken by this board and the ballots counted. It doesn't mean that two ballot boxes should be taken and each counted by one-half of the board, but that the two boxes should be taken and the ballots counted by the board. I want to say to your Honor that there has been a wilful violation of the law. If that is so there has been a crime committed.

THE COURT: What crime?

MR. VICKERS: The crime is they have not conducted the election in accordance with the law.

THE COURT: That is not the crime charged in the indictment. I will agree with you that they have wilfully violated the law.

MR. VICKERS: The wilful violation of that act constitutes a crime.

THE COURT: I will for the time being deny the motion for Mr. Reilly.

MR. ERNST: I ask an exception.

Summing up to the jury.

REQUESTS TO CHARGE SUBMITTED BY MR. LANE.

1. That the jury must bring in a verdict of not guilty as to the defendant William Patterson.

2. That the jury must bring in a verdict of not guilty as to the defendant John F. Blaney.

3. That before the jury can bring in a verdict of guilty against any or either of the defendants charged it must be convinced beyond a reasonable doubt that the particular defendant or defendants whom the verdict of guilty is against, are in fact guilty.

4. That before the jury can find a verdict of guilty against any of the defendants they must be satisfied beyond a reasonable doubt that a crime has been committed.

5. That although there are two counts in the indictment, there is but one crime charged, to wit, a crime of wilfully making a corrupt and false return and before the jury can bring in a verdict of guilty against any of the defendants they must be satisfied beyond a reasonable doubt that the crime of making a false, corrupt and wilful return has been committed by some person with respect to the Seventh Election District of the First Ward at the Primary Election held on September 26th, 1911.

6. That the statute does not provide for any return and it has not been proven in the case that the election officers of the Seventh Election District of the First Ward made any corrupt and false return upon which a crime can be based, and therefore there should be a verdict of not guilty as against all of the defendants.

7. That the jury must not only be convinced beyond a reasonable doubt that a crime has been committed, but they must also be convinced beyond a reasonable

doubt that the particular persons whom they find guilty participated in the commission of that crime.

8. If the jury believe that a crime has been committed but are unable to say that all four persons charged are guilty and are unable to determine from the evidence beyond a reasonable doubt which of the defendants are guilty, they must bring in a verdict of not guilty as to all of the defendants.

9. The burden is upon the State to convince the jury beyond a reasonable doubt that the particular defendant whom the State seeks to have found guilty of the crime charged is guilty of that crime.

10. The duties cast by the election law upon the various members of the election boards are separate and distinct; it is the duty of the judge to read the ballot audibly; it is the duty of the inspector to inspect the ballot and string it; it is the duty of the clerks to tally the vote as announced by the judge; there is no duty cast upon the clerks to inspect the ballots.

11. The clerks of the Board of Election were justified, if they had no reason to suspect that the judge had incorrectly read the ballots, in signing the return if the return truly expressed their tally, without demanding an inspection of the ballots.

12. If the jury find that the Clerks believed at the time they signed the return that the return truly expressed the result of the vote cast, there must be a verdict of acquittal as to William Patterson and John F. Blaney.

13. The indictment is for wilfully committing a crime. The word "wilful" means "proceeding from a conscious motion of the will"; "intending the result which actually comes to pass"; "designed"; "intentional"; and if the jury find any or either of the de-

fendants guilty of the crime charged they must be convinced beyond a reasonable doubt:

First: That the return was false.

Second: That such of the defendants as they find guilty knew it to be false.

Third: That he deliberately participated in the making of the false return.

14. The word "wilful" implies knowledge; and before the jury can find all or either of the defendants guilty they must be convinced beyond a reasonable doubt that the defendant found guilty knew that the return made was false.

15. The word "wilfully" means not merely voluntarily; but with a bad purpose, and before the jury can find all or either of the defendants guilty they must be convinced beyond a reasonable doubt from the evidence that the defendant or defendants found guilty not only knew that the returns were false returns and did not correctly set forth the result of the count of the votes cast and not only that the defendants found guilty voluntarily signed these returns but further, that they signed them knowing them to be false and for a corrupt purpose.

16. The defendants are not indicted for negligently conducting the election, and cannot be found guilty of the crime charged against them because they did negligently and improperly conduct the election, if the jury find, that in fact they did so negligently and improperly conduct it.

17. All and each of the defendants are entitled to the benefit of any reasonable doubt.

18. If there is a reasonable doubt that no crime has

been committed, there must be a verdict of not guilty as to all of the defendants.

19. If there is no reasonable doubt but that a crime has been committed, but there is such confusion that the jury are unable to determine beyond a reasonable doubt that a particular person or persons committed the crime, there must be a verdict of not guilty as to all of the defendants.

20. If there is no reasonable doubt but that there was a crime committed, but there is a reasonable doubt that the particular defendant or defendants committed the crime, then the particular defendant or defendants about whose guilt there is this reasonable doubt are entitled to the benefit of that reasonable doubt.

21. Evidence of good character may be sufficient in itself to raise a reasonable doubt; evidence of good character is to be considered by the jury with the other evidence in the case, and if upon a consideration of the whole evidence, including evidence concerning good character, there is a reasonable doubt with respect to the guilt of a particular defendant or defendants, they are entitled to the benefits of that reasonable doubt.

22. The State is bound to prove beyond a reasonable doubt every element of the offense charged. If the State has failed to prove beyond a reasonable doubt each and every element of the offense charged, there must be a verdict of not guilty as to that defendant against whom the State has failed to sustain this burden of proof.

23. The State must prove beyond a reasonable doubt before there can be a verdict of guilty against any one of the defendants herein:

First: That the return offered in evidence is the return from the Seventh Election District of the First

Ward and is in the same condition as it was when made by the election officers.

Second: That the ballot box which has been offered in evidence is the ballot box used at the Democratic Primaries for the Seventh Election District of the First Ward.

Third: That the contents of the box as offered in evidence are the same as the contents were at the time the votes were counted by the election officers of the Seventh District of the First Ward.

Fourth: That the votes which are now contained in the ballot box are the identical votes which were counted by the election officers of the Seventh District of the First Ward.

Fifth: That at the time the defendant signed the return he knew that the return made by the Election Board of the Seventh District of the First Ward did not correctly set forth the count.

Sixth: That the falsity of the return was due to design and was corrupt.

Seventh: That the defendant knew the return was false and wilfully and corruptly signed it with this knowledge.

If the State fails to prove beyond a reasonable doubt any one of these elements, there must be a verdict of not guilty as to the defendant against whom the State fails to prove it.

24. If the Court holds that the second count charges the crime of making a false count as distinguished from a false return, then I request the Court to charge that the jury must be convinced beyond a reasonable doubt first, that the count was false; second, that the particu-

lar defendant against whom the verdict of guilty is brought in knew it to be false, and wilfully and corruptly made the false count.

25. The indictment specifies wherein the return is false, the State is bound by the indictment. It is not alleged in the indictment that the return is false in that the judge signed the return as judge, whereas in fact he did not act as judge during the count.

26. The personal impressions of counsel are utterly immaterial, and the jury cannot consider them as in any wise bearing upon the question of guilt or innocence. Counsel have no right to express their personal impressions to the jury.

27. The jury have no right to consider the fact that the board divided up, and the Republican members took charge of the Republican box, and the Democratic members took charge of the Democratic box, either as a basis for a verdict of guilty for neglect of duty, or as bearing upon the question as to whether the defendants Patterson and Blaney had guilty knowledge, which is an element of the crime charged which the State must prove.

28. The defendants are not indicted for, and cannot be convicted of, negligently and improperly dividing up in the manner they did for the count.

REQUESTS TO CHARGE ON BEHALF OF DEFENDANT JAMES J. REILLY.

Submitted by Mr. Melniker.

1. If you believe that the defendant James Reilly did not participate in the count and tally of the votes in the Democratic box, then you must acquit him.

2. If you believe that the defendant James Reilly

did not count or tally any of the ballots in the Democratic box, or assist in the count or tally, and had no knowledge of whether the count and tally were correct, then you must acquit him.

3. If you are not satisfied beyond a reasonable doubt that the defendant James Reilly wilfully, knowingly and corruptly, that is, with knowledge that the count and tally were being or had been falsified, certified to such false count and tally, you must acquit him.

4. You must be satisfied beyond a reasonable doubt that the defendant James Reilly, knew that the count and tally were false and knowing, corruptly, that is, with wrongful intent, certified to such false return; otherwise you must acquit him.

5. You must be satisfied beyond a reasonable doubt that the defendant James Reilly, with a corrupt and wrongful intent, made a false count and false tally, otherwise you must acquit him.

6. You must be satisfied beyond a reasonable doubt that the defendant James Reilly, knowing that the count and tally were false, wilfully certified to a false return of such votes, otherwise you must acquit him.

7. The word "wilful" as used in the indictment in this case, means that the defendant did the acts, with the commission of which he is charged, with knowledge of the falsity of the matters to which he certified; if you are not satisfied that the defendant James Reilly had such knowledge, you must acquit him.

8. The rule with regard to the necessity of evidence to prove guilt beyond a reasonable doubt, applies in this case as in other criminal cases, and the State must satisfy you of the commission of the acts with which the defendant is charged, beyond a reasonable doubt; and if you have a reasonable doubt as to the commission

of the acts which is charged by the State as a violation of the law, you must acquit the defendant.

9. It is within your province to acquit some or all of the defendants and convict some or all; and if you are not satisfied beyond a reasonable doubt of the guilt of all the defendants, you must acquit any and all of those as to whom there is a reasonable doubt in your mind.

Requests to charge on behalf of the defendant Nixon:

1. To acquit Nixon.
2. That the jury must be convinced that the defendant Nixon knowingly signed a false return, and convinced beyond a reasonable doubt, before the defendant Nixon can be convicted.

3. If Nixon signed the return honestly believing that it was correct, he should be acquitted.

4. The defendants cannot be convicted for omissions or for negligence. They are indicted for positive acts and can only be convicted if those positive acts are proved.

The Court charged the jury as follows:

GENTLEMEN OF THE JURY: It is hardly necessary for the Court to impress upon your minds the importance of this case. It must be as apparent to you as jurors as it is to the Court, that this is an important case. The very character of the charge makes it important. I might say that every criminal prosecution is important. Some charges are more serious than others. The charge in this case, involving, as it does, the management and administration of the election laws, is probably peculiarly important, and I want you, as

you have apparently done throughout the trial, to give strict heed to everything that the Court says to you in charging you as to the law applicable to the case. The Court has given very careful consideration to every phase of the law involved, and has noted very carefully the Court's views as to the instruction that should be given you in order to enable you to properly determine this matter.

