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Notice of Appeal.

(Filed January 17, 1918.)

To

John Milton and John Bentley, Esqs.,
Attorneys for Respondent.

Sirs:

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Take notice that the appellant, Patrick Crane,
appeals to the Court of Errors and Appeals in
the last resort and all cases in New Jersey, from
the whole of the judgment entered in this cause.

ZIEGENER & LANE,
Attorneys of Appellant.

HARRY LANE,
Of Counsel.

(Service duly acknowledged January 14, 1918.)

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Grounds of Appeal.

(Filed February 7th, 1918.)

COURT OF ERRORS AND APPEALS OF THE
STATE OF NEW JERSEY.

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PATRICK CRANE,
Prosecutor-below
Appellant,

v.

THE MAYOR AND ALDERMEN OF
JERSEY CITY, *et al.*,
Respondents-below
Respondents.

On Certiorari.

On Appeal
from the Su-
preme Court.

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The following are the grounds upon which the appellant appeals to the Court of Errors and Appeals of the State of New Jersey, in the last resort in all cases, from the judgment of the New Jersey Supreme Court:

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1. That the Supreme Court erred in dismissing the writ of certiorari and affirming the proceedings brought up under the writ.

2. That the Supreme Court erred in not setting aside the dismissal of the prosecutor from the Police Department of Jersey City.

3. That the Supreme Court erred in not holding that the prosecutor was dismissed from the Police Department of Jersey City, without first receiving a fair trial.

4. That the Supreme Court erred in not holding that the Director of Public Safety had no

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power of authority to try the prosecutor and to dismiss him, from the Police Department of Jersey City.

5. That the Supreme Court erred in not holding that the prosecutor was dismissed without receiving a fair trial by the full Board of City Commissioners, as he was entitled to. 10

6. That the Supreme Court erred in not holding that the prosecutor was dismissed from the Police Department of Jersey City without sufficient legal evidence to justify said dismissal.

7. That the Supreme Court erred in not holding that the prosecutor was dismissed from the Police Department of Jersey City without having evidence produced against him upon which he could be found guilty of any of the charges filed against him. 20

8. That the Supreme Court erred in not holding that the Director of Public Safety conducted the said trial in an illegal manner.

9. That the Supreme Court erred in not holding that the Director of Public Safety illegally permitted at said trial, a report filed by Thomas J. Lynch on October 14th, 1915, to be read into the record, which report had no binding force or effect on the prosecutor and was illegally admitted. 30

10. That the Supreme Court erred in not holding that the said Director of Public Safety illegally gave testimony on the record.

11. That the Supreme Court erred in not holding that the prosecutor did not receive a fair and

legal opportunity to make proper defense at the said trial, as he was entitled to have done under the laws and statutes of this State.

10 12. That the Supreme Court erred in not holding that the Director of Public Safety was prejudiced and the prosecutor could not receive before the Director of Public Safety, a fair and impartial trial as he was entitled to receive.

ZIEGENER & LANE,
Attorneys for Appellant.

(Service duly acknowledged February 7th, 1918.)

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Opinion of Supreme Court.

(Filed February 8th, 1917.)

Submitted June Term, 1916.

On Certiorari.

Before—Justices SWAYZE, MINTURN and KALISCH.

For the Prosecutor, HARRY LANE.

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For the Respondents, JOHN MILTON.

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

On the 21st day of October, 1915, the prosecutor, who was a member of the Jersey City Police Department, was dismissed from that body. The ground of his dismissal was conduct unbecoming an officer. The specific charges made against him were that on the 13th day of October, 1915, while on duty at the Jewett Avenue stable, he was ordered by Lieutenant Lynch, his superior officer, to leave the stable door open, whereupon the prosecutor used vile language, assaulted and attempted to shoot Lynch; that on the 14th day of October, 1915, the prosecutor, when ordered by Lieutenant Lynch to make out a report regarding his [the prosecutor's] conduct the day previous, used vile and threatening language to the lieutenant and refused to make out the report, and that such conduct was in violation of Rule 25, Section 34 of the Manual of the Jersey City Police Force. The prosecutor, on the 21st day of October, 1915, was put upon trial before Frank Hague, Director of Department of Public Safety. The accused appeared with counsel and objected to being tried by the director, on two grounds: first, that the director was disqualified

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to try the cause because in a letter written by that official to the chief of police of Jersey City, he had expressed an unfavorable opinion on the conduct of the prosecutor as a police officer; secondly, that the director was without jurisdiction to try the prosecutor sitting alone, in that the prosecutor was entitled to a trial by the
10 entire Board of City Commissioners.

These objections were overruled by the director and the trial proceeded. Witnesses were sworn and examined and cross examined, the accused officer being a witness in his own behalf.

The letter which is made the basis of the prosecutor's claim that the director was disqualified to try the prosecutor upon the charges preferred against him, was embodied in an order made by the director on the 21st day of
20 February, 1915, and which order is designated as "General Order No. 21." A part of the letter which the prosecutor claims disqualified the director to sit in judgment, reads as follows: "This man is constantly reporting sick, and I am convinced that his ailments are only imaginary, with the purpose of shirking his duties. I have stated before in a communication to you that I am determined to drive such men as these out of the department and I only regret that I
30 have not sufficient evidence to place Crane [the prosecutor] before the Commissioners on charges, and recommend his dismissal."

Reading the entire letter it becomes plain that the director was attempting to eradicate an evil that had grown up in the Police Department, namely, for some officers to feign illness, be relieved from duty on account of illness, and draw full pay. In order to stop this nefarious

practice the director used plain and emphatic language. But it is an idle thought to entertain for a single moment that the director was actuated by personal malice against the men in his department generally or against the prosecutor, in particular. The director was manifestly actuated by a proper spirit of public service; and it was his duty to protect the public against imposition and to enforce proper and strict discipline in the department of which he was the head and for the proper conduct of which he was answerable to the public.

10

It is further to be observed that what was said, by the director in this letter, written some six months prior to the happening of the event, which gave rise to the present charges, has no connection whatever with the nature of the charges upon which the prosecutor was tried.

20

The fact that a superior officer in whom the law has vested the authority to try his subordinates upon charges preferred against them has on previous occasions reprimanded or disciplined them for delinquencies in the performance of their duties does not *per se*, in the absence of a statutory mandate forbidding it, disqualify such superior officer from trying them on charges duly preferred against them.

30

As we are unable to discover any evidence of bias or oppressive conduct on the part of the director, in the trial of the prosecutor, we are forced to the conclusion that he was not disqualified to inquire into and determine the truth of the charges made against the prosecutor.

As to the point made by counsel for the prosecutor, that the director sitting alone was without jurisdiction to try the accused, in that the

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statute contemplates a trial by the entire Board of City Commissioners, we find to be without merit.

10 Prior to the adoption of the Act of 1915 (P. L. 1915, p. 494) amending Section Four of the Act of 1913 (P. L. 1913, p. 836) the law required the entire Board to sit in a case like the present. *Herbert v. Atlantic City*, 87 N. J. L., 98. In that case the prosecutor was a member of the Police Department of Atlantic City and was tried by the entire Board of Commissioners, sitting as a special tribunal for that purpose. The authority of the Board to try the case was objected to by the prosecutor upon the ground that by an ordinance previously adopted by the Board, the power attempted to be exercised had been transferred by the Board to a single commissioner, the director of the Department of Public Safety.

20 This Court held that since the Legislature vested the judicial powers in the Board of Commissioners, the latter could not lawfully divest itself of such powers and transfer them to the director of public safety.

30 Evidently, in view of the ruling of this Court in that case, the Legislature amended Section Four of the Act of 1913, so as to authorize the Board of Commissioners to distribute the executive, administrative, judicial and legislative powers, authority and duties into and among five departments in cities having five departments, etc. This was decided in *Brennan v. Jersey City*, at the June Term, 1916, by this Court in an unreported opinion.

40 In the present case it appears that the Board of Commissioners by resolutions, had conferred upon the director of the Department of Public Safety the judicial powers exercised by him.

It is next urged, that the prosecutor was dismissed without sufficient evidence to justify his dismissal and that the conviction was against the clear weight of the evidence.

An examination of the evidence leads us to the conclusion that the judgment, pronounced by the Commissioner against the prosecutor, is fully supported by the preponderance of the credible testimony in the case.

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Lastly, it is insisted that the proceeding must be set aside because illegal testimony was admitted over objections of counsel for prosecutor. The admission of illegal testimony, in cases tried by a special tribunal like the one whose proceedings we are considering, will not have the effect to invalidate the finding of the tribunal, so long as it appears that there is competent testimony in the case to support such finding. In the present case the competent testimony amply supports the judgment of the Commissioner.

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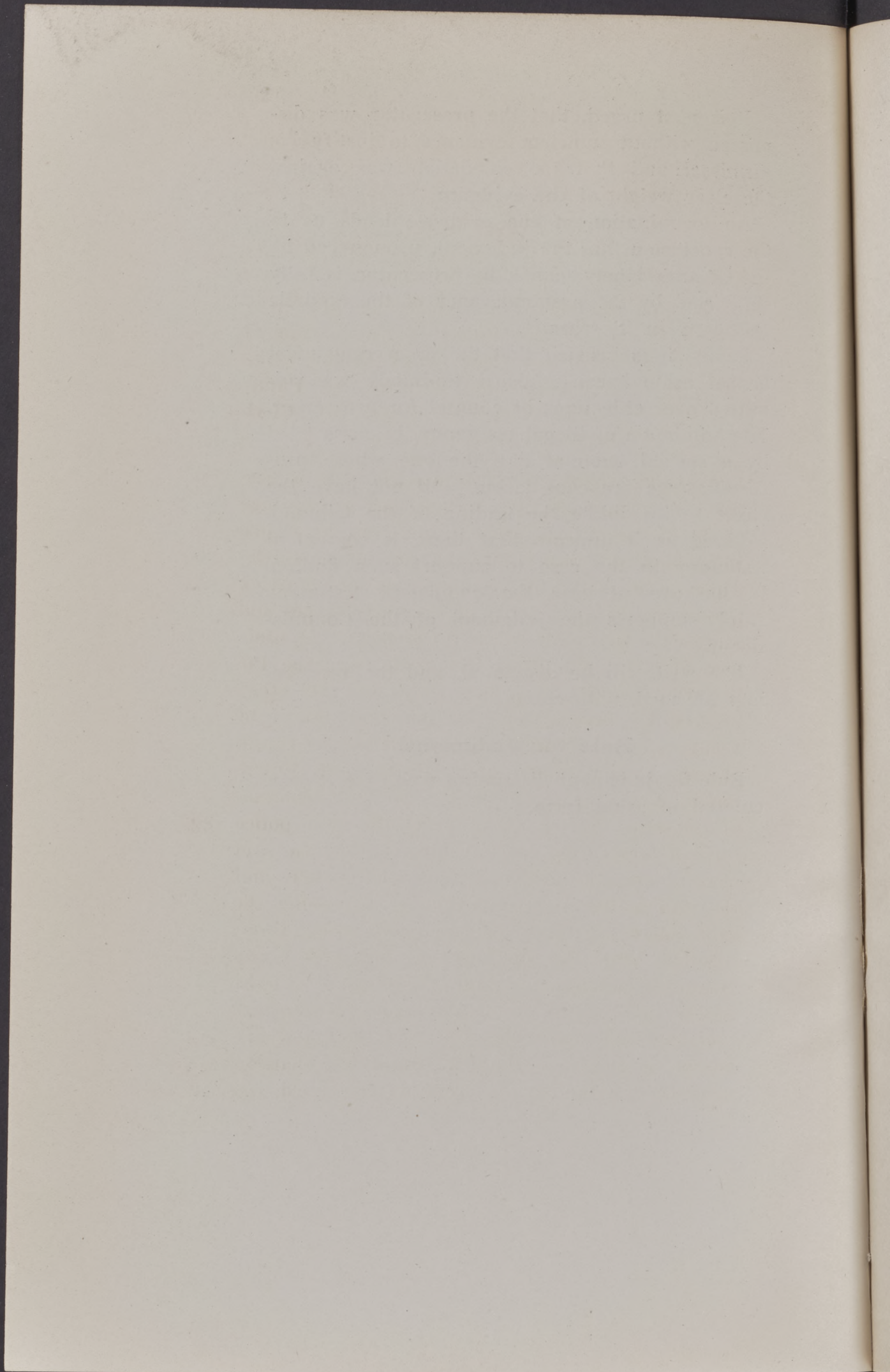
The writ will be dismissed, and the proceedings affirmed, with costs.

Rule for Judgment.

Rule for judgment dismissing writ of certiorari entered in usual form.

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Writ.

New Jersey, ss.:

To the Mayor and Aldermen of Jersey
City, The Board of Commissioners
of Jersey City, Frank Hague, Com- 10
missioner and Director of Public
[SEAL.] Safety, Michael I. Fagen, City Clerk
of Jersey City, Greeting:

We being willing, for certain reasons, to be cer-
tified of certain charges, actions and proceedings
of the dismissal of Patrick Crane from the Police
Department of Jersey City, by you taken and by 20
which actions and proceedings the said Patrick
Crane was declared guilty of the said charges and
was on the twenty-first day of October, A. D. nine-
teen hundred and fifteen dismissed from the Po-
lice Department of Jersey City, and all other
proceedings and actions by the said Board of
Commissioners of Jersey City and the said Frank
Hague, Commissioner and Director of Public
Safety, touching or concerning the said dismissal
of the said Patrick Crane from the said police 30
force of Jersey City, do command you that the said
charges and the evidence taken thereunder, and
the said action and resolution so dismissing the
said Patrick Crane from the said police force,
together with the findings of the said Frank
Hague, Commissioner and Director of Public
Safety, and all other matters and proceedings
touching and concerning the said trial and dis-
missal of the said Patrick Crane by whatever 40
name they or the party therein may be called, you

distinctly and openly send to our Justice of our Supreme Court of Judicature, at Trenton, the tenth day of February, A. D. nineteen hundred and sixteen, together with this writ, that therein may be done what of right and according to the laws and Constitution of this State ought to be done.