The defendants are charged by the State with the commission of a crime. The first count in the indictment—the indictment contains two counts—charges that the defendants while officiating as members of the board of registry and election in the Seventh District of the First Ward of Jersey City, at the primary election held on September 26th, 1911, did wilfully violate the law in that they did make a false, fraudulent and corrupt return of the canvass and count of the votes cast, in the particulars specified in the indictment. I have used the words of the indictment because—as far as necessary in order to draw to your attention what the first count charges. The second charges that in conducting the said primary they did then and there commit wilful fraud in the discharge of their duties as such board of registry and election, by then and there falsely counting the ballots cast at said primary, in that they unlawfully and fraudulently did falsely count divers ballots, the number of which is to the grand jurors unknown, by making false returns in accord with said false count, they then and there well knowing that the said count and the said returns were not then and there true and lawful. You will take the indictment with you when you retire to the room and you will be able to note from its reading more particularly the details specified in the two counts.

The defendants were election officers and as such it was their duty to conduct the primary referred to in the indictment, as provided by law. In order that there may be no doubt in your minds as to what I mean by

that, I am going to read you the law directly applicable to their functions. I will not read you all the law, but sufficient of the law to enable you to appreciate what the duties of these defendants as election officers, in the first place, were.

"The two members of such board appointed from the political party which at the last preceding general election cast the largest number of votes in their county shall conduct the primary election of such party, having sole charge of the ballot boxes of said party, and delivering, receiving and depositing the official ballots voted by members of such parties, and having the sole right to challenge the voters offering to vote the ticket of such parties as in this act provided; and the members of said board appointed from the political party casting the next largest number of votes in said county at said election shall, in like manner, conduct the primary election of such political party. All of the members of said board of registry and election shall conduct the primary election of any other political party holding a primary election under this act, and shall also ascertain and certify to the result of the primary election of all political parties holding primary elections under this act in the manner herein provided in section fifteen."

(Another section of the act which I will read to you):

"At the close of the primary election, the board of registry and election shall forthwith proceed to canvass and count the votes cast at such election, proceeding in the manner indicated by the statement hereinafter in this section provided for, and as nearly as may be in the manner required by law; the said boards of election shall at the conclusion of such canvas make up and sign a statement of the result of such election, which statement they shall as soon as may be transmit to the clerk of the

municipality within which the said primary election is held; said statements shall in words at length show the entire number of votes cast at such election, the whole number of ballots rejected, the whole number of ballots cast for each party as indicated by the party names at the head of the respective party tickets, and the number of votes received by each person as a candidate for nomination for office, or for the position of delegate; such statement shall be in the following or like form."

Then the law proceeds to outline the form of return, and the court will charge you that the form of return in evidence here is as the law requires, drawn in conformance with the statute, as to the form of return. To such statement the law requires shall be attached a certificate in the following form:

"We certify the foregoing to be a true and correct statement of the result of the primary elections held in such district at the time above stated; that the same truly and correctly exhibits the entire number of votes cast for each political party at such election, the whole number of ballots rejected and the number of said ballots rejected belonging to each party respectively; also the number of votes received by any person to be a candidate of any party for any office or for the position of delegate named on any ballot or ballots cast at such election."

That is the form of certificate that is required in connection with the return required to be made by the board of registry in connection with the holding of the primaries. Now this act, the section of the law I just read to you, says that such proceedings in connection with the primary shall be as nearly as may be in the manner required by law. I will read to you further, from the election law, to indicate what duty was imposed by law upon these defendants. I will read some

other sections of the law, which will more clearly manifest the full duties of these defendants. The first section I read to you will relate to their functions wholly upon the conclusion of the primary:

"Such board shall then unlock and open the ballot box; * * * the ballots shall then be taken singly and separately therefrom by the judge of election, * * * and while each ballot shall remain in his hands, he shall audibly and publicly read the same; and before taking another ballot from the box shall deliver the ballot open * * * to the inspector, to be examined and numbered; the inspector shall take and examine the same; and thereupon if he shall be satisfied that the same has been correctly read, write on the back thereof the number of such ballot from one onward, in the order in which the same shall have been taken from the box; * * * the inspector shall string the * * * ballots by means of needle and twine to be provided for that purpose."

"The clerks of such board, under the inspection and direction of such board shall each make a list of the names of all persons for whom one or more votes shall have been given, designating the office which such person shall be voted for; and as each ballot shall be read he shall write the figure '1' opposite the name of each person whose name shall be contained therein, as designated for any office; when all the votes which shall have been received shall have been read, examined, numbered and strung, as above directed, such board shall carefully and truly cast up the votes given for each person for any office to be filled at such election."

"No member of any board of registry and election shall sign any returns of election until after the completion of the counting of votes, and his personal examination of the tally-sheets to deter-

mine the results; the counting of the votes shall commence immediately upon the closing of the polls on the day of election; the board shall proceed to read and count the votes received and shall complete the same without delay and without adjournment, and after completing the same shall audibly and publicly announce the result thereof, particularly specifying the whole number of the voters in the poll book, the name of each person for whom any votes shall have been given for any office to be filled by such election, and the number of votes given for each person for the office designated for him by said votes; the counting of all ballots at any election shall be open and public, but not to the extent that the number present shall hinder, delay or inconvenience the election officers in counting the ballots and ascertaining the result."

The last three sections are from the general election law and pertain directly and specifically to general elections, but are made as far as possible applicable to the conduct of a primary, which is the reference I just referred to from the law, that the proceedings shall be as nearly as may be in the manner required by law.

You will see that it was the duty of the entire election board at the close of the primary to ascertain and certify the result of the election as to all political parties, in other words at the close of the primary it became the duty of the entire election board to ascertain and certify the result of both the Democratic and the Republican primaries. The evidence presented clearly discloses that that course was not pursued at this primary. It appears from the evidence that the Democratic officers proceeded to canvass the result of the Democratic primary and the Republican officers to canvass the result of the Republican primary. The law requires that the judge of the election should in each instance take the ballot from the box, should read it, and pass it to the inspector. This board did not pursue

that course. In one instance it appears that the judge of elections presided or officiated at the Republican box and the inspector of elections officiated at the Democratic box. The judge of election instead of drawing the ballots from the Democratic ballot box, as the law requires, did not pursue the course required by the statute, and the inspector instead of receiving the ballot and stringing it, as the law requires, followed an entirely different course. In other words, the officers of this board did not pursue the technical legal requirements in the conduct of the canvass of the vote at the primary. There was undoubtedly in this a violation of the law, but this violation of the law you have no direct concern with. I mention it to you in order to get the matter clearly in your minds; for the indictment you are trying does not deal with that situation; the indictment does not charge a violation of the law in this respect. The four defendants could be prosecuted undoubtedly for neglect of duty in not performing the duties required of them by law, and they could be charged by indictment or other proceedings with such violation. But this indictment you are now trying does not particularly refer to that situation. I call your attention to this because the defendants cannot be convicted for omissions nor for negligence under this indictment, but for the specific charges laid in the indictment. I refer to this because I have read to you the law applicable to their duties and I want you to distinctly understand what the particular functions and duties of these officials were in the premises. The indictment is confined to the allegations to which I have already directed your attention. The first count in the indictment charges a crime in connection with the return and the second charges criminal conduct in connection with the count.

I will now read to you the particular section of the law which fixes criminal responsibility:

"Every person charged with the performance of

any duty under the provisions of any law of this State relating to elections, who wilfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such law shall be guilty of a misdemeanor."

So the indictment in this case in charging these defendants with the crime to which I have referred charges them with a misdemeanor. It so charges in each count of the indictment. Now, the thing for you to determine is, have these defendants or any one or more of them violated the law in respect to the matters charged in the indictment? If so, such person or persons are guilty of criminal conduct as charged in the indictment. In order to convict the defendants or any of them their guilt must be established by proof that convinces you beyond a reasonable doubt. What is reasonable doubt? I am going to read to you what the courts have held reasonable doubt to be. I will quote from the decision of the Court of Errors of this State. It is the language of that court in defining the term. It has been referred to pretty extensively by all the counsel in summing up and the Court has been requested particularly to charge you the doctrine of reasonable doubt.

"It is a term often used, probably pretty well understood but not easily defined. It is not a mere possible or imaginary doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which after an entire comparison and consideration of all the evidence leaves the minds of the jurors in that state of condition that they cannot say that they feel an abiding conviction to a moral certainty, of the truth of the charge. The burden of proof is on the prosecution. If upon such proof there be reasonable doubt remaining, the defendant is entitled to the benefit of it by an acquittal. The evidence must

establish the truth of the fact to a reasonable and moral certainty, a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This we take to be reasonable doubt; because if the law should go further than this and require absolute certainty, it would exclude circumstantial evidence altogether."

In another case the Court has laid down a definition: "Be reasonable doubt is not meant absolute certainty, but the proof must be such as to exclude from the mind of the juror all reasonable doubt of accused's guilt. If on a review of the evidence the juror asks his inward conscience, 'Is he guilty?' and it answers, 'I doubt if he is,' he should acquit, but if it answer, 'I have no doubt,' then he should convict. Reasonable doubt is a doubt which may be entertained by reasonable men after a thorough consideration and review of all the evidence."

Every element requisite to fasten guilt upon any defendant must be established by proof that satisfies you beyond a reasonable doubt. The burden of proof is upon the State. The presumption of innocence attaches to the defendant and it must be overcome, but if that presumption is overcome then your duty is absolutely clear in the premises. You should take the case of each defendant separately, and applying the legal principles the Court has given you or will give you, determine his guilt or innocence. In this you must keep in mind the two counts of the indictment. Has the guilt of the defendants or any of them been established under the first count of the indictment, the count relating to the making of the false return? If so, your verdict should be guilty on that count. Has the guilt been established as to the second count, the count relating to the counting of the ballots? If so, your verdict should be guilty as charged, on the second count. Has guilt been established as to both counts? If so, you should find them guilty of both counts, or guilty as charged in the indictment.

The term "knowingly" as used in the statute means that the criminal acts were committed, if committed at all, with knowledge of the falsity of the return, and with knowledge of the falsity of the count of the ballots, with intention to falsify the return or the count. Mistakes made through ignorance would not be acts committed with knowledge and with fraudulent intent. If the defendants or any of them erred in the performance of their duty and accomplished an unlawful and improper result, but did not fraudulently and knowingly so act, they cannot be convicted under this indictment. Now let us consider the case briefly from the standpoint of the evidence. In this connection let me say you are the judges of the facts in the case. The Court gives you the law. The Court may comment upon the evidence but you are to determine the facts. If in the course of anything the Court says in relation to the evidence the Court refers particularly to any part of the evidence it is not with a view to finding the facts nor to convey to you the court's views as to the facts one way or the other. You are the sole and exclusive judges of the facts. You are to take the law as the Court gives it to you, apply the law to the evidence, the evidence you have heard, take that evidence, and analyze it and consider it and determine after a full consideration of it, applying the law the Court gives you whether or not the guilt of these defendants or any of them has been established beyond a reasonable doubt. The State contends substantially that first there was a false and fraudulent counting of the votes as they were taken from the ballot box, and secondly that there was a false and fraudulent and corrupt certificate of the results. Some of the testimony is to the effect that the ballots were taken from the box by the defendant Nixon with the exception of a period when he was relieved by one Norton who says that he acted while Nixon was rolling a cigarette. These ballots were strung by one Brennan who testified that he did not examine them or did not have time to examine them, but that he numbered the ballots. There is also testimony that the tally

sheet was kept by the defendant Blaney except for a period of about fifteen or twenty minutes when he was relieved from keeping the tally by the defendant Patterson. You recollect, I think, the defendant Blaney testified that he was obliged to go to the toilet and that he asked Patterson—or Patterson took up the work where he left off and he was gone for fifteen or twenty minutes—you remember the testimony. At the conclusion the official tally sheet was made up by Patterson and it, together with the ballot box, was taken to the office of the City Clerk. As to the disposition of it there you will remember the testimony. Subsequently it was taken to the Grand Jury room with the ballot box which was there opened in the presence of Mr. McCarthy. You will remember his testimony as to what occurred there, and as to the subsequent disposition of the case. It was subsequently discovered that the count of the ballots by the grand jury showed a discrepancy of the count as compared with the return made by the board. This fact seems to be beyond dispute, that is, that the result of the count of those ballots as taken from the box in your presence would show the result charged in the indictment, and would show the discrepancy charged in the indictment as compared with the return made by the officers to the City Clerk. You will recollect the testimony of the witness Brennan in this connection as to the identity of the ballots—because of course in order to fasten the crime upon any one in connection with this situation you must satisfy yourselves of the facts that are essential to establish, first, that this was the ballot box. You have heard all the testimony as to that. Can there be any doubt as to that? Is there any doubt in your minds as to whether or not it is the ballot box? You must satisfy yourselves on that point by proof which convinces you beyond a reasonable doubt. Can there be any question that this was the ballot box? You must satisfy yourselves beyond a reasonable doubt that these ballots which produced the count which has been given you in evidence are the ballots that were put in the box on that evening. Can there be any question on

that score? You are to determine the fact. That is why I refer particularly to the testimony of this man Brennan. Brennan says that he took these ballots from the two men and as he looked them over, you will recollect he testified that the marks on the ballots, with the exception of two that he could not remember, were the marks he made on the night of the primary. You are to determine whether or not that evidence together with other evidence does not sufficiently establish this box as the box that was used in that primary and these ballots as the ballots that were deposited in the box at that time. I think another witness, one of the election officers, or perhaps some one else, you will remember the testimony, also identified the tally sheet that was taken from this box in the court room as the tally sheet that was made up by one of the officers the night of the primary. You have all that evidence. Can there be any doubt that this is the box and that those are the ballots that were used that night at that particular primary? Now that is a proposition that you gentlemen are to determine. The Court cannot determine it for you. The Court feels that you are of sufficient intelligence to determine that proposition without much difficulty. If you are satisfied beyond a reasonable doubt that the ballots produced in court were the ballots counted by the board at that primary, can there be any question that the return made by the board was false? It is admitted in court that the ballots here presented disclose a situation not as represented in the return made to the City Clerk. The question propounded for your consideration then, and on which you must be satisfied from the proof beyond a reasonable doubt, if that is so, is whether or not these are the ballots and whether or not there is this discrepancy. You are to determine then whether or not there was a falsity in the return. Can there be any doubt of that if all these other facts are as contended for by the State? And if this return or report made at that time was false as charged in the indictment, can there be any question but that a serious wrong was committed by some one? You are to de-

termine these questions. As I said before, there ought not to be much difficulty in determining these questions by the exercise of your intelligence in applying it to the proofs submitted in this case. If there was such a wrong as charged in the indictment committed, who committed it? Did these defendants or any one of them? And if they or any of them committed it, did they do it knowingly and wilfully? Did the defendant, Nixon, read off the ballots honestly or did he read them falsely, knowingly and with fraudulent intent? If he did, if he read those ballots off improperly, knowingly, falsely, with fraudulent intent, he is guilty as charged in the second count of the indictment, and if he subsequently signed the return made up from such reading he would be guilty as charged in the first count, or guilty as charged by the indictment. In this connection you will recollect the testimony is, I think, practically without contradiction, that these ballots were practically all read by this defendant Nixon, with the exception of a few that were read by a man named Norton, who was not a member of the board at all—a committeeman—who was present there at the time. He had no right to interfere with the count of these ballots or to concern himself in any way in the conduct of that primary in the manner in which it is charged he did it. He is not a defendant, however. You are not to consider him in any way except as a witness in the case. You will recollect the testimony was that Nixon read all these ballots except those that Norton read. I believe Norton says he read about fifteen, while Nixon rolled a cigarette. You will remember the testimony. Did he read them knowingly falsely and with fraudulent intent? It is a matter of no concern whether or not it affected the result of the primary. If he read them falsely and credited votes to persons not entitled to them, whom he knew were not entitled to them, he did it knowingly, wilfully and fraudulently. If he did it, if that is so, if it is established by proof that convinces you beyond a reasonable doubt, beyond any question he would be guilty of the crime charged in the second count of the indict-

ment. As I stated, if he followed any such conduct up by certifying to the result obtained by that false reading, then he would be guilty of the offence charged in the first count, or both counts; and Nixon would be guilty as charged in the indictment as a whole. If he read them falsely, so that the tally sheet was false, and he knowing it to be false, signed it, signed the return based upon it, with fraudulent intent, then he would be guilty as charged in the first count of the indictment. Now, if Nixon did wilfully and improperly read the ballots, with fraudulent intent, if the other defendants had knowledge of the fact, and fraudulently certified to the correctness of the return, they should likewise be guilty with him. In other words, if he, Nixon, committed the crime charged in the second count of the indictment, and that was known to these men who were tallying or who were present as members of the board, and they knowing the fact, knowing that he was wilfully and wrongfully calling off these names, certified to the correctness of the return based upon that illegal action, they would be guilty with him. Did the defendants, Blaney or Patterson, fraudulently falsify the tally? If so, they must be guilty of the crime charged in the second count. You will remember that they swore that they tallied the names as read off by Nixon. You will recollect that one Brennan was also keeping tally, and you will recollect that he testified that he finally abandoned the tally towards the end for the reason—you will remember his testimony. You have a right to keep his testimony in mind in coming to a conclusion, together with the testimony of the other witnesses, as to whether or not there was a likelihood of the defendant, Patterson, and this other man, Blaney, making any error in the talley as the names were announced by Nixon or Norton. You have a right to keep that, together with the other evidence in the case in mind. Did they keep a correct tally? If so—as announced by Nixon—and that tally shows a discrepancy, the discrepancy that is admitted here in court today, and shown by the ballots, if you find the facts so to be, then

undoubtedly the ballots were improperly read. They were improperly read, if they kept a correct tally. Did they keep a correct tally? They say that they did, and that at the end of this tally, they added the results, and that the return made by them was in accordance with this tally. That is, Blaney says he kept a correct tally while he was tallying, and Patterson who came and relieved him for a few minutes, says that during the period in which he tallied, he kept a correct tally. You have to determine the question as to whether they did or not. If they kept a correct tally that would have an important bearing upon the question whether the guilt of the defendant, Nixon, has been established; because if they did, you can readily see that if that tally was correctly kept of the vote as announced by Nixon, and there was a discrepancy in the result, you can readily see where the responsibility for that discrepancy might be placed. It is one of the elements in the case. You must consider that, with all the other evidence in the case. If they correctly tallied the ballots read off by Nixon, they could not possibly be guilty under this indictment.

Now, as to the other defendant, Riley, the testimony seems to show that Riley, despite the fact that he had certain duties well defined by law, did not see the ballots counted, did not tally them, did not watch the reading and did not take part in the tally, as far as the count of the Democratic box is concerned. It appears that Riley officiated at the Republican box. He apparently thought that was the extent of his duty. Many a man has misunderstood the law, and followed a course in accordance with what he understood to be the law, but that fact, the mere fact that he misunderstood his duty would not make him guilty of a crime. I just refer to that in passing, so there may be no question as to the situation. The testimony seems to show that he did not take part in the tally and see the ballots counted. He was judge, and his duty was to take the ballots from the box. He did do that as to the Republican box, but not

as to the Democratic box. But although he did not do that, he signed a certificate, a certificate which according to his own statement, he knew very little about. Did he so do with illegal purpose, intentionally and knowingly sign a false, fraudulent and corrupt return? If you are satisfied beyond a reasonable doubt from the evidence in the case, that such was the fact, you can convict him of the crime charged in the first count of the indictment, but unless you are satisfied that he willfully signed such false, fraudulent and corrupt statement, you must acquit him. I have been speaking now as to Riley. In simple words, you are to determine first, was the crime charged committed, and second, are these defendants or any of them guilty?

Was the crome charged, committed? Was there a willful, fraudulent and false count of the vote? If so, who did it? Was there a false, fraudulent tallying of the vote, with corrupt intent, and if so, who did it? I have repeated those questions to you so that you can get the issues, the prominent issues in the case, clearly in your minds. I have talked to you at some length because this is an important case. As has been said, it involves the purity of the ballot box. Can there be any more important thing in a republic? As one of the counsel says, when a man comes to the ballot box—one of the counsel for the defense said to you in summing up—when a man comes to the ballot box to vote, and places his ballot in that ballot box, if it is an honest ballot, he has a right to have it honestly counted and properly recorded, and if the officials whose duty it is to perform that service, violate the law, there should be no hesitation on the part of a jury in letting them feel the sting of a proper verdict. No innocent man should be convicted of crime. Juries should not be moved by sentiment, nor be swerved by it, one way or the other. No man should be found guilty because the offense with which he is charged is a heinous offense. No man should be acquitted of a charge, likewise, because the result of the action, if the action was criminal, was abortive and accomplished

nothing. The question is, was the crime committed? If it was, did the defendants or any of them commit it?

The jury in reaching a conclusion should take all the circumstances into consideration. You must, then, convict when you are satisfied that guilt has been established by proof that satisfies you beyond a reasonable doubt. To convict any one of the defendants you must find that he deliberately participated in the crime. It must be so established to your satisfaction beyond a reasonable doubt. In this connection I am requested to charge that evidence of good reputation may in itself be sufficient to create a reasonable doubt. I charge that that is the law. Testimony of this sort has been adduced in behalf of the defendants, Blaney and Patterson. This evidence you must consider, together with the other evidence in the case—this evidence of good reputation. If this evidence, with the other evidence in the case, raises a reasonable doubt in your minds, they are entitled to the benefit of that doubt, for the guilt of the defendants must be established, having in mind all the evidence in the case, which includes evidence of reputation. I am asked to charge you that a willful act is one done designedly, intentionally or consciously. It does not mean merely voluntarily. The court will so charge you. To find these defendants or any of them guilty, you must find that they wilfully, *wilfully* violated the law in the respects charged in the indictment—*wilfully* did it, that they did it designedly, intentionally, with false and corrupt purpose.