10 Witness, William S. Gummere, Chief Justice,
at Trenton, the twenty-first day of January, A.
D. nineteen hundred and sixteen.

WM. C. GEBHARDT,
Clerk.

Ziegner & Lane,
Attorneys.

Endorsement:

20 I allow this writ.
January 19, 1916.

F. J. SWAYZE,
J. S. C.

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Return.

NEW JERSEY SUPREME COURT.

PATRICK CRANE,
Prosecutor,

v.

THE MAYOR and ALDERMEN OF
JERSEY CITY, the BOARD OF
COMMISSIONERS OF JERSEY
CITY, and FRANK HAGUE,
Commissioner and Director of
Public Safety of Jersey City,
Defendants.

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On Certiorari.

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In obedience to the command of the within writ we hereby certify and send to the Honorable the Justices of the Supreme Court within mentioned the charges, action and proceedings of the dismissal of Patrick Crane from the Police Department of Jersey City, together with all other papers and things concerning said proceedings.

In witness whereof we have hereunto set our hands and caused the seal of the said City to be affixed and attested by the City Clerk this eleventh day of February, 1916.

30

THE MAYOR AND ALDERMEN
OF JERSEY CITY

M. M. Fagan,
Mayor.

FRANK HAGUE,

Director of Public Safety.

MICHAEL I. FAGEN,

City Clerk.

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[SEAL.]

Trial.

Before—Hon. FRANK HAGUE, Director of Department of Public Safety.

10	In the Matter of The Complaint of PHILIP LEON- ARD, Inspector, <i>against</i> Patrolman PATRICK CRANE.	}	Conduct Unbecoming an Officer.
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Jersey City, October 21, 1915.

APPEARANCES:

20 AUGUST ZIEGENER, Esq., on behalf of Defendant.

30 Mr. Ziegener: Before proceeding with this trial I wish you would show me the order; I understand that that is the only way I can obtain possession of it; the order which was issued by Chief Monahan, known as General Order No. 21, under date of February 19, 1915; I believe 1915; I have ascertained that that order is in existence, and I cannot secure possession of it or a record of it, unless it is ordered by you.

 The Commissioner: It is in our possession, Mr. Ziegener?

 Mr. Ziegener: Yes, it is in your possession or in the possession of the Police Department.

40 The Commissioner: You may go up and get that Order No. 21, and you may proceed, counsellor, with the case.

 Mr. Ziegener: I want to base my application on that order, sir.

The Commissioner: Very well, which order is that?

Mr. Ziegner: Order No. 21; General Order No. 21, pertaining to this defendant.

The Commissioner: Here is the order (handing order to Mr. Ziegner).

Mr. Ziegner: Now, in view of the order which is issued under date of February 19, 1915, at headquarters of the Police Department, which is known as General Order No. 21, and which is based upon the action by you, under, I believe, a letter dated February 18, 1915, and under and by which you have already stated, as against this defendant, that you only regretted that you had not sufficient evidence to place Crane before the Commission on charges and recommend his dismissal; I submit that under the circumstances that you grant us a trial before the entire Board, which will only result in the defendant's rights being protected and I ask a ruling on that application.

The Commissioner: Your application is denied.

Mr. Ziegner: I take an exception. I then desire that under and by virtue of your action taken on such date, and the statement made by you to Frank Monahan, as Chief of Police of Jersey City, relative to this defendant, Patrick Crane, that your right to try this defendant under the circumstances and the conditions which prompted the issuance of such order and statements by you, that you are disqualified to sit in judgment on these alleged charges, and that upon so sitting the defendant will be deprived of his legal rights, and in order to perfect the record, I desire at this time, to have read into the record the order known as General Order No. 21.

The Commissioner: You have got two or three applications, your one application is that it be read into the minutes.

10 Mr. Ziegner: No, that is not an application, my statement now is that I challenge you to sit as a Judge in this case, to determine the rights of this defendant, in view of your previous action in the letter to Chief Monahan, and your determination and your statement that you had only regretted that you had not sufficient evidence to place Crane before the Commission on charges so that you could recommend his dismissal; the challenge is that you are disqualified to sit in judgment on these alleged charges against the defendant.

The Commissioner: Do you want a ruling on that?

Mr. Ziegner: Yes, sir.

20 The Commissioner: It is approximately the same as the other application.

Mr. Ziegner: I ask for a dismissal of the charges on the following grounds: that you are without jurisdiction in this case; I move for a dismissal on that ground, and I reserve my right to remove the defendant's plea to strike out.

The Commissioner: Would not that application be a proper application to make at the time the City closes its case, and you ask to have the case *nolle prossed*.

30 Mr. Ziegner: No, sir.

The Commissioner: You may proceed.

Mr. Ziegner: So far as the contents of the complaint is concerned we waive the reading of it.

The Commissioner: You defer entering a plea until the following applications are made.

40 Mr. Ziegner: I move that you should dismiss this proceeding on the following grounds: first, because of lack of jurisdiction on your part in that the alleged manual, rules and regulations for the governing of the Police Department of Jersey

City, alleged to have been on January 1st, 1913, were never legally adopted.

The Commissioner: Application denied.

Mr. Ziegner: I take an exception. I move for a dismissal for the reason that the resolution which alleges to provide that you have the sole right and authority to determine these cases and hear these complaints are contrary to the statute in such cases made and provided, and that you have no legal right, power or authority to act in the capacity of a single headed commission.

10

The Commissioner: Your application is denied.

Mr. Ziegner: I ask an exception. I further move that in hearing, or attempting to hear, this case against this defendant under the circumstances referred to, are attempting to exercise judicial powers in yourself which are not warranted by the law, that provides that the Board of Commissioners directs the Board, or a quorum thereof to proceed, and that you have no legal right or authority to proceed single handed. That the alleged Act, by which the word "judicial" was alleged to have been inserted is unconstitutional and you have no power to proceed as a sole Judge and jury.

20

The Commissioner: Your motion is denied.

Mr. Ziegner: I ask an exception. I further move that the defendant cannot secure a fair and impartial trial before you; that the charges served upon the defendant were not served in such manner so as to enable the defendant to properly defend himself.

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The Commissioner: Your motion is denied.

Mr. Ziegner: I take an exception. I further move that the charges were not served in accordance with the statute under such cases made and provided, and that under the statute or statutes the defendant is entitled to be protected.

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The Commissioner: Your application is denied.

Mr. Ziegner: I take an exception. That the contents of the affidavits, statements or allegations upon which the said charges were served were not conveyed to the defendant nor was he informed of the contents of the same, in order to properly, defend himself at this alleged trial.

The Commissioner: Your application is denied.

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Mr. Ziegner: I ask an exception. That the defendant was not legally summoned to appear at this time.

The Commissioner: Application denied.

Mr. Ziegner: I ask an exception. That the writing or writings alleging to be a copy of the charges and specifications against defendant were not served upon the defendant in conformity with the law.

The Commissioner: Application denied.

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Mr. Ziegner: I ask an exception. We enter, at this time, a plea of not guilty and also I renew my motion to dismiss the complaint for the reasons set forth previous by me at this time. And I desire, at this time, in view of the fact that this case is going to resolve itself into a pure question of fact, and in which this defendant stood alone and is a fellow officer, that you exclude such witnesses from the room as are not needed at the time.

30

The Commissioner: That will be done.

PHILIP S. LEONARD, sworn.

By the Commissioner:

Q. I show you a paper and ask you if you swore to that complaint? A. Yes, sir.

Q. Against Officer Crane for failing to make out a report regarding his conduct and using threatening language; that is your report? A. Yes, sir

40

Q. Your attention was called by Lieutenant Lynch to the matter?

Mr. Ziegner: I object to that question.

The Commissioner: I will allow the question.

A. Yes, Lieutenant Lynch.

Q. You may state what Lieutenant Lynch told you?

Mr. Ziegner: I object to the question on the ground that it is incompetent, irrelevant and immaterial and not binding upon this defendant. 10

Q. Where is Lieutenant Lynch's report? A. There are two reports; this is the second charge.

Q. I show you the report of Lieutenant Lynch and ask you to examine it and state who you received that from?

Mr. Ziegner: I object to the question as to who he received it from on the ground that it is incompetent, irrelevant and immaterial and not binding on this defendant. 20

The Commissioner: I will allow the question.

Mr. Ziegner: I take an exception.

Q. You may say who you received it from? A. That is the report that was submitted to me by Lieutenant Lynch; he left it at the Fourth Precinct Station House for me, signed by him. 30

Q. On that what did you do? A. I based my report on that along with the report of Patrolman Johnson and Patrolman—

The Commissioner: I offer the paper in evidence.

Mr. Ziegner: I object to that and move to have it stricken from the record as hearsay evidence and that it is incompetent, ir- 40

relevant and immaterial and not binding on this defendant.

The Commissioner: I will allow the question.

Mr. Ziegner: I ask permission to examine the witness as to whether or not it is hearsay as to what it contains.

10 The Commissioner: You may do so.

By Mr. Ziegner:

Q. You say that this paper alleging to be a report was left at the Fourth Precinct Station House, is that right? A. Yes, sir.

Q. Not with you? A. No, sir.

Q. In so far as anything contained in that statement you have absolutely no personal knowledge?

A. Only that I identify his writing.

20 Q. You have absolutely no personal knowledge of the alleged facts set forth in that statement?

A. Yes, because I talked to Patrolman Sullivan about it.

30 Q. And in so far as what Patrolman Sullivan told you being the truth or not you have no personal knowledge? A. Only from what those two men told me, the written report of Lieutenant Lynch and the talk that I had with Patrolman Sullivan regarding the case.

Q. You are basing everything on what somebody told you? A. I certainly am on the written report.

Q. You don't mean to say that you based your complaint on what you actually knew and within your knowledge? A. Yes, from actual knowledge and from what somebody else told me.

40 Q. And what you have based this complaint against this defendant on is something that somebody else has either submitted to you in writing by way of a report or what somebody told you?

A. Only the written report and from my talk with Patrolman Sullivan.

Mr. Ziegner: I object to the offer of the paper for the reason that it is not binding on this defendant and further that it is incompetent, irrelevant and immaterial and I also ask at this time to strike from the record the entire testimony of this witness. 10

The Commissioner: I will overrule your motion and I now offer the report of Lieutenant Lynch and order to have it written in the record.

Mr. Ziegner: I object to that offer and order.

By the Commissioner:

Q. Inspector, the rules of your department is what, as to complaints, as to the truth of complaints? 20

Mr. Ziegner: I object to the question on the ground that the rules are the best evidence and they speak for themselves.

The Commissioner: I will overrule your objection.

A. Our complaints are drawn up by the commanding officers. 30

Q. And submitted to you in your district? A. Well, the men that are attached to the stable are practically under me.

Q. You have filed a complaint against Officer Crane with your name signed to it; now, what rule of the department forces you to do that? A. There is no particular rule other than that it is the duty of the Inspector to draw complaints against all men who he may find violating the rules of the department. 40

Q. On all sorts of reports? A. Yes, sir.

Q. You display your own judgment on that? A. Yes, sir.

Q. That is all.

By Mr. Ziegener:

10 Q. What did you mean a moment ago when you said that all charges or complaints should be presented by the commanding officer? A. I meant this: If a lieutenant of police that is working directly under the Captain, he submits a report to the Captain setting forth that the man has violated a rule.

Q. Isn't it a fact that your manual says that (reading from Rule 5 of the Manual)? A. Well, I think possibly it does say that in that book.

20 Q. Not possibly; doesn't it, under Rule 5, say (repeating)? A. Yes, if that Lieutenant is under his command.

Q. Are there any other ways in which charges might be made? A. Yes, I might make charges against any member of the department for violating any rule.

Q. Any other way? A. That is the only way I know of.

30 Q. You were not the direct superior of Mr. Crane, were you? A. Yes, sir; and every man attached to that stable who is carried on the pay roll of that stable and his name is simply carried on the pay roll of the Fourth Precinct his name is carried there and he reports there going on and off duty.

Q. That is all.

Lieutenant THOMAS LYNCH, sworn:

40 By the Commissioner:

Q. Now, Officer, you are a Lieutenant of the police? A. Yes, sir.

Q. Attached to where? A. The mounted squad.

Q. How long have you been on the force? A. Sixteen years a mounted policeman.

Q. Do you remember the night in question that you and Officer Crance had this trouble? A. Yes, sir.

Q. I am going to show you a report and ask you to read same; I show you signature, is that your signature and is that your report? A. Yes, sir.

10

Mr. Ziegner: I object to the reading of this alleged report on the ground that it is not binding on this defendant and that it is incompetent, irrelevant and immaterial, and in nowise can it become the testimony of the witness on the stand. When he is put on the stand to disclose occurrences alleged to have happened, and which can only be disclosed by the mouth of such witness, furthermore it cannot be held against the defendant, by any paperwriting which he has submitted to any person.

20

The Commissioner: I will overrule your motion.

Mr. Ziegner: I take an exception.

The Commissioner: I will now direct the Clerk to read the report as verified by him.

30

The Clerk (reads report as follows):

"J. C., Oct. 14, 1915.