I think I have covered practically every phase of the case necessary for presentation to you, gentlemen. The court is going to expect you gentlemen to do your duty, whatever that may be. You have been listening to the testimony in this case for two days, and as I said in the beginning, you must of necessity appreciate the importance of the case. It involves one of the most important features of the administration of public affairs. It strikes right at the root of the whole system of govern-

ment. If a crime has been committed and the guilty man or men are in court, and the evidence warrants you in saying that guilt has been established, you will do the greatest injustice to yourselves as well as to the community if you refrain from convicting. At the same time, even so, you must apply all the legal principles in the case in giving the defendants at the bar the benefit of every principle of law that the court has given you. The guilt must be established by proof that satisfies and convinces you beyond a reasonable doubt. You have no right to convict these defendants on general principles —not for a moment. You must convict them on your determination, based upon the law the court has given you. As you retire to the jury room, take up their cases collectively or separately. As you take up the defendant for instance, apply the evidence in the case to him. Has his guilt been established beyond a reasonable doubt, on the first count of the indictment, making a false certificate and return in the manner charged in the indictment. Determine that proposition. Determine whether he is guilty of the second count. If guilty on both counts, then he is guilty as charged in the indictment. If on either one or the other, then he is guilty on that one. Your verdict should be accordingly. And so, as to each defendant. You are the judges of their guilt or innocence, taking the evidence as you have heard it, you are the judges of the credibility of the witnesses; you have a right to determine from their attitude on the stand, their method of answering questions, and from that, together with all the other evidence in the case, where the truth is. The court cannot determine that for you except where there is a principle of law, or there is no dispute, or it is admitted by everybody concerned in the case. All other facts must be determined by you. I want you to remember what the court said in the first instance, that if the court has referred to any fact in the case in the course of its charge to you, it is not for the purpose of conveying to your mind anything that the court thinks as to any of the facts in the case, but simply for the purpose of better enabling the court to present

your duty to you from the standpoint of the law. Take the law the court has given you, take the evidence as you find it, the documents that have been offered in evidence. Look them over, give the case careful consideration and dliberation. If you find as a result of that careful deliberation. If you find as a result of that careful been established beyond a reasonable doubt, of the charges set forth in this indictment, then you will find the defendant Riley guilty. But if you are not satisfied beyond a reasonable doubt of the defendant Riley's guilt then acquit the defendant Riley. If you are satisfied that the guilt of the defendant Patterson has been established by proofs in accordance with the principles of law that the court has given you, do not hesitate to convict the defendant Patterson, but if you are not satisfied beyond a reasonable doubt that the defendant Patterson's guilt has been established as charged, you must acquit. If you believe the defendant Blaney's guilt has been established by proof that satisfies you beyond a reasonable doubt, then it is your duty to convict him, but if you are not satisfied beyond a reasonable doubt that his guilt has been established, then it is your duty to acquit him. If you are satisfied beyond a reasonable doubt that the defendant Nixon's conviction would be warranted by the evidence, if you are satisfied beyond a reasonable doubt, then it is your duty to convict him of the charge of which you find him guilty. But if you are not satisfied beyond a reasonable doubt of his guilt, he is entitled to an acquittal. I think you now thoroughly appreciate your duty under the law. As I said, I want you to give the case the most careful consideration. Your verdict should be in accordance with the evidence, as I said; not in accordance with any sentiment, in accordance with any feeling you may have for anybody concerned in the case. The names of several gentlemen have been mentioned to you in the course of remarks, and in the course of testimony, the names of gentlemen who are candidates for office. They should be mere names to you, so far as the determination of this case is concerned. It should be a matter of no concern to

you whether a man be a democrat or a republican, whether he be a candidate or otherwise. Those are matters that should not concern you as jurors. Your concern should be merely for an honest administration of the law, that is all, and if a crime has been committed, you should show, as I said before, by the sting of your verdict, that you understand it and condemn it. If a crime has not been committed—and when I say "committed" I mean by these defendants or any of them—you should let your verdict speak accordingly. I think I have covered everything. Is there anything further, gentlemen? —Anything further, Mr. Prosecutor?

MR. VICKERS: No.

(The jury returns into court for further instructions).

THE COURT: The request has come to me to know whether or not the tally paper made by Mr. McCarthy in the grand jury room can be taken into the jury room. It is not in the jury room because it was not offered in evidence, and cannot be offered in evidence under the rules of evidence. The court cannot permit it to go in evidence, under the rules of law. You have the testimony, however, of the witness, and you recollect, I think, the testimony of the witness was to the effect that the votes tallied in the count in the grand jury room were as expressed in the indictment, and counsel have agreed that that is so. Counsel agreed in open court that the votes as counted in the grand jury room were just as set forth in the indictment, exactly as set forth in the indictment.

MR. ERNST: We will agree to that.

THE COURT: All the counsel have agreed to that. The court does not want any misunderstanding in the jurors' minds. The reason that document cannot go to the jury is because it is not in evidence. His testimony is the evidence. You may retire.

(The jury retires.)

I, the undersigned, one of the Judges of the Court of Common Pleas of the State of New Jersey, holding a Court of Oyer and Terminer, in and for the County of Hudson, HEREBY CERTIFY that the foregoing is a true transcript of all the proceedings had upon the trial of the indictment in the foregoing cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the said Court this sixth day of May, nineteen hundred and twelve.

ROBERT CAREY.

NEW JERSEY SUPREME COURT.

THE STATE, Prosecutor, *Defendant-in-Error,* vs. JAMES S. NIXON, Defendant, *Plaintiff-in-Error.*	In Error. SPECIFICATION OF CAUSES.

TO PIERRE P. GARVEN, ESQ.,

PROSECUTOR OF THE PLEAS:

PLEASE TAKE NOTICE that the following is a specification of causes on which the plaintiff-in-error relies for a reversal of conviction in the above cause:

1. That the Court refused to quash the indictment when moved by the defendant.

2. That the Court refused to grant a severance for the trial of the said defendant Nixon when thereto moved.

3. That the Court at the trial of the said cause refused to direct the jury to acquit the defendant Nixon, although thereto moved by the said defendant.

4. That the Court at the trial of the cause charged the jury as follows:

> "You will see that it was the duty of the entire Election Board at the close of the primary to ascertain and certify the result of the election to all

political parties—in other words, at the close of the primary it became the duty of the entire Election Board to ascertain and certify the results of both the democratic and republican primaries. The evidence presented clearly discloses that this course was not pursued at this primary. It appears from the evidence that the democratic officers proceeded to canvass the result of the democratic primary and the republican officers to canvass the result of the republican primary. The law requires that the judge of the election should, in each instance, take the ballot from the box, should read it, and pass it to the inspector. This Board did not pursue that course."

5. That the Court charged the jury at the trial of the said cause:

> "Now, the thing before you to determine is, have these defendants, or any one of them, or more of them, followed the law in respect to the matters charged in the indictment. If so, said person or persons are guilty of criminal conduct as charged in the indictment."

6. That incompetent and irrelevant evidence was submitted over the objection of the defendant.

7. That competent and relevant evidence was excluded when offered by the defendant.

8. That the Court erroneously instructed the jury.

ALEX. SIMPSON,

Attorney of Plaintiff-in-Error.

Dated, February 8, 1913.

EXHIBIT S-2.

DO NOT PUT THIS BOOK IN BALLOT BOX.

PRIMARY REGISTER OF SEPTEMBER 12, 1911.
FOR PRIMARY ELECTION, SEPTEMBER 26, 1911.
SEVENTH DISTRICT, FIRST WARD.
JERSEY CITY.

Board of Registry and Election shall place upon this Primary Registry the names of all persons whose names appear upon the poll book of their election district as having voted in said election district at the last preceding election. Said names shall be arranged according to streets.

The election officers shall also place upon this Primary Registry the names of all voters who shall appear in person before them; and the names of all voters presented to them by affidavit. Said Board shall place the letter "D" opposite such of the registered names herein as appear also in the Democratic Primary Book of the year 1910, and also shall place the letter "R" opposite such of said names as also appear in the Republican Primary Book of 1910.

In any new election district the Board of Registry and Election shall make up this Primary Register by copying the revised Registry Book furnished by the City Clerk and also place herein the "D" and "R" to be taken from the revised Democratic and Republican Primary Books, also furnished by the City Clerk.

On PRIMARY DAY the NUMBER OF THE BALLOT is placed in the FIRST COLUMN, and the name checked before voter votes.

All members sign certificates in back of book.

Deliver this book to City Clerk, Primary night, with ballot box.

Street No. Check	*Name*	*D or R*	*How Registered*
100	Rector, Pierson A.	D	Copy
101			
102	Williams, M. H.		Copy
103	Van Norden, W. H.	D	Copy
	Davis, Edward S.	D-R	Copy
	Guidi, Robert	D	Copy
	Knowles, John		Personal
104	Ewing, Crawford J.	R	Copy
	Tulley, William		
105	Nelson, Aron	D	Copy
	Nixon, James		Person
106	Bragen, Michael	D	Copy
	Kehoe, Daniel		Copy
	Kline, Abraham		
	McLoughlin, Frank		Person
107	O'Conner, Edward	D	Copy
107	Phiard, Harvey F.	D	Copy
108	Yocum, Edward		
108	Dighria, Bartholomew		Copy
108	Masker, John H.	D	Copy
	Steller, Geo.	R	Copy
	Gangewar, Frank	R	Copy
	Daly, John T.	R	Copy
108	Auchmutz, Frank H.		
119	Gray, James	D	Copy
119	Donnellan, John	D	Copy
	Loughlin, Fred'k	R	Copy
121	Burke, Edward	D	Copy
	Jackson, Frank S.		Person
	Joyce, Harry		Copy
123	Chisholm, David	D	Copy
	Throop, M. H.	D	Copy
123	Naurocki, Anthony		Personal
126	Lambert, Charles	R	Copy
133	O'Connell, James J.	D	Copy
	Finn, Masters	R	Copy
	Munson, Frank E.	D	Copy
	Klopsch, Paul J.	R	Copy
135	Halloran, Martin	D	Copy
	O'Neill, John J.	D	Personal
137	Madden, Peter	D	Personal
	Moore, John S.	D	Copy
	Madden, John	D	Copy
139	Lippman, Samuel	D	Copy
	Lippman, David		Copy
	Nolan, Michael		Copy
141	Bogan, James	D	Copy
	Bogan, Joseph	D	Copy
	Bragnsdels, Frank L.		
141	Doran, R. A.		
143	Kelly, John	D	Copy
	Calloo, Michael	D	Copy
	Patterson, Wm. C.		Person
	Callo, Leo		Copy
145	Baker, Wilford	R	Copy
	McCulla, Charles		Copy
	Jobes, William		Copy
	McCulla, Harold		Copy

Street No. Check	*Name*	*D or R*	*How Registered*
147	O'Donnell, Joseph	D	Copy
	Lyons, Joseph		Copy
	Chadwick, Albert I.		Personal
149	White, A. John	R	Copy
	Jaskson, Thos.	R	Copy
151			
153	Moore, Daniel	R-D	Copy
	Beckley, Chas.	R-D	Copy
155	Corcoran, Jos. A.		Personal
155	Hart, Thomas	R	Copy
155	Meehan, William	D	Copy
155	Witeneck, George	D	Copy
157	Klein, Thomas	R	Copy
157	Hutchinson, Donald	D	Copy
	Gilda, Chas. A.	D	Copy
	Crawford, Maurice	D	Copy
159	Richard, Geo. B.		
	Lawson, William		Copy
160	Ebert, Owen W.		Personal
161	Mulverhill, Thomas	D	Copy
161	Miskel, Thomas J.		Person
161	Reber, Horas S.	D	Copy
162	Hoffman, Harry		Personal
162	Scanlon, Stephen	D	Copy
	Gundersbol, Albert	R	Copy
163	Reid, Maurice F.	R	Copy
164	Turner, David D.	R	Copy
164	McDannier, Luke		Personal
165	Nolan, Michael		Personal
166	Williams, Geo.		Personal
166	Norton, Thos. F.		Personal
166	Reilly, James J.	R	Copy
	Flynn, Wm.		Copy
	Morrissey, Patrick H.		Personal
166	McCarthy, John F.		Personal
167	Cronin, Thomas		Copy
	Fasano, Emidio		Copy
168	Thomas, William H.	D	Copy
	Rogers, Sonia	D	Copy
	Parker, Marshall	R	Copy
	Simpson, James A.		Personal
169	Rybakossky, Philip		Personal
169	Podolla, August	D	Copy
	Podolla, Herman		
170			
171			
172	Gardner, Raymond		Personal
173	Konsky, Peter		Personal
173	Nolan, Joseph		Personal
173	Warren, Chauncey	R	Copy
173	Blaszcyki, Charles	R	Copy
173	Blaszcyki, Anthony	R	Copy
173	Blaszcyki, Frank	D	Copy
	Blaszcyki, Louis	R	Copy
174	McCullom, Jos. G.		
175	Fielder, Bert	D	Copy
176			
178	Hawthorne, James D.	R	Copy

	Street No. Check	Name	D or R	How Registered
	178	Grant, David		Person
	179			
	180	McGregor, Moses J.	D	Person
		Dougherty, James	D	Copy
		Wise, Louis	D	Copy
	181	Fields, Wm. J.	R	Copy
	181	Carmini, Napolitno		Person
	182	Kilmirray, Martin		
		Stark, Chas.		Copy
	182	Foule, Robert J.		Personal
	183	Spain, James		Personal
	184	Burke, John	D	Copy
		Muniger, Martin	R	Copy
		Newman, Max		
	185	Fischer, Emil		Person
	186			
	187			
	188			
	189			
	190	McCabe, Thomas		Copy
	191	Hayesa, William	D	Copy
	191	Miskel, John	D	Copy
	192	Walker, Chas. P.	D	Copy
	193	Kohn, Max		Personal
	194	Foller, J. R.		Personal
	194	Worrell, Jacob		AFF
	194	Crowley, Patrick		Copy
	194	Jacktman, Deidrick	D	Copy
	194	Crowley, Patrick	D	Copy
	194	Foller, Charles	D	Copy
	195	Holton, John	D	Copy
		Milanowsky, Stephen	R	Copy
		Whalen, Louis	D	Affd
	196	Pilgrim, Charles	D	Copy
		Kirchner, Geo. P.		Person
		Herbert, James		Copy
	196	Ridley, Chas. H.		AFF
	196	McLoughlin, Stephen A.		Person
Henderson St.,	236	Jones, Peter	D	Copy
	238	Laster, Jewel S.		Copy
		Russell, Edward		Copy
		Gadalum, Samuel		Copy
	238½	Steele, James	D	Copy
Trans. to 8 W. 8 Dist.		Braham, Charles	R	Copy
		Steele, Joseph		Copy
	240			
	108	Scandales, John		Personal
	108	Fitzpatrick, Thomas		Personal
	108	Dowd, Patrick		Copy
Sussex St.,	108	Blaney, John F.	D	Copy
	108	Youngerman, Frank	D	Copy
	108	Brake, Charles R.	D	Copy
	146	Collins, John	D	Copy
	110	Loughlin, Edward	D	Copy

Street No. Check	*Name*	*D or R*	*How Registered*
108	Lind, William	R	Copy
108	Dooley, Patrick J.		Person
108	Sutton, Chas.		Copy
110	Eliott, Geo. H.		Person
110	Post, James	R	Copy
110	Croffey, Michael, Jr.		Copy
110	Croffey, J.	D	Copy
	Kelly, Patrick	D	Copy
	Croffey, Martin	D	
	Croffey, Michael	D	Copy
	Meyer, Henry	D	Copy
	Kelley, Thomas J.	D	Copy
	Croffey, Thomas J.	D	Copy
	Meyers, Edward	D	Copy
	Collins, John	D	Copy
110	Farrell, Patrick		Copy
112	Welsh, John	D	Copy
	Callaghan, Dennis	D	Copy
	Kennedy, James A.	D	Copy
	Kennedy, Thomas	D	Copy
	Feehan, Michael	R	Copy
	Meyer, Andrew J.		Person
	Hughes, Arthur		Copy
112	Ryan, Thomas		Copy
112	Meyers, Henry J.		Personal
122	Hoffman, Wm.	D	Copy
	Fillebrown, George	R	Copy
	Auber, Philip		Copy
124	Snyder, William	D	Copy
	Johnson, George		Copy
126	Boylan, John B.	D	Copy
	White, John B.		
	Slie, Wm. H.		Copy
	Lazarus, Jacob		Copy
126	Paige, Richard		Personal
128	Drennan, Thos. F.	D	Copy
	Cavaghan, Thos.		
	Schedeman, Frederick		Personal
	McNamara, Martin		Personal
130	Bothwell, J.	D	Copy
	Brophy, John	D	Copy
	Allen, Harry		Copy
	Kopp, William		Personal
132	Donnelon, William		Copy
	Kretchner, Charles	D	Copy
134	Durnin, Thos.		Copy
134	Hamilton, James		
136	Jacques, Thos. F.		Person
136	Jacques, Wm. B.	D	Personal
136	Rubbert, John	D	Copy
	Schweikart, Charles	D	Copy
	Rubbert, William	D	Copy
136	Fitzpatrick, Patrick		
138	Long, Thomas	D	Copy
140	Jerseki, Frank	D	Copy
	McGovern, Bernard		Personal
142	Wachna, Frank	D	Copy
	Smithkowski, F.	D	Copy

	Street No. Check	*Name*	*D or R*	*How Registered*
	144	Kloniecki, Edward	D	Copy
	144	Kearney, Thomas		Personal
	146	Murphy, Michael	D	Copy
	148	Nolan, John	R	Copy
	148	Murray, James	D	Copy
		Burke, Mylis	D	Copy
		Harney, William	R	Copy
	150	Nixon, James S.	D	Copy
	150	Devlin, James	D	Copy
		Jarczyk, Charles	D	Copy
		Devlin, John W.	D	Copy
		Devlin, Thos. M.	D	Copy
	152	Janz, Edward	D	Copy
	152	O'Brien, Edward	D	Copy
		O'Brien, Terrence	D	Copy
		O'Brien, Raymond	D	Copy
		Murphy, Daniel	D	Copy
	154	Croppe, August	D	Copy
		Gavin, M. J.	D	Copy
		Breitsch, Charles	D	Copy
		Breitsch, Anton	R	Copy
		Gavin, Michael J.	D	Copy
	154	Breitsch, William		Copy
	156	Dann, Jacob	D	Copy
		Hartman, James		Copy
		Quinlish, Michael		Copy
	158			
	160	Katunske, Charles	D	Copy
		Katunske, Edward	D	Copy
		Katunski, Joseph	R	Copy
		Homann, Henry		Copy
		Walker, Henry		Copy
		Walker, Robert		Personal
Van Vorst St.,				
	237	McMahon, James	D	Copy
		Conway, Martin	D	Copy
		Logan, Martin	D	Copy
		Barth, Frederick	D	Copy
		Morton, Thos. C.		Person
		McMahon, John		Copy
Washington St.,	239	Cane, Thomas		Copy
Warren St.,	215			
	217	Blake, David		Personal
	217	Fitzpatrick, T. J.	D	Copy
		Schnackenberg, Geo. H.	R	Copy
		Andstedt, Philip		Copy
	219	Brennan, James T.		Person
		Graham, William J.	D	Personal
		Brennan, John J.	D	Person
		Brennan, George		
	221	Kempert, Herman	D	Copy
		Behrens, Henry		Copy
	222	Banderberg, James	D	Copy
		Lattimer, Wm. H.	R	Copy
		Bowyer, Oscar	R	Copy

Street No. Check	*Name*	*D or R*	*How Registered*
	Klock, Emile	R	Copy
	O'Brien, John		Copy
223	O'Neil, Wm. M.	D	Copy
223	Williams, Chas.		Personal
225	Lenahan, Thomas		Personal
225	Rich, Daniel	D	Copy
	Miller, Peter D.	R	Copy
	Rich, William		Copy
	McCauley, Henry		Copy
	Knox, Samuel		Copy
	McNell, John		Copy
227	Crudden, Francis	R	Personal
			Copy
	Mettler, James		Copy
229	McDermott, Thomas	D	Copy
	Ryan, Robert		Copy
	Power, Joseph		Copy
	Hurley, Michael		Copy
	Corrigan, Michael		Personal
	Connors, William		Personal
231	Corrigan, James P.	D	Person
			Copy
	McLoughlin, Chas.	R	Copy
234	Murphy, John F.	D	Copy
	Engstrong, John		Copy
236	McGarry, Frank		Personal
236	Simpson, James A.		Copy
236	Pehilan, John J.		Personal
236	Wandell, Geo.		Person
236	Wilson, Stephen	D	Copy
	Woodward, Robert	D	Copy
	White, H. W.	R	Copy
	Cassidy, John M.		Personal
237	Sternberg, Morris		Copy
237	Kelly, John		Personal
238	Davis, Louis	D	Personal
	Davis, Edward		Personal
238	Speropoulas, Theo.		Personal
239	Isham, Charles		Personal
	Hayes, William	D	Copy
240	Kulp, Nathan	D	Copy
241	Kinber, Samuel		Personal
241	Francis, Lewellyn		Personal
241	Graham, Henry C.		Personal
	Coyle, Frank H.		Copy
	Hennessy, Edward		Person
			Copy
	Lloyd, John	R	Copy
	Anderson, Peter		Copy
242	Matera, Vecent	D	Personal
	McGovern, Frank A.		Personal
243	Jackson, F. S.	D	Copy
	Gray, Wm. B.	D	Copy
	Hughes, T. D.	R	Copy
243	DeForge, Joseph		Copy
	Moore, Chas.		Copy
243	Kennedy, John		Personal
244			