To Inspector Leonard,

Sir:

At 11:50 last P. M. I returned to stable from patrol. I found all doors in stable shut and a red hot fire in office. I ordered Patrolman Crane to leave the big door open

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and give the horses air, he called me a vile name and made a rush for me; he had a broom in his hand. I pushed him away and he clinched with me again. He was dragged away by Patrolman Sullivan; he then ran in office; when he went to come out into stable again he was stopped by Patrolman Johnson, in the struggle with Johnson he fell against the glass door breaking a pane of glass in same. I booked myself and gave my horse a drink. I then went out on my horse and was leaving stable for patrol when he called me a big bum and a cocksucker. I would have suspended him then but I know the 4th Precinct was short handed and decided to let him continue on duty until I returned from patrol. When I returned from patrol with Sergt. Lockwood at 4:15 A. M. I ordered him to leave a report as to why he used vile language to me and he replied I will not leave a report for you—you can go fuck yourself. I then told him he was suspended; he had not fed the horses and then I told him he was suspended after he had replied as stated; he went out and began to feed the horses and I told him not to feed any more as he was suspended; he then changed his clothes and after making several threats he left the stable. I learned from Patrolman Johnson that he had taken Crane's revolver from him when he was struggling with him at office door which had glass broken. I notify Lieutenant Kelly over 'phone that I suspended

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*does not say
anything about
revolver*

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Patrolman Crane and left Crane's shield and patrol key at 4th Prec.

Respectfully,

THOMAS LYNCH,
Lieutenant Commanding."

Mr. Ziegener: I also desire to state for the purpose of the record that the reading of this alleged report at this time is absolutely in contradiction of the rules of law of evidence, that it is unjust to the defendant, because it entitles the complainant to refresh his memory of alleged occasion. 10

The Commissioner: I will overrule the motion.

Mr. Ziegener: I take an exception.

Q. Is that your statement, Lieutenant? A. Yes, sir. 20

Q. Is that a correct statement? A. Yes, sir.

Mr. Ziegener: I move to strike from the record the alleged facts which was conveyed to the record by the reading of the report in the record and the manner in which it was read.

The Commissioner: The objection and application are denied. 30

Q. You charge Crane with using vile language? A. Yes, sir.

Q. You can just tell, as near as you possibly can, what took place on the night in question and what lead up to it? A. On the night of October 13, I went to the stable about a quarter of twelve o'clock, I knocked on the door and Policeman Johnson opened the door; and Policeman Crane came out of the office and closed the door; I told him to leave the door, and let the horses get some air; I opened the door myself and he 40

went to the rear of the stable and said, "You big fuck"; I put up the horse and went over to the other side and he stood with a broom in his hand and this was said, and he smashed me in the mouth and he hit me, and after he hit me he ran in the office and got a revolver; I said to Johnson, "Take that revolver off him," and Johnson took the revolver off him, and he called me a "cocksucker," and then again he said, "I would be a citizen within a week," I would have suspended him then only we were short handed and I arrived back at 4:15 in the morning; I told Sergeant Lockwood that I had told him to leave a report and he said, "fuck the report" and he proceeded towards me with the gun, and he had two hands right at his back, like this (illustrating).

10

Q. Where did he get the gun from? A. Out of his locker.

Q. He had an argument with you and left you and opened the door of the locker? A. I don't know whether he opened the door of the locker or not.

Q. He took the gun from the locker? A. Yes, sir.

Q. What color was the gun? A. I could not tell you that.

Q. Was it a regulation gun? A. I do not know.

Q. Are you sure it was a gun? A. Yes, sir; I am sure it was a gun.

Q. Did you see the gun after Officer Johnson took it away from him? A. Yes, sir.

Q. Where were you going? A. Out of the door.

Q. What did he say? A. "I will kill you, you cocksucker, I will fill you full of lead, you big bum."

30

Q. That is when you struggled with him? A.

40

revolver

*Doesn't know
hand of gun*

No, the struggle is when I held his wrist, and Officer Johnson took the gun away from, and I took hold of him and I held him and Officer Johnson took the gun off of him.

Q. What is the character of this man?

Mr. Ziegner: I object on the ground that the witness is not qualified and has not shown any qualifications and on the further ground that it has no bearing on this case. 10

The Commissioner: We are here to hear charges.

Q. What is the conduct of this defendant, Lieutenant, prior to this trouble? A. I never saw him, all right, only talking that is all.

Q. What was the trouble, what was he talking about? A. Oh, different things, that he had to work all night. 20

Q. Peaceably? A. I never heard him say anything.

Q. Use any vile language, cursing or swearing? A. Only this night he went crazy in particular.

Q. You are positive that what you say is true as to the gun, and after having this argument, that he entered the office and took the gun out of the locker; what did he say? A. Yes, and he said, "You cocksucker, I will fill you full of lead." 30

By Mr. Ziegner:

Q. When you arrived up there at the door, who was the man that opened the door? A. Patrolman Johnson.

Q. How far is that door away from the office door that you have spoken of? A. About ten feet to the left, I guess the door is ten feet away. 40

By the Commissioner:

Q. The office door is ten feet to the left as you enter? A. Yes, but as you enter it is to the left.

Q. It is on the side of the building towards Summit Avenue? A. Yes, sir.

By Mr. Ziegner:

10

Q. And the door leading into the office itself is in the interior of the building? A. Yes, about ten feet; yes, the door opens this way (illustrating), and also to the left is the office door.

Q. There is an extra door leading from the interior into the office itself? A. Yes, sir.

Q. And that is the door that you spoke of as a sort of swinging door leading from the street? A. Yes, sir.

20

Q. And then you had Officer Johnson open the door? A. I did not have Officer Johnson.

Q. Who opened the door? A. Why, Patrolman Johnson opened the door, I saw him from the window on the left.

Q. You went from the window to see him open the door? A. Yes, I did.

Q. Officer Johnson didn't have to tell you, because you saw him open it? A. That is right.

30

Q. Then when you walked in you say that you had said something about the horses getting some air? A. I said it was too hot in this stable and the horses needed air and the door should be opened and leave the horses get air.

Q. When you said that you were still on your horse? A. Yes, sir.

40

Q. And then you drove into the rear of the stable? A. No, I drove to the right of the stable as you go in the door.

Q. Didn't you testify on your direct examination, that when you entered and when you spoke

about the horses getting air, that you went to the rear of the stable? A. I said Crane went to the rear of the stable.

Q. Then you went where? A. To the side of the stable, to the right, and then I tied my horse up.

Q. Towards the rear? A. Well, you had to go to the rear to go into the stable.

Q. Not necessarily? A. When you go in the stable you have to go to the rear; then it is possible you are going to the rear since you are in the stable. 10

Q. You may stay in the front? A. Not necessarily.

Q. You went in the front? A. Yes, I went in the front and then I went on the side to the right.

Q. When you went in that stable did you go to the rear of the stable or didn't you? A. I went to the side of the stable. 20

Q. Was it the side in front or the side in the rear of the stable? A. In the front of the stable, in the front, going into the stable.

Q. When you went into the stable, you remained in the front end of the stable? A. Yes.

Q. And Crane went to the rear of the stable? A. Yes, sir.

Q. And how far was that from where you were stationed, from the rear end of the stable? A. About fifteen feet. 30

Q. What was the next thing that happened? A. After he told me to go and fuck myself I got off my horse and I tied my horse, and he told me to go and fuck myself. X

Q. And you had tied your horse in the front and Crane was in the rear, and he said, "Go fuck yourself"? A. Yes, sir.

Q. Did you remain there? A. No, I waited for him to walk towards me, I went out. 40

Q. You started before he started? A. I went out after that.

Q. Was there any particular reason why your mind failed you at that particular time? A. No, I don't know.

Q. You are sure that you walked towards Crane? A. I walked towards him, I think, I may have, and I may not have.

Q. Why did you say that you might when you were testifying under oath, that you did that particular thing? A. Well, I did.

Q. You did what? A. I did do it.

Q. Why did you testify that you might have done it? A. Well, I might have went there and I might not have.

Q. Now, you are saying that you might and you might not, which is true? A. I did.

Q. Now, when you walked towards him what did you walk towards him for? A. I told him not to call me a fuck.

Q. Did you tell him that? A. Yes, I did, sure.

Q. Then what happened? A. He said, "you are a big cocksucker and you are a bum."

Q. Then what happened? A. Then I seen a broom fall.

Q. You stood there without doing anything? A. I grabbed hold of Crane and—

Q. You stayed there while he was calling you those very pleasant names? A. I had to stand there.

Q. There is one thing that you could have done if you wanted to be nice, but you smashed him in the mouth? A. I didn't smash him in the mouth, I smashed him in the jaw.

Q. You want at this time to distinguish between jaw and mouth? A. Yes.

Q. What did you say about a broom? A. He had a broom in his hand.

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ref to call me

bum
broom fall

Smashed Crane
to jaw

Q. Then you suddenly saw the broom fall? A. Well, it got away somewhere.

Q. Well, if there was a broom, you could certainly count for its appearance? A. The last I saw of it it was on the ground.

Q. After he had dropped the broom, he smashed you in the mouth? A. He smashed me in some part of the face.

Q. You said on your direct examination that he smashed you now did he or did he not smash you in the mouth? A. He smashed me on some part of the face.

10

Q. Did you not testify on your direct examination that, "when I went to the rear of the stable he said you big fuck and smashed me in the mouth?" A. No, sir.

Q. You smashed Crane in the mouth? A. Yes, sir, when he smashed me in some part of the face I smashed him in the jaw.

20

Q. When he was in the back of the stable and he had this broom in his hand and dropped it, you walked up and told him that he should not call you those unpleasant names, he struck you? A. Yes, sir.

Q. How tall are you? A. About five feet eleven.

Q. What is your weight? A. 170 pounds.

Q. After he struck you in some part of the face, that you don't know where he hit you, then you smashed him, is that right? A. Yes, sir.

30

Q. What had preceded the striking by you of this man just before you had struck him? A. Sullivan and Johnson had hold of the two of us.

Q. You were striking him when the two of them had hold of you? A. I could not strike.

Q. What was this man Crane doing at the time you smashed him in the jaw? A. He was holding on to me.

40

Q. Where was he holding on to you? A. All over my shirt, he was holding on to me all around, holding on my arm.

Q. He was leaving everything go except your two hands and when he let go of you you smashed him in the jaw? A. I did smash him after he smashed me.

10 Q. When this man was holding you, you smashed him in the jaw?

The Commissioner: I will tell you just what he said.

Mr. Ziegner: I object to the statement being made by the Commissioner.

20 The Commissioner: The witness distinctly testified that he smashed the defendant in the jaw after the defendant had smashed him in the face.

Q. I asked you this question a moment ago, what preceded your smashing this man, and you said that he was holding you by the shirt; was that true or false? A. He was holding me all around, trying to hold on.

Q. He was trying because you were beating him? A. I hit him one punch.

30 Q. You have been a Lieutenant for seventeen years? A. No, sir.

Q. And you hit this little man? A. Yes, sir.

Q. After you gave him one big clout, what did you do? A. I ran after him, he went to the office to get a gun.

Q. You ran after him? A. Yes, sir.

Q. Still following him? A. Yes, he said he will fix me.

40 Q. To punch him? A. No, not to punch him unless he punched me.

Q. If he punched you you were going to punch him back? A. I certainly was.

Q. Don't you know as a police officer that you have no right to punch back; do you understand the law; that a policeman of seventeen years' standing that if another man punches you that you should punch him; is that your construction of the law; can you answer that question yes or no? A. No, sir.

Q. You can't answer it? A. No.

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The Commissioner: He says "No," he does not say he can't answer the question.

The Witness: I ain't got any authority to hit a man.

Q. What did you do it for? A. I suppose on the impulse of the moment I hit him.

Q. After that one impulse, you followed him and ran after him, and if he struck you, you were going to strike him? A. I might have.

20

Q. Why didn't you back away; were you going to punch him again? A. I didn't punch him again.

Q. You didn't, but you were going to? A. That ain't doing it.

Q. You didn't get the chance, did you? A. He didn't get the chance.

Q. You didn't get the chance, did you? A. He didn't get the chance, did he?

30

The Commissioner: You have got in the record that the superior officer struck this defendant.

Mr. Ziegner: I want to get on this record his actions, because there may be some other questions involved in this case.

Q. Now, I ask you, knowing that you had no right to offer an assault for an assault under the circumstances that you have described, why you followed this man and were going to strike him again if he had attempted to punch you?

40

By the Commissioner:

Q. Why did you run after him? A. I ran after him fearing that he was going to shoot me.

By Mr. Ziegner:

Q. Then it is not true that you went after him to punch him back if he punched you? A. No; that is not true.

10 ~~X~~ Q. And that was a deliberate falsehood? A. Well, I said that for fear that he might, on the impulse of the moment, try to hit me.

Q. Then after you had pursued Crane, when did you next meet Crane, was there any unusual excitement or struggle? A. I met him in the door.

Q. The doorway leading into the office on the left? A. Yes, sir.

20 Q. Is that the door which has a pane of glass in it? A. It has several panes of glass in it.

Q. Was there a pane of glass broken? A. Yes, sir.

Q. Where was that pane of glass that was broken? A. One of the bottom panes of glass in the office door.

Q. So that you had pursued the defendant to the office door? A. Yes, sir.

30 Q. You did not enter the office? A. Yes, halfway between the office and the office door.

Q. Right on the door step? A. Yes, right on the door step.

Q. How far is that broken pane of glass from the door step? A. About two feet.

Q. Can you account for the breaking of this window? A. No, sir.

40 Q. You have not the slightest idea how it was broken? A. No, only what I heard.

Q. You are sure about that? A. Yes, sir.

Q. Well, now, when you got to this door what

*Wounded to
office*

did you do? A. I was not thinking about the door.

Q. I am asking you when you got to this door, you were evidently thinking of punching this man again; outside of that what did you do? A. I grabbed his two wrists and ordered Officer Johnson to take the gun away from him.

Q. And then it was taken away from him? A. Yes, sir. 10

Q. And that is all that happened? A. Yes, sir.

Q. Now, can you give us some explanation of the statement that the window was broken while Mr. Crane was in a struggle with Johnson in the office? A. The reason that I put that in the statement was because it was Johnson that told me that.

Q. Oh, Johnson told you? A. Yes, sir.

Q. And the reason you put some other things in the statement was because Sullivan told you? A. No, sir. 20

Q. Everything that Sullivan said was all right? A. Yes, sir.

The Commissioner: He didn't say that Sullivan told him.

Q. You say the reason you put it in your statement was because Johnson told you? A. Yes, sir. 30

Q. So that you had no direct knowledge of what transpired in the office when the window was broken, or when Johnson took the gun, or where all these terrible things were going on, had you? A. No knowledge of them, no.

Q. Can you tell us now, when you were standing in this place, why it is that you cannot give us any reason for the window breaking? A. No, sir; I can't. 40

Q. You didn't suddenly become blind, did you? A. No, sir.

Q. Isn't the fact that you took this man and threw him through the window? A. No, sir, I didn't throw him through the window, I couldn't throw him through the window.

Q. Isn't the fact that after the clinching took place in the back of the stable? A. There was only one clinching.

10 Q. Well, what did you mean in the statement "after you had pushed him away, and after he was dragged away by Patrolman Sullivan you clinched with him again? A. I grabbed his two wrists.

Q. Will you kindly picture a clinch to me; what you mean by a clinch? A. When you take a man from behind his back and clinch him; I don't call that clinching a man.

20 Q. You are sure about that? A. Yes, sir; I would not in my estimation.

Q. Isn't it true that when he had the broom in his hand you pushed him away, and he clinched with you again; isn't that true? A. Yes, sir.

Q. Did Crane have your hands behind your back? A. No, sir.

Q. Well, how could he clinch you with your definition of "clinch?" I am asking you whether he held your hands behind your back. A. No, sir.

30 Q. Well, clinching is not what you mean at all, you meant by holding your hands in front of you? A. Yes, sir.

Q. What did you mean by using the language, "while I had my arms around his waist he punched me and then I punched him?" A. He was holding me around the shirt.

Q. Well, we will say the shirt, is that true? A. Yes, sir.

40 Q. He was holding your shirt? A. Yes, sir.

Q. He was trying to restrain you from beating him any more? A. I only hit him once.

Q. He was trying to stop you from hitting him again? A. I suppose he was.

Q. Can you give us any other reason why he should hold on to your shirt? A. I suppose I can't.

Q. Now, you know as a lieutenant of police that this man having an assault upon you that it was an absolute violation of your rules, didn't you? A. Yes, sir.

10

Q. And you knew your position as a lieutenant of the police? A. Yes, sir.

Q. Do you mean to tell this Commission that knowing these things and knowing your duties as a superior officer, that you permitted it to go to the next morning before you suspended him? A. Yes, sir.

Q. Was it because you wanted another witness to appear and corroborate your fake evidence? A. No, sir.

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Q. It was not? A. No, sir.

Q. In other words, you want to convey to this Commission that you, as a lieutenant of seventeen years' standing, would keep within the department a man who had struck a superior officer purely for the sake of knowing that the precinct was short of a man; is that what you want to tell this Commission; is that what you want to convey to this Commission? A. Yes, sir.

30

Q. You would let any man commit any amount of violations such as striking a superior officer and not report him because one precinct was short of a man? A. Not a man, but men.

Q. You didn't presume that this man was taking the place of four or five men? A. It was four o'clock in the morning.

Q. How many more men were in that stable besides Crane? A. Crane himself.

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Q. And yet it only required one man and yet you didn't know it? A. Yes, sir.

Q. You are pretty well versed in vile language, are you not, Lieutenant? A. No, I aint.

Q. You never cursed in your life? A. Yes, sir.

Q. You never utter such words as "fuck yourself?" A. That night?

10 Q. Yes, or any night. A. Yes, I did.

Q. It is quite a common term on your part? A. No, it is not.

Q. Only in exceptional cases? A. Yes, sir.

The Commissioner: You must confine yourself to the night in question.

Q. You didn't use the term "fuck yourself" that night, did you? A. Not as I can remember.

20 Q. You may have used that term? A. I say, no, sir.

Q. Do you want on the record and before Commissioner Hague that you don't remember that you did? A. I don't.

Q. What did you say that you don't remember?

30 The Commissioner: He did not say that he did not remember.

Q. Not as you can remember? A. Yes, sir.

Q. What prompted the failing of your memory in those two or three seconds which transpired in which as you stated "you can't remember" and the fact that you said that you didn't? A. I don't know.

40 Q. Now, lieutenant, if you can't remember that, can you remember using the word "cocksucker"? A. No, sir.

Q. You can't remember that? A. I never said that.

Q. You remember that you did not say that? A. I did not say that; I would not say that to any man.

Q. Did you struggle with this man or have your hands on him at the time this glass was broken?

A. I never remember having the glass breaking.

Q. You did not even hear the crash? A. No, sir.

Q. You went off duty at five o'clock in the morning, didn't you? A. Yes, sir.

Q. And you were off duty until what time? A. Until nine o'clock.

Q. You live where with reference to that stable? A. I live at 266 Duncan Avenue.

Q. How far is that from the stable? A. About a mile, I guess.

Q. Did you leave the stable to go home that morning? A. I left the stable to go to the Fourth Precinct with reports.

Q. When did you reach the Fourth Precinct Station House? A. A little after six o'clock, or something like that.

Q. What do you mean by "or something like that;" there is no man better qualified to tell the time than a policeman because he has got to pull his box; you reached the Fourth Precinct Station House about six o'clock? A. Yes, sir.

Q. And from the Fourth Precinct Station House you went where? A. I went back to the stable again.

Q. What for? A. To see Sergeant Lockwood.

Q. He afterwards became a witness? A. Yes, sir.

Q. And how long did you stay in the stable? A. Until about five minutes after seven o'clock.

Q. When did you go there? A. To Jewett and Monticello Avenues.

Q. What for? A. To get a car.

Q. Is that the only reason you went there? A. Yes, to get a car.

Q. Did you wait on the highway on that corner? A. Yes, sir.

Q. Where were you at eight o'clock in the morning of this trouble? A. I was at home in the house.

10 Q. At eight o'clock you were home in your house?

A. Eight o'clock in the morning of October 14th?

Q. Yes. A. Yes, I was home.

Q. This happened on the night of October 13th? A. Yes, sir.

Q. And on the morning of the 14th of October, at eight o'clock, you were in your house? A. Yes, sir.

Q. Are you sure of that? A. Yes, sir; as far as I know.

20 Q. Now, take a little time and think? A. I can't say on that morning I was in at eight o'clock but I went home and had my breakfast.

Q. Well, take time to think whether you were not in a saloon about eight o'clock that morning? A. No, sir; I was not.

Q. Were you in uniform that morning? A. No, sir.

30 Q. Where had you changed your uniform? A. Home in the house.

Q. Were you in a saloon on the corner of Jewett and Monticello Avenues that morning about eight o'clock in civilian clothes? A. No, sir.

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

Q. When did you see Johnson and Sullivan after that night? A. The next night at twelve o'clock.

Q. Where? A. In the stable.

40 Q. Had you seen either or both of these men at any place previous to twelve o'clock that night?

A. The night of the 13th of October?

Q. No, the day of the 14th? A. No, sir.

Q. From the time that you reached home, as you say, at eight o'clock that morning, you now under oath say that you did not see Sullivan and Johnson, or either one of these men, before twelve o'clock that night? A. I did not see either of them.

Q. How much of this report that you have filed was based upon what somebody told you? A. Only what Johnson told me.

Q. About what? A. About the glass being broken.

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Q. And all the rest is your own statement? A. Yes, sir.

Q. Well, then how is it that you say in this statement that you had fed your horse and given him a drink? A. I don't say that.

Q. And given him a drink and that then you went out and got on your horse, and was leaving the stable when this man, Crane, called you a big bum and a cocksucker? A. I don't say that.

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Q. You don't say that? A. I don't say what you have stated.

Q. Look at your report.

Mr. Ziegner: I ask the Commissioner to show the witness the report.

A. (Witness reads report): I gave my horse a drink—no "feed" in the report.

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Q. Well, we will cut out the "feed," you gave him a drink? A. Yes, sir.

Q. Is that true? A. Yes, I gave my horse a drink.

Q. And then went out? A. Yes, sir.

Q. And it is then that Crane used the terms "you big bum" and "cocksucker," is that right? A. Yes, sir.

Q. What did you mean in testifying on your direct examination that after you had booked, you went out and that then Crane said "Fuck you and

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your reports"? A. He said that at 4:15 in the morning.

Q. Why is it that after he had struck you and you had struck him and after he ran towards the office door and you ran after him, that you stopped at the door and did not go the limit? A. I went the limit.

10 Q. Did you go in the office? A. Half-way in front of the door.

Q. Just far enough to keep away from this man? A. I caught hold of his hands, I didn't stay away from him, and I held him until I told Johnson to take the gun away from him.

Q. It was after this holding him that this pane of glass was broken? A. I can't account for that breaking at all.

20 Q. There was no unusual noise that would stop you from hearing a glass breaking two or three feet away? A. I didn't hear it.

Q. You didn't see Crane at all? A. I didn't know that he was here.

Q. Well, as far as you know while stopping at the door Johnson took the gun away from him and it was all over, is that right? A. It was all over then.

30 Q. Yes. A. Everything was all over then.

Q. Everything was all over? A. Yes, sir.

Q. Just where was it that Johnson took the gun from this man? A. Right at the door of the office.

Q. And you did not lose track of him from that time, either of Crane or Johnson? A. I did not do this as long as he had the gun.

Q. But during the time that this struggle was going on with the gun, you were watching everything, were you? A. Yes, sir.

40 Q. Then, let me ask you, why you said in your report that "I learned from Patrolman Johnson that he had taken Crane's revolver from him, when

he, Johnson, was struggling with him, at the office door out of which the pane of glass was broken?

A. Johnson told me that.

Q. Well, you did not see him take the gun at all?

A. I saw him unloading it.

Q. Did you see him take the gun from this man?

A. No, sir.

Q. Why did you testify about a minute ago that Johnson was holding Crane's wrist? A. I didn't say that; I was holding Crane's wrists. 10

Q. Didn't you say that? A. No, sir.

Q. Who was taking the gun from Crane's hands, you or Johnson? A. Johnson.

Q. When were you holding this man's hands? A. When he had the gun in his hand.

Q. A moment ago you said you did not see any gun but you heard it from Johnson? A. I didn't see the gun. 20

By the Commissioner:

Q. Did you see Johnson take the gun away from this man, Crane? A. No, sir; I didn't.

By Mr. Ziegner:

Q. You did not see the gun while Crane had it; there is no misunderstanding about that? A. No, sir. 30

Q. Why did you say a moment ago that while you were holding his wrists you saw Johnson take the gun out of his hands? A. I did not say that.

Q. You say that you saw Johnson unloading it? A. Yes, sir.

Q. Where? A. Right in front of the office door.

Q. After he took it from Crane? A. Yes, sir.

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

Q. How do you know that he was unloading a gun that he took from Crane? A. I saw him bringing it in. 40

Q. Where did it come from; out of a clear sky?

A. I suppose so.

Q. Can you give us any reason why you did not see him, Crane, with it? A. I saw Johnson with the gun.

Q. And you can't tell us now where it came from?

A. Only I think Crane went into the closet to get the gun and I told Johnson to take it off of him.

10 Q. You assumed that Crane was going to the closet to get this gun? A. Yes, sir.

Q. And when you got to the door, it was then that you were struggling with Crane? A. Yes, sir.

Q. Why? A. Because I thought he had something in his hands and was going to shoot me.

Q. Because you thought he had a gun you caught hold and struggled with him? A. Yes, sir.

20 Q. When did you find out that he didn't have anything in his hands? A. I didn't find that out at all.

Q. What were you struggling with him for? A. I found out afterwards; Johnson told me that he had the gun.

Q. Do you mean to tell us now that he didn't have anything in his hands? A. No, I can't say that he had.

30 Q. Have you made up your mind as to who was struggling? A. Johnson was struggling with him.

Q. A moment ago you said you did not know anything about Johnson struggling with him; and now you say you saw Johnson take the gun off of him? A. Only what Johnson told me.

Q. You can't say how the gun got into Johnson's possession, although you were right there? A. I saw right over Crane's back.

40 Q. In the office? A. No, in front of the door.

Q. And how large is this office? A. I never measured it.

Q. Well, is it a little box or is it a room about

as big as this room? A. About as big as that space in here (indicating).

Q. How big was it? A. About as big as this enclosure back of the Commissioner.

Q. You had no difficulty in seeing what was going on there, had you? A. What was going on in the office?

Q. Yes. A. There was nothing going on only Mr. Crane was going on in the office. 10

Q. Crane went through the window; I mean what happened in the office? A. Nothing happened in the office, it was right between the door.

Q. And that is just where you were standing? A. Yes, sir.

Q. And you cannot tell us where that gun came from? A. I can't tell, but I surmise where it came from. 20

Q. Is there any way in which you can explain that you do not know where that gun came from? A. Only that it came out of the locker; I thought he had a gun and I found out afterwards that he had a gun.

Q. What is your rule as to leaving the stable and going on patrol duty; you leave after nine o'clock? A. Yes, sir.

Q. And what time would you report again? A. At different times. 30

Q. Are you not, when you leave the stable at nine o'clock, supposed to stay on patrol all night? A. No, sir.

Q. And you did return this night about 11:45, is that so? A. About that time.

Q. Can you account in any way for the left side of Mr. Crane's head being all bruised? A. No, sir.

Q. He may have fallen against a stove? A. I do not know; I did not see him fall against any stove. 40

Q. Did you know Mr. Crane's physical condition previous to this night? A. I know he was always complaining.

Q. You know that he sustained a fracture of his jaw? A. I heard that; he made that remark to me; I heard that the doctor had pulled out one of his teeth.

10 Q. You know that he had a fractured jaw?
A. I heard that he had had a tooth pulled out.

Q. You are five feet eight inches and weigh 170 pounds and deliberately smashed the man in a jaw that had been injured? A. I never knew that it was fractured.