	Street No. Check	Name	D or R	How Registered
	245	Cross, Geo. H.		Personal
		Corbett, Thomas		Personal
	246			
	247	Singer, William	R	Copy
	247	Driver, Thomas		Person
	247	Finley, J. H.		Personal
York St.,	101			
	103	Stahl, Lewis		Copy
		Stahle, Maurice		Copy
	105	Bateman, Benjamin	D	Copy
		Patton, E. C.	D	Copy
		Cloward, Alfred	D	Copy
		Richie, Robert		Person
		McGrath, Owen		Copy
	105	Lurvey, John A.		Personal
	107	William, Ira		Copy
		Brightell, John		Copy
	109	St. Clare, John		Copy
	109	Cook, William		
	109	Flynn, Nicholas A.	D	Copy
		Pender, Louis	D	Copy
		Slavin, Jas.	D	Copy
	109	Sommers, William J.		Personal
Added		Murphy, Joseph		Personal
	113			
	115			
	117			
	119	Mason, Edward	R	Copy
		Anness, William		Copy
	121	Kennedy, James		Personal
	121	Goldstein, W.	D	Copy
	121	Hobert, Wm. H.		Copy
	123	Fallon, James J.		Copy
	125	Moran, Edward		Person
	125	Clancey, Michael		Copy
	127			
	129	Weigel, Frank		Copy
	131	Brown, David		Copy
	133	Collette, Frank		Copy
		Queen, William		Personal
	135	Hughes, James		Copy
Vacant lots	159			
Vacant lots	161	Daley, George		Personal
	163	Brennan, Chas.	D	Copy
	163	McHugh, John B.	D	Copy
	163	McCarthy, Patrick J.	D	Copy
	163	McHugh, Charles	D	Copy
	163	McHugh, William	D	Copy
	163	Fallon, John	D	Copy
	163	Feehan, Patrick	D	Personal
	163	Sullivan, James B.	D	Copy
	163½	Puleston, Chas.	R	Copy
	165	Drun, Robert		Copy
	167	Conniff, Michael		Copy
		Kinsey, William		Copy
		Dennery, Thomas	D	Copy

	Street No. Check	Name	D or R	How Registered
		Benson, John	D	Copy
		Griffin, Michael	D	Copy
		Dennery, John	D	Copy
		Griffin, James C.	D	Copy
		Downs, John		Copy
		McGinnis, James		Person
	171	Feinstein, Samuel		Personal
		Feinstein, Joseph R.		Copy
	171½	Donnelon, John H.	D	Copy
Added	171	Lewis, Edwin J. (Transfer from Court)		
	173	Johnson, George W.		Personal
	175	Kerrigan, Joseph		Personal
	177	Nelson, A.	R	Copy

Total vote polled September 26, 1911:

Democrat	164
Republican	35
Total	199

BOARD OF REGISTRY AND ELECTION,

JAMES J. REILLY,
Judge.

JAMES S. NIXON,
Inspector.

JOHN F. BLANEY,
Clerk.

WILLIAM C. PATTERSON,
Clerk.

PRIMARY REGISTRY CERTIFICATE.

The undersigned, constituting the BOARD OF REGISTRY AND ELECTION for the SEVENTH ELECTION DISTRICT, FIRST WARD, Jersey City, County of Hudson, HEREBY CERTIFY that the foregoing is a correct registry of the names of all persons entitled to the right of suffrage in said District at the Primary Election to be held therein on the twenty-sixth day of September, 1911.

Three hundred and seventy-eight.
(Write the number in words.)
378.
(Figures.)

JAMES J. REILLY, Judge.
Residence 166 Grand St.

JAMES S. NIXON, Inspector.
Residence 150 Sussex St.

WILLIAM C. PATTERSON, Clerk.
Residence 143 Grand St., Jersey City.

JOHN F. BLANEY, Clerk.
Residence 108 Sussex St.

EXHIBIT S-1.

FORM 1.

SEVENTH DISTRICT FIRST WARD

OFFICIAL RETURNS

of

PRIMARY ELECTION

Jersey City, N. J., Sept. 26th, 1911

Filed in the

City Clerk's Office

M. I. FAGEN,

City Clerk.

FORM NO. 1.

OFFICIAL RETURNS PRIMARY ELECTION.

Election Board will fill out and sign returns No. 1 and 2 and bring them in envelope to City Clerk's office with ballot boxes at close of count.

DO NOT PUT THIS IN BALLOT BOX.

Statement of the result of a primary election held in the Seventh Election District, First Ward, of Jersey City, in the County of Hudson and State of New Jersey, on the 26th day of September, 1911:

Total number of votes cast one hundred and ninety-nine (199).

The total number of Democratic ballots cast was one hundred and sixty-four (164).

The total number of Republican ballots cast was thirty-five (35).

The total number of Democratic ballots rejected was none.

The total number of Republican ballots rejected was none.

FOR MEMBERS OF GENERAL ASSEMBLY.

(Write in full number of votes.) (In figures.)

MAGNUS BREDENBEK received thirty-nine (39) votes.

GEORGE F. BRENSINGER received ninety-three (93) votes.

EUGENE CICCARELLI received fifty (50) votes.

CORNELIUS FORD received one hundred (100) votes.

DANIEL J. GRIFFIN received one hundred and sixty-one (161) votes.

JOHN N. INTROCASO received thirty-eight (38) votes.

PETE H. JAMES received forty-one (41) votes.

MICHAEL J. LAVIN received eighty-eight (88) votes.

HENRY W. MOSER received fifty-three (53) votes.

JAMES J. McATEER received forty-four (44) votes.

CLARENCE J. McDONALD received fifty-four (54) votes.

JAMES J. McGRATH received eighty (80) votes.

ALEXANDER SIMPSON received fifty-five (55) votes.

JOHN H. VOLLERS received forty-three (43) votes.

FRANK X. WHEELIHAN received forty-five (45) votes.

THOMAS F. A. GRIFFIN received eighty-six (86) votes.

CHARLES E. S. SIMPSON received sixty-five (65) votes.

CHARLES M. EGAN received eighty-two (82) votes.

THOMAS F. MARTIN received one hundred and fourteen (114) votes.

JAMES C. AGNEW received forty-seven (47) votes.

MAX DAVIS received sixty (60) votes.

JOSEPH M. BRANEGAN received ninety-eight (98) votes.

THOMAS M. DONNELLY received forty-four (44) votes.

ADOLPH C. CARSTEN received thirty-three (33) votes.

PHILIP STEUERWALD received sixty (60) votes.

WILLIAM S. DAVIDSON received forty-two (42) votes.

BENJAMIN HEYMAN received sixty-three (63) votes.

FOR SHERIFF.

GEORGE B. BERGKAMP received two (2) votes.

ALEXANDER J. CLEMENTS received one hundred and forty-two (142) votes.

EMIL GROTH received three (3) votes.

ADOLPH LANKERING received seven (7) votes.

NICHOLAS P. WEDIN received eight (8) votes.

FOR SURROGATE.

JOHN P. EGAN received one hundred and eighteen (118) votes.

FOR CORONER.

GUSTAV EBERHARDT received thirty-two (32) votes.

EDWARD C. ZEIGER received ninety-two (92) votes.

FOR MAYOR.

ROBERT A. AMBREY received one (1) vote.

ANTHONY HAUCK received no (0) votes.

JAMES F. O'MELIA received three (3) votes.

MARK A. SULLIVAN received sixty-four (64) votes.

H. OTTO WITTPEN received ninety-three (93) votes.

FOR PRESIDENT OF BOARD OF ALDERMEN.

JOHN J. CUNNINGHAM received fifty-nine (59) votes.

ERNEST J. HEPPENHEIMER received forty-four (44) votes.

JAMES E. KELLY received forty-four (44) votes.

DENNIE MULLINS received five (5) votes.

FOR STREET AND WATER COMMISSIONERS.

GEORGE J. BRACKNER received fifty-seven (57) votes.

JOHN E. CARLOCK received seventy (70) votes.

JOHN H. FARDELMANN received five (5) votes.

JOSEPH W. GRIFFIN received seventy (70) votes.

FRANK HAGUE received forty-five (45) votes.

JOHN PROUT received thirty-four (34) votes.

HARRY HELLER received fourteen (14) votes.

FOR ALDERMEN.

MICHAEL J. CALLAHAN received one hundred and forty-four (144) votes.

FOR CONSTABLE.

JOHN H. MASKER received one hundred and forty five (145) votes.

FOR JUSTICE OF THE PEACE.

FOR MEMBERS OF COUNTY COMMITTEE.

THOMAS C. NORTON received one hundred and fifty (150) votes.

FOR MEMBERS OF GENERAL ASSEMBLY.

JOHN H. COOPER received eighteen (18) votes.

A. ORESTES CICCARELLI received eleven (11) votes.

HENRY F. HAESE received seventeen (17) votes.

GEORGE H. JONES received eighteen (18) votes.

HARRY I. LEFFERTS received fifteen (15) votes.

WALTER E. MORRIS received eighteen (18) votes.

GEORGE C. MOHR received fourteen (14) votes.

JOHN E. McARTHUR received twenty (20) votes.

MALCOLM ISBISTER received ten (10) votes.

JOHN H. PAUL received nineteen (19) votes.

MAX L. SOLINSKY received twelve (12) votes.

FRED W. STELTMANN received thirteen (13) votes.

JOHN J. COYLE received thirteen (13) votes.

WILLIAM D. IVES received twelve (12) votes.

JAMES J. MULLIGAN received sixteen (16) votes.

EDWARD A. RANSOM, JR., received thirteen (13) votes.

MAS LEVY received eleven (11) votes.

CHARLES C. JAMES received twelve (12) votes.

JOHN D. PIERSON received fourteen (14) votes.

WILLIAM C. ASPER received eleven (11) votes.

WILLIAM BIEMER, JR., received nine (9) votes.

ADAM J. RUBY received eight (8) votes.

OTTO C. KLUSSMANN received ten (10) votes.

FRANK KOCH received ten (10) votes.

FOR SHERIFF

DANIEL F. DWYER received four (4) votes.

MARK M. FAGAN received twenty-three (23) votes.

FRED J. STUHR received four (4) votes.

FOR SURROGATE.

RICHARD DOHERTY received seven (7) votes.

JOHN F. GARDNER received ten (10) votes.

GUSTAV A. FINGSTEN received eleven (11) votes.

FOR CORONER.

FRANK A. CAPOANO received eight (8) votes.

HENRY LEBER received nineteen (19) votes.

FOR MAYOR.

JOHN H. HOPKEN received two (2) votes.

ANDREW KNOX received fourteen (14) votes.

FERDINAND N. SAUER received fifteen (15) votes.

FOR PRESIDENT OF BOARD OF ALDERMEN.

JAMES EDWARD POPE received eighteen (18) votes.

GEORGE C. WARREN, Jr., received eleven (11) votes.

FOR STREET AND WATER COMMISSIONERS.

JAMES ALLARDICE received thirteen (13) votes.

THEODORE L. BIERCK received eighteen (18) votes.

HENRY J. HILL received nine (9) votes.

THEODORE MENDLES received seven (7) votes.

JOSEPH P. O'CONNOR received sixteen (16) votes.

FOR ALDERMEN.

MARCELL NIDOLSKY received twenty-five (25) votes.

FOR CONSTABLE.

WILLIAM F. FALLON received twenty-seven (27) votes.

FOR JUSTICE OF THE PEACE.

FOR MEMBERS OF COUNTY COMMITTEE.

EMIL FISCHER received twenty-nine (29) votes.

WILLIAM A. LATTIMER received twenty-nine (29) votes.

WE CERTIFY the foregoing to be a true and correct statement of the results of the primary election held in such district at the time above stated; that the same truly and correctly exhibits the entire number of votes cast for each political party of such election, the whole number of ballots rejected and the number of said ballots rejected belonging to each party respectively, also the number of votes received by any person to be a candidate of any party for any office named on any ballot or ballots cast at such election.

IN WITNESS WHEREOF we have hereunto set our hands this 26th day of September, One thousand nine hundred and eleven.

JAMES J. REILLY,

JAMES S. NIXON,

Inspector.

JOHN F. BLANEY,

Clerk.

WILLIAM C. PATTERSON,

Board of Registry and Election.

New Jersey Court of Errors and Appeals.

THE STATE, *Defendant-in-Error.* *vs.* JAMES S. NIXON, *Plaintiff-in-Error.*	In Error.

BRIEF OF PLAINTIFF-IN-ERROR.

This writ of error brings up a judgment of the Supreme Court, affirming a conviction of the plaintiff in Error upon an indictment, on which indictment he, with three others was convicted for violation of the election law. The plaintiff-in-Error was sentenced to one year's imprisonment; the other defendants were allowed to go under suspension of sentence. The grounds of the application for the reversal of the judgment of the Supreme Court deal with:

1. The indictment;

2. The refusal of the Court to order a severance;

3. That the Court incorrectly instructed the jury.

Argument.

POINT I.

The indictment (pp. 4-7, P. C.) does not charge a crime. The substance of the charge is:

> "Did not return the correct number of votes received by each person as a candidate for nomination for office in the following particulars, to wit, that the said defendants did return and certify that Alexander J. Clements for the office of Sheriiff of the County of Hudson, &c."

In the opinion of the Supreme Court it is said that the 191st section of the General Election Law provides that:

> "If any member of any district board of registry and election shall at any election wilfully and designedly make or sign any false or untrue statement or certificate of the result of any such election, he shall be deemed and taken to be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding Five hundred Dollars or imprisonment at hard labor for a term not exceeding two years, or both. The indictment charges the offense struck at by Section 3 of the Supplement and Section 5 by engrafting the 191st section of the General Law into the Supplement, makes the offense criminal."

The contention of the plaintiff-in-error is that this indictment does not specifically set forth such offense; that to colloquially say "the defendant made a false return" does not charge that he "wilfully and designedly did make or sign a false or untrue statement or certificate of the result of the said election." There was a general verdict of "guilty" on both counts, and the plaintiff-in-error contends that he was not sufficiently apprized by this indictment of the offense against him. A statutory offense should be charged in the words of the statute, although it may be charged without

particularly stating the facts and circumstances, if it is thereby described without uncertainty or ambiguity, or there may be a particular statement of fact that will bring the defendant within its operation. The plaintiff-in-error contends that neither of these things was done. The offense pointed out by the Supreme Court is "An act wilfully and designedly done." The offense described in the indictment is "making a false return." So in *The State v. Stimpson,* 4 Zab. 9, it is said:

> "The general rule is that any indictment for misdemeanor is created by statute and is sufficient to charge the offense in the words of the statute. But the rule, though general, admits of many exceptions. In all cases the offense must be set forth with clearness and all necessary certainty to apprize the party accused of the offense of which he stands charged. 'It does not seem to be always sufficient to pursue the very words of the statute, unless by so doing you fully and directly and expressly allege the fact that the doing or not doing whereof the offense consists without the least uncertainty or ambiguity.' "

Although the objection to the indictment may seem captious, yet the indictment simply recited the act of the defendant without reciting that it was wilfully and designedly done. The defendant simply went to trial on an allegation of a false return, and, upon this being proven, the criminal intent of the wilfulness and designedness were both absent from the indictment

In the *State v. Bahtrolomew,* 40 Vr. 160, it is said:

> "It is sufficient to charge in the language of the statute, when that clearly apprizes the defendant of the crime charged."

But the indictment in this case does not use the language of the statute which the Supreme Court points out, but states in a colloquial way that he "made a false return" without alleging that he did so wilfully and designedly. This does not inform him of the alleged crime.

POINT II.

Denial of separate trial plaintiff contends was error. (P. C. pp. 12-24,)

State v. Roselle, 33 Vr. 216, is authority for the proposition that it is not error to grant a separate trial. It is not authority for the statement that there can not be an abusive discretion in denying a severance.

Mr. Justice Story in *U. S. v. Marchant and Colson,* which is reported in 25 U. S. Supreme Court Reports, 6 Lawyers' Ed. 700, speaking of severance, says:

> "In our opinion it is a matter of sound discretion to be exercised by the Court with all due regard and tenderness to prisoners according to the known humanity of our criminal jurisprudence."

The contention of Nixon is that the refusal to grant a severance was abuse of discretion in law. The case in which Mr. Justice Story wrote the opinion is cited in *Ball v. United States,* 163 U. S. 662, and the *Ball* case is cited in *Heike v. United States,* 227 U. S., 131 (P. 12-24, p. c.).

The four defendants who were indicted together were placed for trial together. The plaintiff-in-error applied for a severance. In *State v. Brauneis* in the Supreme Court of Errors in Connecticut, 79 At. 70, it was held:

> "While whether a separate trial shall be allowed parties jointly indicted is within the discretion of the court where, from the nature of the case, it appears that a joint trial will probably be prejudicial to the rights of one or more of the parties, a separate trial shall be granted when properly requested."

On the application for a severance the Trial Judge said that the application for a severance was resolved against the defendant by the case of

Roesel v. State, in 38 Vroom. The case of *Roesel v. State* decides that it is proper for a court to try defendants separately; does not declare that it is proper in all instances to try the defendants together, and that in no case should a severance be allowed. While it is true that it is a discretionary matter, yet it is a discretionary matter to be exercised in doubtful cases in favor of the defendant.

Also in this State the cases of *State v. Overton,* 2 Law, 435, and *State v. Baum,* 64 Law, 410, are cases where the power to grant severance was exercised. It is, of course, the law that severance is within the discretion of the trial court, but a reading of the record shows that the interests of the four defendants in this case were so conflicting that a denial of the severance worked manifest wrong and injury. These defendants were jointly indicted for making a false return in calculating votes. Naturally each of them put the onus upon the other three. It was a matter in which their interests were conflicting: one might have been innocent; and three guilty; three might have been innocent and one guilty, and to force them to trial together was to compel them to be witnesses against each other. An application was made for a severance, and a reading of the record shows that proof was taken on a severance. The reading of the testimony shows how the interests of these defendants conflicted. As a matter of argument—of course, not in the printed case,—one of the counsel for the defense in summing up told the jury that "of course there was fraud and corruption at this election." And after such a summing-up the jury convicted all four of the defendants—and the Judge allowed three to go under suspension of sentence. Under these circumstances the defendant did not receive a fair and impartial trial, as he was forced

into a trial in company with three men whose interests were directly antagonistic to his own. From a reading of the testimony of Nixon and John F. Blaney, it will be seen that the evidence of one of them must have been wrong: Nixon testified that he correctly called off the votes; Blaney testified that he correctly kept the tally; the tally was wrong, and was the evidence of the alleged fraud. If Nixon was testifying truthfully, Blaney was not; and if Blaney was testifying truthfully, Nixon was not. They were put directly in antagonism to each other, and during the trial Blaney became excited (p. 91, l. 33) and being asked, "Does the tally sheet correctly indicate the names as he called them off?" answered, "Yes, so help me God." Nixon testified (p. 72, l. 20), that he called off the ballots correctly. If he called the ballots correctly, and Blaney tallied them correctly, the results that happened could not have happened, therefore the jury must have known that some one was not telling the truth, and it was two defendants who were thus placed together facing each other, each fighting for his liberty before the same jury, and each attacking the other. Manifestly this was not a situation in which the defendants should have been forced to trial together, and if the remarks of Mr. Justice Story mean anything, they mean that in such a case there should have been a severance granted.

The plaintiff in error therefore contends that although it is a matter of discretion with the trial court whether to order a severance or not, yet, in certain cases, where the interest conflict, it is a matter of right. *State v. Brauneis,* 79 Atl., 70 and

POINT III.

Instructions.

The court charged the jury, (on page 154):

> "In other words, the officers of this board did not pursue the technical legal requirement in the conduct of the canvass of the vote at the primary."

This was for the jury to find under *State v. Diamond,* 86 Atl., p. 57. In the Supreme Court it is said that this conduct was harmless because the court pointed out to the jury that they were not concerned with this negligence of the defendant. But was it harmless, in view of the fact that the court, on p. 155, said:

> "Now the thing for you to determine is, have these defendants or any one or more of them violated the law in respect to the matters charged in the indictment. If so, such person or persons are guilty of criminal conduct as charged in the indictment" (p. 155, p. c.).

This was clearly an instruction to find the defendants guilty whether they had wilfully and designedly violated the statute, or violated it by mistake.

Further on p. 155, p. c., the court says:

> "You are to determine then whether or not there was a falsity in the return. Can there be any doubt of that if all these other facts are as contended for by the State?"

limiting the determination of the jury not to the wilfulness or designedness of the false return, but whether or not as a fact it was a false return.

And then the relation of the defendant Nixon in connection with what has been decided before on p. 160, the court said:

> "If he read them falsely and credited votes to persons not entitled to them whom he knew were not entitled to them, he did it knowingly, wilfully, and fraudulently."

This was purely for the jury to say, not for the court to say what the action of his calling them out was. He might have called them out incorrectly, which would have been falsely, and yet, if, after that, he signed the return, believing that the mistake had been corrected, he would not have "wilfully and designedly" signed a false return. It was in these matters that the defendant suffered injury by the charge of the court. The case comes up under certificate, and therefore it was not necessary that specific exception should have been taken, under the case of *State v. Hendrick*, 41 Vr. 441. Although, under *State v .Hummer*, it was permissible for the court to comment on the evidence and to give the jury the benefit of his views, and his long experience, yet he was not permitted under the law laid down in *State v. Diamond, supra,* to determine facts which were for the jury to determine.