Q. You knew that there was something the matter with his jaw, didn't you? A. No, I knew that he had something the matter with his teeth.

20 Q. You knew that he was a sick man? A. I knew that he was always complaining that he was sick.

Q. And yet you deliberately smashed that man in the jaw? A. I did when he smashed me, yes.

Q. Now, at the time that you smashed Crane in the jaw, did you fear for your life, or for your safety as against this defendant? A. No, sir.

30 Q. Let us understand that; Mr. Lynch at the time that you smashed Mr. Crane in the jaw or in any part of his face you did not fear for your life, nor did you fear for your safety; you have answered "no"; is that true? A. Yes, sir.

Q. There is no misunderstanding about that, is there? A. No, sir.

By the Commissioner:

40 Q. At the time you smashed Crane in the jaw or in any part of his face, you did not fear for your life, nor did you fear for your safety? A. Well, I would not want to kill the man; my life was in danger.

By Mr. Ziegner:

Q. How was your life in danger? A. This man was all the time hollering around in the stable that he was sickly and if anybody ever put him out of business, he would shoot them.

Q. You say that you feared your life or in furtherance of the Commissioner's question that it was put in fear because of this man hollering around the stable? A. He was always threatening in the stable that if anyone ever took the bread and butter away from him, he would shoot them. 10

Q. You knew that when you testified on your direct examination? A. I sure did.

Q. You cannot be mistaken about it, can you? A. No, sir.

Q. Then why did you answer the Commissioner that his conduct was always all right? A. So it was. 20

Q. The conduct of a policeman going around the stable threatening to blow people's heads off? A. He was all right then; he said that if anyone took the bread and butter out of his mouth he would shoot them.

Q. So that threat was not applied to you at all? A. I thought when he hit me in the stable it applied to me. 30

Q. You thought when he hit you that he was going to blow your head off? A. No, sir.

Q. Do you mean to tell us now that you feared this man's assault on you as he stood in that stable? A. No, sir.

Q. At the time that you punched him in the jaw there was nothing that you feared as against this man at that time? A. No, sir. 40

Q. That is all.

The Commissioner: We will now adjourn for recess until 2 P. M.

After Recess.

FREDERICK J. JOHNSON, sworn.

Direct examination by the Commissioner:

Q. Officer, you are a patrolman attached to the mounted squad? A. Yes, sir.

Q. As a mounted policeman? A. Yes, sir.

10 Q. Do you recall the night in question, October 14th? A. No, sir; the 13th.

Q. October 13th; do you recall that night? A. Yes, sir.

20 Q. Will you tell just what transpired and what led up to the trouble of Lieutenant Lynch and Officer Crane? A. I guess I arrived at the stable about 11:15 or 11:20, and I was bringing my horse in and getting him ready to go on night duty, and about 11:40, or twenty minutes to
30 twelve o'clock, I was getting ready and went to my horse's head when Lieutenant Lynch came up to the door and I opened the door for Lieutenant Lynch to come in, and I went to put my equipments on my horse, the harness, bridle, etc., and Lieutenant Lynch and Patrolman Crane had a few words about leaving the big door open and after a while Lieutenant Lynch said something about opening the door and Crane said "Go
40 fuck yourself, you cocksucker," and Lynch said, "I am no cocksucker," and Crane said, "You can't scare anybody about here," and I turned around and saw the two of them in a struggle on the floor, and Officer Sullivan on top of the two of them, and Officer Crane ran in the office, and they did nothing special in the office; Crane had a gun and Lieutenant Lynch told me to take the gun away from Crane and I took the gun away from him; and he wanted it back and I wouldn't give it to him; and I kept the gun and returned

it to the Fourth Precinct; they had a few words but I did not care anything about it.

Q. Did you follow them into the office? A. Yes, sir; when they were struggling with the gun.

Q. Were you in the office first? A. No, Crane and Lynch were in the office first.

Q. And you followed Lynch and Crane in there? A. Yes, after I heard the glass break I went in the office and Lieutenant Lynch said, "Take the gun off of him," and they were struggling between the two of them.

10

Q. Was there anything said about killing him? A. Well, Crane said that to him, "I will kill you."

Q. Did you say you heard Crane say, "I will kill you"? A. Yes, sir.

Cross examination by Mr. Ziegner:

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Q. Why was it, if you knew it, that you did not say that Lieutenant Lynch referred several times to leaving the door open? A. Well, I did not pay any attention to it first off.

Q. As a matter of fact it was not said several times? A. Well, I can't tell you; I was getting my equipment and I did not pay much attention to it.

Q. You did not know what happened, then? A. Only that I heard the thing.

30

Q. Up to the time that you went to put the bridle on your horse nothing had been said between these two men? A. No, I did not hear anything.

Q. Well, you heard Lynch refer several times to leaving the door open? A. Only once.

Q. And then all of a sudden you heard a struggling? A. Yes, sir.

40

Q. Where was that struggling? A. In the stable right near the watering trough.

Q. Where is that in reference to the building?

A. In the front of the building.

Q. So that the first time your attention was drawn to the condition Crane and Lynch were both having this talk in the front of the office?

A. Yes, sir.

Q. You are sure that it was not in the front of the stable? A. Yes, sir.

10

Q. Now, when you heard this struggling and turned around, you say you saw both of these men clinched? A. Yes, sir.

Q. That was at the place where you had seen them before? A. No, I guess they were walking back and forth.

Q. Do you know whether they were in the front or the back of the stable? A. Well, it was where they were quarrelling, it was only twenty feet to the front door.

20

Q. It was in the rear of the stable? A. Yes, sir.

Q. Now, at any time that you saw Crane you did not see Crane with a broom? A. No, sir.

Q. There was no broom there at all? A. Not as I noticed.

Q. You looked around and could see the two in a clinch and struggling? A. Yes, sir.

30

Q. Did you see anything else? A. Well, I parted them then.

Q. That was in the back of the stable? A. Well, it is only about twenty-five feet from the front door, it was not twenty-five feet.

Q. Now, before you parted them did you see Crane attempting to defend himself? A. Well, I suppose he was when they were clinched.

Q. Did you see Lynch give him a punch in the jaw? A. No, the two of them had hold of one another when I saw them.

40

Q. After you parted them where did Crane go?
A. Crane went to the office.

Q. When he went to the office where did Lynch stay? A. Lynch followed him in the office.

Q. And did you go towards the office then? A. No, sir, I went to my horse.

Q. After you came back from your horse did you go towards the office? A. No, I did not go towards the office until I heard the crash of the glass. 10

Q. At the time of the crash of that glass Lynch was in the office and Lynch was struggling with Crane and Lynch was the man that threw Crane through the window? A. No, sir.

Q. Lynch must have been the man that threw Crane through the window, you didn't push him through it? A. No, sir.

Q. Sullivan didn't push him through? A. No, sir. 20

Q. You made a statement, which I presume is true, that Lynch followed Crane into the office; that is true? A. Yes, sir.

Q. And if Lynch says that he was outside of the office or on the threshold of the office door, he is a liar, is he, or is he not? A. I could not say that.

Q. And if he says that he did not go in the office and struggle with Crane in the office; he is a liar, isn't he? A. Yes, sir. 30

Q. Now, you also say that after Crane says "I will kill you," Lieutenant Lynch and Officer Crane were struggling around in the office, Lieutenant Lynch trying to get the revolver in the struggle; that is true? A. Yes, sir.

Q. So if Lieutenant Lynch says that he did not struggle for the revolver and had not seen the revolver, he is another liar, isn't he? A. Yes, sir. 40

Q. And when you say Crane, referring to them struggling was pushed back into the closed door of the office, breaking the glass, that was true?

A. They were near the office when I took hold of them.

Q. That was true? A. Yes, sir.

10 Q. And when you say Lynch was trying to get the gun from Crane that Crane was thrown through that pane of glass, wasn't he? A. It was broken before I got up to them; they were right up against the door when I got to them.

Q. When you got this gun where was Lynch?

A. They were in the office; I parted them in the office and I put the gun in my pocket.

Q. In other words, when you took this gun from Lynch or Crane, Lynch was right there?

20 A. He had hold of him.

The Commissioner: Lieutenant Lynch testified that the defendant had hold of him when this officer came and took the gun away from him.

Mr. Ziegner: The evidence is that Mr. Lynch has said that he never saw the gun, and that he did not know whether it came out of a clear sky or not.

30 Q. During the entire time that this struggle was going on in this office Lynch was in the struggle? A. Yes, sir.

Q. It was not you struggling and throwing this man, Crane, through the window, was it? A. No, sir.

40 Q. How was it that you did not see this punch that Mr. Lynch testified he gave Crane? A. I paid no attention to it; it was twenty minutes to twelve o'clock and I had to put on my equipment; it was twenty minutes to twelve o'clock and I paid no attention to the struggle.

Q. How many clinches did you see? A. One outside in the center of the stable and the other in the office itself.

Q. And Lynch is the man that was clinching with Crane in the office, that is true, isn't it? A. Yes, sir.

Q. Did you hear Mr. Lynch use any language that night? A. No, the only thing I heard Lynch say was "I am no cocksucker." 10

Q. You heard him say "fuck" to Crane? A. No, I did not; he may have; I didn't pay much attention to it.

Q. When did you next see this man Lynch after that? A. One or two o'clock on patrol that same night.

Q. Did you speak to him about this case? A. No, sir. 20

Q. Not a word? A. No, sir.

Q. When did you see your side partner, Sullivan? A. About eight o'clock the next morning.

Q. When did you two men compare these reports? A. I made mine at eight o'clock the following morning.

Q. Have you seen these two reports? A. No, sir.

Q. They are identical? A. No, sir. 30

Q. Did you have any conversation with any one about the making of these two reports? A. No, sir.

Q. Not a word? A. No, sir.

Q. Did you see Lieutenant Lynch the following morning? A. No, sir.

Q. Were you in the vicinity of Jewett and Monticalloe Avenues? A. Yes, sir; I got on a car at that corner about twenty minutes after eight.

Q. Did you see Lieutenant Lynch getting on that same car? A. No, sir. 40

Q. Did you see him getting on a car? A. No, sir.

Q. Did you see Sullivan? A. No, sir; Sullivan was on duty.

Q. You are not in doubt about Lynch following Crane into that office and when you entered into that struggle it was in the office? A. No, sir.

Q. You mean beyond the door sill? A. Yes, sir.

10

DANIEL SULLIVAN, sworn.

Direct examination by the Commissioner :

Q. Officer, you are a patrolman attached to the mounted squad? A. Yes, sir.

20

Q. Will you tell us just what transpired on the night in question as to the trouble between Lieutenant Lynch and Officer Crane, on October 13th; just what you know about it? A. It was at 11:40 that Lieutenant Lynch had went to the door and Patrolman Johnson opened the door for him, and when he came in—

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Q. Were you inside of the stable? A. Yes, when he came in he asked Patrolman Crane why he did not leave the door open and let the horses get some air, and with that Crane turned to him and said, "Go and fuck yourself," and Lieutenant Lynch got off his horse and went towards Crane, and Crane turned to him and said, "You won't scare anybody around here, you big fuck," and I went over to my horse; I pulled them apart and Patrolman Crane said that he would kill the big bum. I went to my horse. I only had a few minutes to get up to the station house; and when I got in again Johnson had the gun in his hand; whether he got it off of Crane or not I

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don't know; I asked Johnson when he got it and he said, "Off Crane," and—

Mr. Ziegener: I object to that.

A. (continuing): I told Johnson to hold on to the gun, and I went to the station house after the fight was all over.

Q. Did you see the struggle in the office? A. No, sir. 10

Q. Did you see Officer Crane coming out of the office with a gun in his hand and saying, "I will kill you, you big son of a bitch"? A. Yes, sir.

Q. Who was he referring to? A. Lieutenant Lynch.

Q. He was not referring to you or Johnson? A. No, sir. 20

Cross examination by Mr. Ziegener:

Q. You say Crane says, "I will kill you, you big son of a bitch"? A. Yes, sir.

Q. Did you hear the words "big bum" used? A. Yes, sir.

Q. Why didn't you put "big son of a bitch" in your report? A. I don't know whether I left it out or not.

Q. If you were told it was not in your report, you could not give us any reason why it was left out? A. No, sir. 30

Q. How long after this trouble did you say, Officer Sullivan, that you saw him? A. I saw him the next night.

Q. What time? A. About twelve o'clock.

Q. Did you not see him before that after this trouble? A. No, sir.

Q. Did you see Lieutenant Lynch before that? A. No, sir. 40

Q. When did you take the car the next morn-

ing? A. I didn't get off the next morning; I did not get off duty until twelve o'clock the next day.

10 Q. You say in your statement that after those words had been used they ran after one another, who do you mean by that? A. Well, Officer Crane had been up towards the end of the stable and Lieutenant Lynch was at the side towards the street; and Lieutenant Lynch walked over to Crane and told him not to call him those names.

Q. So that Lynch was the one that approached Crane? A. It looked as if they were leaning over one another.

Q. Where did they happen to meet? A. Right in front of the stairs.

20 Q. Where is that in reference to this building? A. About the middle of the building, and when I turned to my horse they were in a clinch.

Q. Yes, and you saw Crane trying to defend himself? A. Yes, sir.

Q. And you saw Lynch give him a punch in the jaw? A. I would not say that I saw Lynch give him a punch in the jaw.

Q. If Lynch said that he did give him a punch in the jaw you would not doubt Lynch's statement? A. No, sir.

30 Q. You saw it? A. I would not say that I saw Lynch punch him in the jaw; they were both in each other's arms when I saw them.

Q. And from the time you turned around and saw them clinched, you know there was something serious going on? A. Yes, sir.

Q. Why didn't you run towards them? A. I did.

Q. When you got over to them you separated them? A. Yes, sir.

40 Q. And you had no sooner separated them than you saw them clinched again? A. Yes, sir.

Q. And Lynch was at it, too? A. Yes, sir.

Q. And after you saw them struggling back and forth and clinching during that time Crane was trying to defend himself? A. Yes, sir.

Q. And seeing that he could not do anything he ran towards the office? A. I saw him run towards the office.

Q. You mean by "him" Crane? A. Yes, sir.

Q. And when he ran towards the office then Lynch ran after him? A. Yes, sir. 10

Q. And when Crane got in the office Lynch ran after Crane, didn't he? A. I did not go in the office.

Q. You saw Lynch go in the office? A. Yes, I saw the two of them run in the office.

Q. And after that you heard the crash of glass? A. Yes, sir.

Q. And at that time you told Johnson to go in? A. Yes, sir. 20

Q. At that time Lynch and Crane were in the office and the crash of glass had already taken place? A. Yes, sir.

Q. Was there anybody there at the time of the crash besides Crane and Lynch? A. No, sir.

Q. And you are sure that Johnson was on the outside when the crash occurred? A. Johnson had just passed, he was going in the door when the crash occurred. 30

Q. When you went over to your horse, did you see this struggle for the gun? A. No, Johnson had come out with the gun.

Q. How was it that it took you so long to reach that place before this struggle for the gun occurred? A. I did not know that he had a gun.

Q. And things happened so quickly that you did not have time to go in the office? A. Well, I saw Johnson run after Crane. 40

Q. You saw Crane going through the window? A. I did not see Crane going through the window.

Q. Was he hurt? A. I did not see whether he was or not.

Q. There is no doubt in your mind that Lynch was in that office at the time of the crash? A. No, sir.

10 Q. If Lynch says that he was not in that office but was right in the door sill, he is a liar? A. I would not say that; he may have been on the sill; I was over by my horse; I only had a few minutes to get up to the Third Precinct.

Q. You heard that struggle? A. Yes, sir.

Q. Did you see them struggling? A. No, sir.

Q. Were you where you could not see them? A. No, sir; there was a high safe there, they were at the office door, whether they were inside or on the sill, I don't know; I saw Crane go in and I saw Lynch go after him.

20 Q. And he went over the threshold? A. Yes, sir.

Q. You were in the room and he was in it? A. Yes, sir.

Q. You did not see Lynch cut up? A. No, sir.

By the Commissioner:

Q. Was Crane cut up? A. I did not see him cut up.

30 By Mr. Ziegner:

Q. Where was that glass with reference to the office door or was the window outside of the office? A. I did not pay any attention to that.

Q. Can't you tell us where that glass was broken, did you see it since? A. No, I did not take that much notice of it.

40 Q. Can you tell us where the glass is? A. Yes, there are two panes of glass in the door of the office.

Q. Was that one of the panes of glass that was

broken? A. That I can't say; I did not pay much attention to it.

Q. Have you been in that stable since? A. I have been in that stable every night.

Q. You are the night man there? A. No, sir.

Q. Day man? A. No, sir.

Q. Well, Crane succeeded you in some way? A. No, sir.

10

Q. Didn't he succeed you that night? A. No, sir.

Q. How long have you been detailed there? A. Over a year ago.

Q. Before Crane got there? A. Yes, sir.

Q. You have been in there almost daily since that time, and yet you cannot tell us whether there is a pane of glass broken? A. There are four or five panes of glass broken; there was a pane of glass broken the other night.

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Q. Where was that broken? A. It was broken in the inner office.

Q. And yet you cannot tell us where this Crane glass was broken? A. No, sir.

HENRY LOCKWOOD, sworn.

Direct examination by the Commissioner:

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Q. You are a sergeant of police? A. Yes, sir.

Q. Attached to the Jewett Avenue squad? A. Yes, sir.

Q. Will you tell us just what transpired on the night in question (October 13); the night of the trouble between Lieutenant Lynch and Officer Crane? A. I accompanied Lieutenant Lynch from patrol duty that morning, October 14th, and arrived at the stable about 4:20 A. M.; we entered the stable and tied our horses, and went into the office where Crane was, and Lieutenant Lynch

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said to Patrolman Crane, "I want you to leave a report as to why you used that language to me last night, as to why you acted in a manner unbecoming an officer and a gentleman"; Patrolman Crane looked at him, and he said, "I will leave no report for you; you can go and fuck yourself," and he said, "You big bum, I will give you the trouble of your life." Lieutenant Lynch said to Patrolman Crane, "You are suspended from duty." With that Patrolman Crane went out of the office and Lieutenant Lynch shortly afterwards followed him out; I went after Lieutenant Lynch to the outer stable, and Patrolman Crane started to feed the horses, and Lieutenant Lynch said, "There is no use of your feeding those horses; you are suspended." I then went back in the office myself and shortly afterwards Patrolman Crane came into the inner office, where I was doing some writing, and he asked me whether Lieutenant Lynch could suspend him then for what had transpired in the neighborhood of 11:55 the evening before; I told him I thought he could; he asked me if he could compel him to have a report; I said he can't compel you to do anything that you don't want to do; he can only ask you to do it; he said, "I would have to ask the Lieutenant about it"; I said, "You will have to ask the Lieutenant how he wants it made up," and with that he went outside and what conversation they had, I do not know.

Q. You were there when the gun was taken away from him? A. No, sir; I arrived at the stable after that was all over.

Cross examination by Mr. Ziegner:

40 Q. When next did you see Lieutenant Lynch after this 4:20 in the morning? A. When did I see him?

Q. Yes. A. Well, he remained there until he left the stable between five and six o'clock; I don't know the exact minute now that he left; I called up the Fourth Precinct or he called it up to notify them that Crane had been suspended, and I called up the Fourth Precinct myself and notified the clerk at the desk that it was not necessary to send any one over there; that I would remain there until the day man came in.

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Q. Have you seen Lieutenant Lynch since? A. Yes, sir.

Q. Have you spoken to him about this case? A. No, sir.

Q. At the time you made out this report things were fresh in your mind? A. Yes, sir.

Q. You were expected to report everything that you knew of that transpired at that time? A. No, sir; Lieutenant Lynch ordered me to leave a report for the Inspector as to what language Patrolman Crane had used in my presence.

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Q. And you knew that Patrolman Crane was to leave a report of what language Crane had used to Lieutenant Lynch at that time? A. Yes, sir.

Q. Your memory was better then than it is now? A. Yes, sir.

30

Q. Then, why was it in making this report, when your memory was fresh on the subject that you did not say anything about "you dirty bum" at all, and you did not say anything about, "I will give you the trouble of your life?" A. Well, I simply made out a report as to the abusive language that he used.

Q. Did you think it was an improper thing for a man to say towards his superior officer?

A. Yes, sir; he ordered me to leave a report to the abusive language.

40

Q. What you left in your report was, "Go fuck

yourself; I will give you the tumble of your life"? A. Yes, sir.

Q. I say "tumble"; was it "tumble" or "trouble"? A. Tumble.

Q. What was Crane's physical condition that morning? A. Well, normal; he is always so to my knowledge.

10 Q. Did you see any broken glass around there?
A. I did the night before.

Q. Where is that broken glass? A. In the door leading to the stable.

Q. Any other glass broken around there? A. Yes, sir; some of the smaller windows have been broken for some time.

20 Q. Did you ascertain where this glass that was broken this night by Mr. Crane, where it was broken; what glass it was? A. Why, it was a lower light in the lower corner of the door leading out into the stable.

Q. Is that the door which is referred to as the "office door" to the left hand of the office? A. It is the only door leading from the office; leading from the office into the stable; the other door leads out in the street.

30 Q. That door swings in? A. It swings from the stable into the office.

Q. And at that time if the door had been opened, the door would swing to the east, would it not? A. Yes, sir.

40 Q. So that a person clinched would be beyond the door step in order to come in contact with that glass? A. He would be inside of the office; he would have to be in the office proper; the same as here (indicating) is the office, and here (indicating) is the door; he would have to be inside of that office to break that glass.

By Lieutenant Lynch:

Q. Did Officer Crane tell you how that glass

got broken? A. As I was going to come out of the stable, I asked him how this glass got broken, because Patrolman Hayes is always anxious to know how this glass gets broke, and he said Johnson broke this glass backing me up against it, when he went to take that gun away from me, and I said, "Whose gun?" And he said, "My gun." I said, "What were you doing with the gun here?" and he said, "I am going to shoot that dirty big bum."

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By the Commissioner:

Q. Who did he refer to, who was present when he said that? A. Him and I.

Q. Was Lieutenant Lynch there? A. No, sir; he was out on patrol duty; this was when I was going to get my horse; I didn't know that there had been any gunplay going on.

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The Commissioner: There are two complaints against this man; are we trying him on both complaints?

Mr. Ziegner: Yes.

The Commissioner: The testimony in each case is the same.

Defendant's Case.

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HARRY D. CRAWFORD, sworn.

Direct examination by Mr. Ziegner:

Q. After 11:45 on the night of October 13, did you have occasion to enter the stable, known as the police stables, on Jewett Avenue? A. Yes, sir.

Q. At what time? A. One fifteen A. M.

Q. Did you see Officer Crane there? A. Yes, sir.

40

Q. Did you notice anything unusual in the condition of Mr. Crane? A. Yes, sir.

Q. Tell us what it was? A. He had his hands on his hips this way (illustrating), and I said to him, "What is the matter?" and he didn't answer me; I said, "You seem to be all out."

Q. What was his appearance at that time? A. He seemed to stoop down this way (illustrating).

10 Q. At that time during the conversation that you had with him, did you see any injuries? A. Yes, I saw on his hip in here (indicating), I saw scratch in here (indicating) about an inch long, and over here (indicating) an open cut.

Q. At that time did he ask you to secure medical attention for him? A. That was after, when I had the horse hitched up.

Q. During the time that you were there had his physical condition appeared to be unusual? A. Yes, sir.

20 Q. Did he appear to be suffering pain? A. Yes, sir.

Q. How long did you stay there that day? A. I only stayed there until about a quarter of two in the morning; I had to report at two o'clock.

Q. At that time did Officer Crane do anything or say anything? A. Yes, when I went out on post he asked me to send in somebody.

30 Q. At what time did you go on post? A. Two o'clock on that morning.

Q. What had Crane's condition been around there, any trouble of late? A. Not as I noticed.

Q. I mean his physical condition; was he a healthy man or had he been ailing to your knowledge? A. Well, he had been doing his work, that is all I know.

Q. You did not come into very close contact with him? A. No, sir.

40 Cross examination by the Commissioner:

Q. You say you were talking to Patrolman Crane on this night in question? A. Yes, sir.

Q. Just tell us what he did say? A. I came in the stable about a quarter after one; I came in the back door, and Patrolman Crane came walking along with his hands on his hips and his head down this way (illustrating), and I said, "What is the matter?" and he didn't say anything first, and then he walked in the office, and he opened his pants and showed me where he was cut and I said, "How did this happen?" and he answered and said, "Lieutenant Lynch had thrown him through the glass door."

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Q. Why didn't you state that before? A. Because they didn't ask me.

Q. He said that Lieutenant Lynch had thrown him through the glass door? A. Yes, and he said he had a fight in the stable and in the struggle he had been thrown through the glass door; there is a door leading from the stable to the office.

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Dr. D. F. SRYGLEY, sworn.

Direct examination by Mr. Ziegner:

Q. During the month of October, 1915, were you connected with the City Hospital? A. I was.

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Q. On the morning of the 14th of that month, were you so connected? A. Yes, sir.

Q. Do you know this defendant, Patrick Crane? A. Yes, I do.

Q. Do you know whether or not he became a patient in that hospital on or about that day? A. He did.

Q. Under whose supervision and treatment? A. My treatment.

Q. Did you notice any unusual condition of this man at the time he entered your institution?

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A. He had a cut over his buttocks and a contusion over his left ear.

Q. What sort of contusion was it, in what degree? A. Well, it was like a bruise, it was swollen.

Q. Did it appear to be a fresh bruise? A. Yes, sir.

10 Q. What was his general condition? A. Do you mean his physical condition?

Q. Yes. A. He didn't stand the sewing very well; we had to give him something for his nerves; he was nervous.

Q. What was the extent of the injury to the hip? A. Why it was an incised wound about two inches in length.

20 Q. Did it appear to you as a cut from glass? A. Yes, a sharp cutting instrument such as glass.

Q. Was it such a cut as to require any stitches or treatment by you? A. Yes, we put three stitches in it.

Q. Have you seen Mr. Crane at the institution since? A. No, but I know he has been there.

30 Q. Was that the only and last time that you examined him? A. Yes, sir.

Q. Would that condition be prompted to create a limp? A. Well, not necessarily so; it might for a while, but not permanently.

Q. So far as both injuries were concerned would you say they were of recent occurrence when you saw him? A. Yes, sir.

Cross examination by the Commissioner:

40 Q. You saw him at the institution? A. Yes, sir.

Q. He called in the emergency department and you treated him there? A. Yes, sir.

Q. He was not confined to the hospital? A. No, sir.

PATRICK J. CRANE, sworn.

Direct examination by Mr. Ziegner:

Q. Previous to October 13, 1915, what had been your condition? A. I had a fractured jaw. 10

Q. And how long previous to that time, October, 13th, had you sustained that injury? A. On the 6th day of August I sustained that injury.

Q. And since that time has it caused you any pain? A. Yes, on numerous occasions.

Q. Has it caused you loss of sleep? A. Yes, at times.

Q. Have you been feeling since your jaw had been injured, the same as you had previous thereto? A. No, sir. 20

Q. Has it bothered you at different times? A. Yes, sir, at times I have felt it.

Q. Have you since been under medical treatment for the jaw? A. Well, I have been to the dentist.

Q. Have you also been to Doctor Pyle? A. No, only he operated on my nose.

Q. How long ago did that happen? A. That happened some time ago. 30

Q. Previous to the month of April, you had also been under treatment by different doctors? A. Well, off and on I have had a lot of mishaps.