The plaintiff-in-error therefore submits that under the charge of the court there was removed from the consideration of the jury matters of fact which it was within their power to determine, and that for the errors in the charge in this respect the conviction should be reversed.

Respectfully submitted,

ALEX. SIMPSON,
Attorney of Plaintiff-in-Error.

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New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* JAMES S. NIXON, *Plaintiff-in-Error.*	In Error, etc.

BRIEF FOR THE STATE.

Facts.

The plaintiff-in-error was tried on the first day of November, Nineteen hundred and eleven, in the Hudson Quarter Sessions on an indictment charging him with the violation of the election law, and being found guilty, was sentenced to be confined in the County Penitentiary for a term of one year, and to pay a fine of two hundred and fifty dollars, together with the costs of the prosecution.

Briefly stated, the indictment charges that James S. Nixon, the defendant, (now plaintiff-in-error), together with three other persons, (all of them being and constituting a board of registry and election in a certain election district in the City of Jersey City), on the twenty-sixth day of September, Nineteen hundred and eleven, as such board of registry and election, did wilfully violate an act entitled "An Act to regulate elections," etc., in that they did make a false, fraudulent and corrupt return of the canvas and count of the votes cast at the said primary election, and that they did not return the correct number of

votes received by each person as a candidate for nomination for office. (The indictment then setting forth the particulars in which the said return was false).

The second count of the indictment charges that this defendant, together with the other three persons, being and constituting the board of registry and election in a certain election district in the City of Jersey City, and acting as such board of registry and election, and conducting the primary election held on the twenty-sixth day of September, Nineteen hundred and eleven at the said City of Jersey City, did then and there commit wilful fraud in the discharge of their duties as such board of registry and election, by then and there falsely counting the ballots cast at the said primary election, and unlawfully and fraudulently making a false count of divers ballots, and falsely making a return in accord with said false count, well knowing the said count and the said return not to be true and lawful.

The writ of error in this cause brings up for review the entire record of the proceedings had upon the trial, with a specification of causes for reversal. There is no bill of exceptions, or assignments of error.

The specifications of causes for reversal will be taken up in their order.

First specification of cause for reversal; that the court refused to quash the indictment when moved by the defendant. This motion was made on the following grounds:

1. That the indictment does not charge any crime.

2. That the indictment states that these men made a false return, but does not state that that return was in writing.

3. That it does not state that this was the return mentioned by the statute.

4. That it does not state to whom the return was made.

5. That there is no obligation under the law to make any return.

6. That the court is without jurisdiction, because no valid indictment is before it, the indictment not having been found by a grand jury summoned, organized and sworn as provided by law, by the sheriff of the county, (Elisor Grand Jury).

By reference to Section 15 of "An Act to regulate elections". Pamphlet Laws 1913, P. 603, it will be seen that at the close of a primary election, the board shall canvas and count the votes cast and "make up and sign a statement of the result of such election, which statement they shall, as soon as may be, transmit to the municipal clerk," etc. This statement is usually called a "return"; in this particular case the printed paper itself was designated "official return", as will be seen by Exhibit S-1, in the Printed Case, P. 181-2. Under the law, the blank for this return is furnished by the municipal clerk, and both on its face and on the endorsement is called a "return," Case, P. 180-1. However, the answer to this objection is best made in the language of the Supreme Court in this case as follows: "The supplement to the General Election Law, passed October 28th, 1907, (Section 3) provides that the board of registry and election in each election district of every county in this State, shall include the result of such primary election * * * in the statement which they are now required by law to transmit to the municipal clerk, and the said municipal clerk shall forthwith transmit the result to the county clerk, who shall canvas said returns, etc. From this provision it is evident that the statement of the result of the election is a return of the count of the votes." Printed Case, P. 4-A, L. 6-18.

If what in the indictment is called a return is clearly described, and this return shows the result of the primary election, together with the certificate of the board thereto, then, of course, it would be absurd to argue that the indictment does not specifically allege it to have been in writing. The only statement or return required by the statute is the one giving the result of the count and canvas of the votes at the close of the election, so that when the indictment charges these defendants with wilfully violating the election law in that they did make a false, fraudulent and corrupt return of the canvas and count of the votes cast at the primary election, specifying particulars and alleging "that the said defendants did return and certify" (then giving the particulars in which the return and certificate are alleged to be false, fraudulent and corrupt), the objections raised on the first, second, third, fourth and fifth motions to quash seem to be totally without merit.

The question raised by the objection to the jurisdiction of the court in this instance has been settled in this Court, with regard to the same (Elisor) Grand Jury, and the manner of its selection, etc. in *State v. Zeller,* 54 Vroom 666.

The second specification of cause for reversal relates to the refusal of the court to grant a severance for the trial of the said defendant, Nixon, when moved thereto.

In the exercise of the court's discretion, this motion was properly denied. There was no sufficient reason given or cause shown for the granting of such a motion. This motion for severance was not made until the State had moved the case, and neither at the time of the motion nor at any time during the trial did it appear that this defendant would be in any way prejudiced by a joint trial, or that he had any separate and substantial defense, of which he was deprived by

being tried jointly with his co-defendants. If this return of the count and canvas was a false return, and if it was made by all these defendants, as of course, in law it was obliged to be made by all of them, it was meet and proper, in the absence of some well-founded reason to the contrary, that there should be a joint trial of all the members of this board. This motion for severance being addressed to the discretion of the court, to avail the defendant as a ground for reversing the judgment, it must appear that the defendant has suffered manifest wrong and injury as the result of its denial.

The third specification of cause for reversal relates to the refusal of the court to direct an acquittal of the defendant, Nixon. The grounds assigned are

1. That there is a fatal variance between the indictment and the proof.

2. That no crime has been proved.

In this motion, though one of the grounds assigned for it is a "fatal variance between the indictment and the proof," the specific departure of the proof from the charge is nowhere in the record specified, and if it at all exists, it has thus far eluded careful scrutiny.

This motion also is addressed to the discretion of the court, and on review can avail the plaintiff-in-error as aground for reversal only, if, in the exercise of this discretion, the trial court has worked manifest wrong and injury to the defendant. In *State v. Jaggers,* 42 Vroom 282 the Court of Errors and Appeals has held that "the provision for review of a denial of a motion to discharge, or to direct a verdict of 'not guilty', which is addressed to the discretion of the court, brings in review only the question whether, upon the evidence as it stood when the motion was made, there was a case for the jury." A brief reference to the salient facts in this case will speedily dis-

pose of any claim to merit on behalf of this specification of cause for reversal, The statement or return certified to by this defendant and his colleagues on the board of registry and election was established beyond any question by the evidence, but in addition thereto, on Page 68 of the Printed Case, L. 37-40 the following admission appears by counsel for this particular defendant, the plaintiff-in-error:

> "Mr. Simpson: I admit that James S. Nixon, one of the defendants, signed this return, 'S-1', and that he acted as an inspector on the board of registry and election of the 7th District of the 1st Ward, on the twenty-sixth day of September."

This was at the close of the State's case. Sworn in his own behalf, the plaintiff-in-error admitted the return and certificate. This return showed the following alleged result:

FIRST.

For Sheriff,

Alexander J. Clements, 142 votes.

Nicholas P. Wedin, 8 votes (Printed Case, P 183).

SECOND.

For Mayor,

Mark A. Sulivan, 64 votes.

H. Otto Wittpenn, 93 votes (Printed Case, P. 184).

Whereas, the undisputed count and canvas of the votes in these particulars, as it appeared before the court and jury, show:

FIRST.

For Sheriff,

Alexander J. Clements, 72 votes.

Nicholas P. Wedin, 39 votes (Printed Case, P. 65).

SECOND.

For Mayor,

Mark A. Sullivan, 105 votes.

H. Otto Wittpenn, 48 votes (Printed Case, P. 65).

The fourth cause for reversal relates to a part of the Court's charge. The record shows that the Democratic members of the board had charge of the Democratic box, while the Republican members had charge of the Republican box, (Case, P. 84, L. 13; Case, P. 100, L. 7). The court in this part of the charge was calling attention to that testimony.

The law stated therein is found in Section 87 of the Election Law, (Comp. Stat. P. 2107) and also Section 13 of the supplement of 1903 (Comp. Stat. P. 2170). It will also be seen that in the part of the charge immediately following the portion excepted to, the court was calling attention to the methods of the defendant and the other members of the board in the handling of the ballots and the counting thereof. And then he said "In other words, the officers of this board did not pursue the technical legal requirements in the conduct of the canvas of the vote at the primary. There was, undoubtedly, in this a violation of the law you have no direct concern with * * * for the indictment you are trying does not deal with that situation; the indictment does not charge a violation of the law in this respect."

The fifth cause for reversal also refers to a part of the court's charge. This excerpt does not accurately state the court's remarks. It will be seen that the word "followed" is inserted therein, whereas in the charge, the word "violated" was used. This gives an entirely different meaning to the language. The exact language of the court excepted to is "Now the thing for you to determine is have these defendants or any one or

more of them violated the law in respect to the matter charged in the indictment. If so, such person or persons are guilty of criminal conduct as charged in the indictment." The record shows that the defendant called off the names from the ballots (Case, P. 71, L. 1) and the tally sheet correctly indicated the votes as he called them off, (Case, P. 91, L. 30), and as between that tally sheet and the ballots actually in the box there was a considerable discrepancy as will be seen from the testimony,)Case, P. 65, L. 3). From this language of the judge's charge and the testimony as stated above, it is logical to assume that, weighing the facts and giving heed to the court's charge to place the responsibility where it belonged, the jury brought in a verdict of guilty against that one of the four defendants whose duty it was at the primary to read the ballots, and which reading, it was subsequently disclosed, bore a wide discrepancy to the ballots as actually cast. In view of this verdict, it cannot be said that this part of the charge worked manifest wrong or injury to any of the defendants.

The sixth and seventh causes for reversal will be considered together. The sixth is "that incompetent and irrelevant evidence was submitted over the objection of the defendant" and the seventh is "that competent and relevant evidence was excluded when offered by the defendant." These causes should not be considered by this court, because they are so general. It is practically impossible to ascertain what matters they cover. It was not the intention of the legislature to permit defendants to file specifications of causes of so general a character. These specifications should be as specific in setting out the alleged erroneous ruling by the trial court as is necessary in an assignment of error. There is nothing certain and definite in these causes and, therefore, the plaintiff-in-error has no standing in respect thereof.

The eighth cause for reversal reads as follows: "That the court erroneously instructed the jury." There is no way of determining the precise point the plaintiff-in-error has in mind in this objection to the charge of the trial court, and its general character precludes its consideration by this court.

The judgment should be affirmed.

ROBERT S. HUDSPETH,
Prosecutor of the Pleas,
Attorney of Defendant-in-error.

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