Q. Well, Doctor Pyle treated you as late as November 4th, performing an operation on your nose? A. He cut something out of it.

Q. And as late as August 13th, you have applied to Commissioner Hague for a leave of absence, or rather to the Commission, to put you on sick leave? A. I don't remember that. 40

Q. You also met with an accident while in the performance of your duties, while being in the patrol wagon? A. That was in 1913.

Q. On August 2d? A. Yes.

Q. Who was the driver of that wagon? A. It was driven by me.

Q. And the horse was killed? A. Yes, by a plankroad car.

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Q. At that time did you receive any injury? A. Yes, sir.

Q. And you obtained sick leave? A. Yes, sir.

Q. How long were you on sick leave? A. Practically a month.

Q. Did you have any other accident while in the performance of your duties in the patrol wagon? A. No more accidents in the police patrol wagon.

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Q. That is the only accident that you have received that you know of? A. Yes, sir.

Q. Now, previous to October 13th and previous to the order of the Commissioners on February 13, 1915, had you been taken ill in any way? A. I was never sick for a day; the only mishaps were injuries.

Q. While in the performance of your duties? A. Yes, sir.

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Q. And on October 13, 1915, just tell us what happened from the time Lieutenant Lynch entered the stable until you went from the stable?

A. Lieutenant Lynch came around there some time that night; I never had had any words with Lieutenant Lynch or anybody else in the stable; he went out on patrol duty; possibly about 11:55 he entered the stable again and the stable door was locked; I hollered to some one to open the door, as I was at that time in the office making a new, fresh fire.

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Q. Was that night a night that required any

heat at all, or did you keep heat all nights? A, Well, the nights get cool and I am there alone and it is customary to make a fire, and when Lieutenant Lynch came in the fire was out and I made a new fire, and when he entered he said, "Patsy, leave that door open"; and I said I would not leave it open; I said I would leave it closed; I said I had taken a dose of castor oil; he said, "Fuck you, I am going to have my way." "Well," I said, "Why should you go in there?" and with that he said, "You ain't scaring anyone," and he starts to beat me. 10

Q. Up until the time that he punched you in the jaw, had you ever offered any resistance or had you been in any way disrespectful to a superior officer? A. No, sir; I have not.

Q. Had you, as he testified, gotten hold of him previous to that time? A. No, I would not have the nerve to tackle a man of his size. 20

Q. What do you weigh? A. About 130 pounds.

Q. What is your height? A. Five feet five or five and a half feet.

Q. And up until the time he punched you in the jaw, you say you hadn't done anything to him? A. No, sir.

Q. Tell us what happened? A. I was walking away— 30

Q. We got you up to the time he struck you? A. He struck me and we started to clinch and Officer Johnson, he was backing me up, and I was trying to avoid it.

Q. What happened then? A. I ran in the office, trying to get away from him, and he followed me in.

Q. Did you know that he was following you? A. No, sir; and when I got in the office he came in and he takes and throws me and I go through the window. 40

Q. Was that in the office or near the front door? A. Yes, the struggle was in the office, and he threw me through the door; he went on like a crazy man; I went to my locker and got my gun to protect myself after he went on that way.

Q. Did you use the language that he has said you used? A. No, sir; I did not use it to him.

10 Q. You had no reason to have any trouble with him, other than he wanted you to close the door? A. No, sir.

Q. When you ran towards the office did you have any intention of getting your gun or did you intend to escape from him? A. I tried to get away from him.

20 Q. You say you did not apply for any medical treatment until after Crawford came in? A. I felt something, I was thrown through the window and Officer Crawford came in and I said, "Will you look here?" and I took down my clothes and he gets off his horse and I said, "If you see either Sullivan or Lockwood, or Johnson, let them go and get medical attention for me," and about four-thirty, the Sergeant came down and I turned to Sergeant Lockwood and I said, "Will you excuse me to let me go to the hospital to get some medical treatment?"

30 Q. That was your only reason? A. Yes, sir.

Q. Had you done, on that night, anything which would prompt any man to assault you the way he did? A. No, sir.

Q. Had you ever been hostile or anything to him? A. No, sir.

Q. Or he any to you? A. No, sir.

40 Q. Did you use the language that he says you did the next morning to him? A. He came in the office the next morning; it is the custom to talk over things; Sergeant Lockwood is a very attentive man; and this man turned to me and

said, "You little fuck, you hit me last night." And I said, "What did you do to me." And he said he didn't do anything, and then he started to abuse me—

Q. Where did you go? A. I started out to feed the horses; I had about four or five horses to feed and he said to me, "You are suspended"; I walked inside and he followed me and said, "Leave a report." I said, "Who do I make this report out to, to Hague, Lockwood or Leonard?" and he said, "I don't care who you make it out to." I dressed myself and went over to the hospital and had three stitches put in the cut and then I went over there again and made out my report to Lieutenant Kelly.

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Q. At the time he punched you in the jaw, did you punch him first? A. No, sir.

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Q. Where did you receive the blow? A. On the side of the head.

Q. How was that caused? A. With his hand.

Q. Did you receive more than one blow? A. Yes, sir.

Q. During that time had you struck him at all? A. No, sir.

Cross examination by the Commissioner:

Q. Why did you go for your gun? A. I wanted to protect myself.

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Q. Didn't you know that it was a severe offence to get a gun to protect yourself? A. Why the way he came at me I didn't know what he intended to do to me.

Q. You said that Sergeant Lockwood is a very attentive man? A. Yes, sir.

Q. Is he a liar?

Mr. Ziegner: I object to that, I don't think it is right to have a police officer

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under your supervision characterized in any way.

Q. Do you think that Sergeant Lockwood would tell an untruth about you? A. Well, Commissioner, to the best of my information I have been made use of in this thing.

10 Q. Do you think that Sergeant Lockwood would deliberately lie?

Mr. Ziegner: I object to that; a man may never be known to lie until he lies.

Q. Do you think Sergeant Lockwood would lie about you before this Commission? A. I do not think that he would lie about me, because I think he was a good fair man.

20 Q. You have testified here that officer Lockwood was the man struggling for the pistol? A. I will admit that that statement about Sergeant Lockwood is not true.

Q. You say that Sergeant is telling an untruth? A. Yes, sir.

Q. You say that he is a very fair man? Did you ever know him to lie or injure anyone? A. No, but in that particular one I say that that is false.

30 Q. Your testimony is what Sergeant Lockwood says is false? A. Yes, on that question.

Q. You say that Lieutenant Lynch struck you? A. Yes.

Q. Did you use any vile language towards him? A. No, sir.

Q. He just came in from the street? A. Yes.

Q. And it was to your discomfort to open the door? A. Yes, sir.

40 Q. Why was it to Lieutenant Lynch's comfort to open the door? A. I don't know, he never mentioned horses in his life before.

Q. Now officer, officer Sullivan testified about this conduct of yours, officer Johnson testified about taking the pistol away from you and about your saying I will kill you, you big son of a bitch, now is that true? A. No, that is not true.

Q. Why would officers Sullivan and Johnson come in this room and so testify; you never had trouble with these two men? A. No, sir.

Q. Did you ever have any words with them? A. No, sir.

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Q. Did they ever find any fault with your conduct? A. Not as I know of.

Q. They never criticised or doubted you in any manner? A. No, sir.

Q. They never objected to your being present in the stables? A. No, sir.

Q. They never objected to that? A. No, sir.

20

Q. Will you tell me why officer Johnson and officer Sullivan, two fellow officers, who are well acquainted, who will come in here and tell that story; are they telling an untruth? A. Yes, sir.

Q. That is all.

Mr. Ziegner: That is our defense and I ask for a dismissal of these complaints on the following grounds: I feel that the evidence does not warrant you in convicting this young fellow on the evidence of Lieutenant Lynch, I feel that you in justice to anybody, whether he is a policeman or not, should not convict on such evidence as exhibited by Mr. Lynch; I am not going to be charitable with the gentleman, I regret to say it but he has lied, and if you want to convict a police officer on such evidence I cannot help it; I contend now that he has deliberately lied when he told you that he didn't follow this man into the office, and

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10 that he didn't throw this man through the window, because Johnson testified that this man was attempting to defend himself with a gun and upon his own testimony leaves him liable to prosecution; I think it is outrageous to take his testimony or to consider it in any way, I don't think he ought to be recognized in this case; I want to tell you this, that if this man, Johnson, is telling the truth, that this man Lynch followed and continued to follow him and Crane could get his hand on that gun, and knowing the brute that this man was; if I had been in Crane's place there would have been a gun too.

20 The Commissioner: What was Johnson's testimony about that; I will call patrolman Johnson to the stand again.

FREDERICK J. JOHNSON, recalled.

Direct examination by the Commissioner:

Q. Officer, I understand that your testimony is that the struggle took place while you were getting ready to go on patrol duty? A. Yes, sir.

30 Q. That they clinched at that time? A. Yes, sir.

Q. That they were separated? A. Yes, sir.

Q. And that Crane ran into the office? A. Yes, I was on this side of Crane (indicating).

Q. And your testimony, as I recall it, was that Crane said, "I will kill you," as he was running in the office?

By Mr. Ziegner:

40 Q. Didn't you testify that when Crane ran into the office that Lynch ran after him? A. Yes, sir.

Q. And didn't you testify that then you heard a struggle? A. Yes, sir.

Q. And didn't you also testify that you then heard the crash of glass? A. Yes, sir.

Q. And didn't you also testify at that time that you heard the crash? A. Yes, sir.

Mr. Ziegener: I submit that the evidence in this case does not warrant a conviction and I move for a dismissal of the charges against this defendant.

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The Commissioner: I will deny your motion. I am going to dismiss this man from the department;; I find him guilty in both of these charges, and my verdict is that he be dismissed from the department.

Stipulation.

NEW JERSEY SUPREME COURT.

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PATRICK CRANE,
Prosecutor,

v.

MAYOR and ALDERMEN OF JERSEY CITY and the BOARD OF COMMISSIONERS OF JERSEY CITY,
Respondents.

On Certiorari.

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It is, on this twenty-third day of May, A. D. nineteen hundred and sixteen, in order to avoid the taking of depositions, stipulated and agreed that the following may be considered as formally taken by depositions:

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First. That the prosecutor was a member of the Police Department from the 25th day of August, 1911, and continued to be such a member up until the date of the trial herein.

10 Second. The following is a copy of General Order 21, issued under the direction of Commissioner Hague, Director of Public Safety, on February 19th, 1915:

“HEADQUARTERS POLICE DEPARTMENT.

Jersey City, N. J., February 19, 1915,

General Order No. 21.

20 The attention of the officers and men of this department is directed to the following communication from the Commissioner of Public Safety, to me:

‘February 19, 1915.

Mr. Frank Monohan,
Chief of Police,
Jersey City, N. J.

Dear Sir:—

30 My attention has been called to Patrol Driver Patrick Crane who is detailed nights as stableman at the Jewett Avenue Police Stable.

40 This man is constantly reporting sick and I am convinced that his ailments are purely imaginary with the purpose of shirking his duties. I have stated before in a communication to you that I am determined to drive such men as this out of the Department, and I only regret that I have not sufficient evidence to place Crane before the Commission on charges and recommend his dismissal.

Hereafter when Patrol Driver Crane reports sick he is to be granted sick leave without pay. This is one of the men I referred to in my communication when I said that there were men in the Department who were using their best efforts to destroy the privilege of full pay being granted when a man is sick, and I now ask you to make an investigation of the entire department as to the records of the men I referred to and submit to me a list of the men who in your judgment are frequently feigning illness so that I may issue a general order placing them in the same positions as I have placed Patrolman Crane, so that hereafter when they report sick they are to be granted sick leave without pay; when I say without pay I mean without any pay at all, and I do not mean on half pay. 10

Make this a general order and have copies of it prepared and posted in the reserve rooms of all precincts. 20

Yours very truly,

(Signed) Frank Hague,
Director. 30

I am also enclosing a copy of a letter addressed to Police Surgeon Nevin by the Director of Public Safety on the subject. This letter will also be posted in the reserve room and treated as part of the above order.

By order of

(Signed) FRANK MONOHAN,
Chief of Police." 40

Third. The following is a copy of the charges and specifications, on which trial was held, against Patrick Crane:

"J. C., Oct. 14, 1915.

To Inspector Leonard,

Sir:

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At 11:50 last P. M. I returned to stable from Patrol. I found all doors in stable shut and red hot fire in office. I ordered Patrolman Crane to leave that big door open and give the horses air. He called me a vile name and made a rush for me. He had a broom in his hand. I pushed him away and he clinched with me again. He was dragged away by Patrolman Sullivan. He then ran in office. When he went to come out in the office again he was stopped by Patrolman Johnson in the struggle with Johnson he fell against the glass door, breaking a pane of glass in same. I booked myself and gave my horse a drink. I then went out, got on my horse and was leaving stable for patrol when he called be a big bum and cock-sucker. I would have suspended him then but I know the Fourth Precinct was short handed and decided to let him continue on duty until I returned from Patrol, when I returned from patrol with Sergt. Lockwood at 4:15 A. M., I ordered him to leave a report as to why he used vile language to me and he replied I will not leave a report for you, you can go fuck yourself. I then told him he was suspended. He had not fed the horses, and then I told him he was suspended after he had replied as

stated he went out and began to feed the horses and I told him not to feed any more as he was suspended. He then changed his clothes and after making several threats he left the stable. I learned from Patrolman Johnson that he had taken Crane's revolver from him when he was struggling with him at office door which had glass broken. I notified Lieutenant Kelly over the 'phone that I suspended Patrolman Crane and left Crane's shield and Patrol Key at 4th Prect.

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Respectfully,
THOMAS LYNCH,
Lieutenant Commanding.

October 18th, 1915.

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To the Board of Commissioners of Jersey City:

I hereby charge Patrolman Patrick Crane with conduct unbecoming an officer.

Specifications:

In this that the said Patrolman Patrick Crane of the Fourth Precinct about 11:50 P. M., October 13th, 1915, while on duty at the Jewett Ave. stable, was ordered by Lieut. Lynch to leave the stable door open and upon being ordered to do so he used vile language, assaulted and attempted to shoot the said Lieut. Lynch.

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Being in violation of Rule 25, Section 34 of the Manual of the Jersey City Police Force, January 1st, 1913.

PHILIP LEONARD, Inspector,
Complainant.

40

October 16th, 1915.

I hereby charge Patrolman Patrick Crane with conduct unbecoming an officer.

Specifications:

10 In this that the said Patrolman Patrick Crane of the Fourth Precinct, about 4:15 A. M., October 14th, 1915, when ordered by Lieutenant Lynch to make out a report regarding his conduct at 11:50 P. M., October 13th, 1915, used vile and threatening language and refused to make out a report.

Being in violation of Rule 25, Section 34 of the Manual of the Jersey City Police Force, January 1st, 1913.

20 PHILIP LEONARD, Inspector,
Complainant."

30 Fourth. Jersey City adopted the commission form of government under the provisions of an act entitled, "An Act relating to, regulating and providing for the government of cities, towns, boroughs and other municipalities within this State," being Chapter 221 of the Session Laws 1911, page 462 and is now operating under said act and the amendments and supplements thereto.

40 Fifth. That under the provisions of said act, the duties of the respective departments provided for therein were distributed as follows: Mark M. Fagan to be Director of Public Affairs, George F. Brensinger to be Director of Revenue and Finance, Frank Hague to be Director of Public Safety, Henry Byrne to be Director of Streets and Public Improvements and A. Harry Moore to be Director of Parks and Public Properties; that the said Commissioners have continued to occu-

py the said respective offices until the present time.

Sixth. Rule 25, Section 34 of the Manual Rules and Regulations for the Government of the Police Department of the City of Jersey City, adopted January 1st, 1913, is as follows:

“Each member, in his conduct and deportment, must be quiet, civil and orderly. In the performance of his duties he must maintain decorum, command of temper, patience and discretion; he must, at all times, refrain from harsh, coarse, profane or insolent language, yet be firm, resolute and energetic; he must not neglect or fail to perform any duty he may have to do; he must not use unnecessary force or violence or strike a prisoner, or any person, with his baton, except in self-defense; he must be punctual in his attendance to all calls and requirements of duty, and, at all times, yield prompt and implicit obedience to the orders of his superior officers.”

Seventh. Rule 32 of the aforesaid Manual Rules and Regulations reads as follows:

“(1) Any officer or member of the Force shall be subject to reprimand, suspension, deduction of pay, reduction in rank, or dismissal, according to the nature and aggravation of his offense, for any of the following causes: intoxication, wilful disobedience of orders, indecent, profane or harsh language, disrespect to a superior officer, unnecessary violence to prisoners, leaving post without just cause, neglect in paying just debts, immorality, indecency, or lewdness, absence without leave, incompetency, lack of energy, and incapacity, mentally or physically. Entering liquor saloons or gambling houses, except in discharge of duty, while in uniform, neglect of duty, violation of any criminal law;

10 for making known any proposed action or movement of the Force, or the provisions of any orders, to persons outside of the Force; conduct not becoming an officer and a gentleman, conduct subversive of good order and the discipline of the Force; not properly patrolling post; publicly commenting on the official action of a superior officer; or violation of any rule or order of the Board of Police Commissioners.

20 “(2) It shall be the duty of every member of the Force to report any and all violation of the rules and regulations or orders which they may observe to their respective immediate superior officers. Officers may suspend from duty any subordinate, until the same can be reported to his next superior in office, with the cause and facts on which such suspension was ordered.

30 “(3) No member shall, directly or indirectly, be concerned in making any compromise or arrangement between thieves or other criminals and persons who have suffered from their acts, with a view to permitting the criminals to escape punishment provided for by law, and any officer who has any part in such compromise or arrangements, or has any knowledge thereof, and fails to give information to his superior officer, shall be subject to dismissal.

“(4) From time to time the Board will hold Police trials for violations of the rules of the Department or for such other offenses on the part of police officers as are contrary to law.

40 “5) All charges shall be prepared by the District Inspector under the direction of the Chief of Police and the Board.

“(6) No violation of the rules or of the laws on the part of a police officer shall be disposed

of in any other method except by a trial before the Board.

“(7) Suspension pending investigation must be made either by the Board of the Chief. Reinstatement shall only be made by action of the Board. No charge once made shall be withdrawn or altered except by consent of the Board.

“(8) Captains are required within 24 hours after a complaint has been filed to make final charges and specifications, a copy of which shall be left with the Clerk of the Board. 10

“(9) Complaints against officers may be made by a member of the force or a citizen by letter to the Board. When by a citizen such complaint must be sworn to.

“(10) No member of the Force being under charges shall cause any person, either before trial or judgment to interfere personally or by letter, in his behalf with any member of the Board. He shall, however, have the right to subpoena as many witnesses as he may deem necessary.” 20

Eighth. That the following resolutions were adopted by the Board of Commissioners of Jersey City on the dates set forth: 30

RESOLUTION PASSED ON APRIL 22, 1915.

By Commissioner Hague:

Whereas, the Legislature of this State has just enacted Chapter 275 of the Laws of 1915, which is an amendment of the 4th Section of Chapter No. 221, of the Laws of 1911, popularly known as the “Walsh Act,” and

Whereas, the Corporation Counsel, by communication dated April 21, 1915, has advised this 40

Board that the effect of the enactment of Chapter No. 275 of the Laws of 1915, is to authorize this Board to delegate the judicial power of hearing charges against any employee of the City Government to the head of the Department in which said employee is in service, and

10 Whereas, it is deemed desirable by this Board to discontinue the practice of having the entire Board sit upon the trials of employees of the City Government charged with offenses, for the reason that the time consumed in the conduct of said trials and hearings can be devoted to departmental affairs by the various Directors other than the Director having charge of the Department in which the accused employee is in service, and for the further reason that it has
20 been found that the practice of having the entire Board sit upon the trial of accused employees has resulted in interference with the work of the Directors in their various departments, therefore, be it

Resolved, that from and after the passage of this resolution the Directors of the respective departments shall, whenever charges are preferred against any officer or employee of this City, conduct the trial of said employee and
30 render judgment thereon, which judgment, upon the filing of a memorandum thereon with the City Clerk, shall become the judgment of this Board, and it is further

Resolved, However, that the maximum penalty to be fixed by any Director shall not exceed the forfeiture of 90 days' pay, and be it further

Resolved, That at each of the trials of accused employees conducted in any of the Departments
40 of this City a member of the Law Department shall be present to advise the Commissioner or

Director conducting said trial and to advise the accused employees who are not represented by counsel of their legal rights.

Adopted.

Yeas: Commissioners Brensinger, Byrne, Hague, Moore, and Mayor Fagan.

Nays: None.

(Resolution passed on May 13, 1915.) 10

By Commissioner Hague:

Whereas, This Board did heretofore and on the 22nd day of April, 1915, pass the following resolution:

Whereas, the Legislature of this State has just enacted Chapter No. 275 of the Laws of 1915, which is an amendment of the fourth section of Chapter No. 221 of the Laws of 1911, popularly known as the "Walsh Act"; and 20

Whereas, The Corporation Counsel, by communication dated April 21, 1915, has advised this Board that the effect of the enactment of Chapter No. 275 of the Laws of 1915 is to authorize this Board to delegate the judicial power of hearing charges against any employee of the City Government to the head of the department in which said employee is in service; and 30

Whereas, it is deemed desirable by this Board to discontinue the practice of having the entire Board sit upon the trials of employes of the City Government charged with offenses, for the reason that the time consumed in the conduct of said trials and hearings can be devoted to departmental affairs by the various Directors other than the Director having charge of the department in which the accused employe is in service, and for the further reason that it has been found that the practice of having the entire Board sit upon the trial of accused employes has resulted in interfer- 40

ence with the work of the Directors in their various departments; therefore, be it

10 Resolved, That from and after the passage of this resolution the Directors of the respective departments shall, whenever charges are preferred against any officer or employe of this city, conduct the trial of said employe and render judgment thereon, which judgment upon the filing of a memorandum thereon with the City Clerk, shall become the judgment of this Board, and it is further

Resolved, However, that the maximum penalty to be fixed by any Director shall not exceed the forfeiture of ninety days' pay; and be it further

20 Resolved, That at each of the trials of accused employes conducted in any of the departments of this city a member of the Law Department shall be present to advise the Commissioner or Director conducting said trial, and to advise the accused employes who are not represented by counsel of their legal rights, and

30 Whereas, By reason of the experience resulting from the operation of said resolution, it is deemed advisable to supplement the same by providing that whenever, in the judgment of the Director of the department in which an accused employe may be employed, it is necessary for or desirable to have the entire Board of Commissioners sit upon the trial of such accused employe, the same shall be done; therefore be it

Resolved, That the foregoing resolution, so passed by this Board on the 22nd day of April, 1915, be amended by providing as follows:

40 Further Resolved, That whenever charges are preferred against any officer or employe of the city and the Director of the department in which said officer or employe is so employed shall advise this Board in writing that owing to the character

of nature of the charges it is deemed advisable or expedient that the entire Board shall sit upon the trial of such charges, then and in that case the entire Board of Commissioners, or a majority of them, shall sit upon and hear the trial of the accused employe and render judgment thereon.

Adopted.

Yeas. Commissioners Brensinger, Byrne, Hague, Moore, and Mayor Fagan.

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Nays, None.

(Resolution passed September 29, 1915.)

By Commissioner Hague:

Whereas, heretofore and on the 22nd day of April, 1915, the Board of Commissioners did distribute the judicial power conferred upon them by the authority of Section 221 of the Laws of 1911; which distribution of power was limited in its scope and extent so as to provide that no employe of the City could be dismissed from the service by any one Commissioner without the concurrence of the entire Board; and

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Whereas it is the opinion of this Board that after a trial of such procedure the same does not work for the best interest of the City, therefore be it

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Resolved, that the said resolution heretofore passed and adopted on the 22nd day of April, 1915, be and the same is hereby rescinded.

Further resolved that the judicial power heretofore conferred upon the Board of Commissioners by the authority of said act and its supplements and amendments be and the same is hereby distributed into and among the five departments of the city, each Commissioner to have the power to act within his own department without limita-

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tion as to the nature and extent of the punishment to be imposed except as provided by law.

ZIEGENER & LANE,
Attorneys for Prosecutor.
JOHN BENTLEY,
Attorney for Defendants.

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Reasons.

NEW JERSEY SUPREME COURT.

PATRICK CRANE,
Prosecutor,

v.

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MAYOR and ALDERMEN OF JERSEY CITY, BOARD OF COMMISSIONERS OF JERSEY CITY, and FRANK HAGUE, Commissioner and Director of Public Safety of Jersey City,
Defendants.

} On Certiorari.

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The prosecutor presents the following reasons for setting aside the proceedings, dismissing him from the Police Department of Jersey City, before this Honorable Court, by the writ of certiorari granted in the above entitled matter.

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First. That the said prosecutor was dismissed from the Police Department of Jersey City without having received a fair trial upon charges preferred against him as he was entitled to receive by virtue of the statutes in this State.

Second. That the prosecutor was dismissed from the Police Department of Jersey City with-

out having evidence produced against him upon which he could be found guilty of any charges filed against him.

Third. That upon the alleged trial of the prosecutor evidence of an illegal character against the prosecutor was admitted and the prosecutor was condemned upon said illegal evidence and dismissed from the Police Department of Jersey City. 10

Fourth. That the prosecutor was dismissed from the Police Department of Jersey City after an alleged trial upon certain charges in alleged support of which evidence was produced and which neither proved said charges nor furnished a rational basis for the said judgment of dismissal. 20

Fifth. That the prosecutor was dismissed from the Police Department of Jersey City without first being given a fair trial.

Sixth. That the prosecutor was dismissed from the Police Department of Jersey City without sufficient legal evidence to justify said dismissal.

Seventh. That the dismissal of the prosecutor from the Police Department of Jersey City was the result of the oppressive conduct and bad motives of Frank Hague, one of the Commissioners of Jersey City and the Director of Public Safety. 30

Eighth. That Frank Hague, one of the Commissioners and the Director of Public Safety, had no power or authority to try the prosecutor and to dismiss him from the Police Department of Jersey City; the prosecutor was entitled to receive a fair trial and a trial before the full Board of City Commissioners. 40

Ninth. That the prosecutor did not receive a fair and impartial trial before the full Board of City Commissioners, as he was entitled to.

10 Tenth. That Frank Hague, Director of Public Safety and one of the Commissioners of Jersey City was disqualified to sit as a Judge and to preside at said alleged trial at which the prosecutor was found guilty and dismissed; that the said Frank Hague, Commissioner and Director as aforesaid, acted both as Prosecutor and Judge; that he showed his prejudice throughout the entire trial and that his decision was not based upon evidence and that there was no evidence to support his decision and judgment and that the said decision and judgment was against the weight of evidence.

20 Eleventh. That the said Frank Hague, Commissioner and Director as aforesaid, illegally permitted at said alleged hearing and trial, a report made by Thomas F. Lynch on October 14th, 1915, to the inspector, to be read into the record, which report had no binding force or effect on the prosecutor and was illegally admitted.

30 Twelfth. That the said Frank Hague, Commissioner and Director as aforesaid, conducted the said trial in an illegal and improper manner.

Thirteenth. That the said Frank Hague, Commissioner and Director as aforesaid, illegally gave testimony on the record in an indirect way and by asking leading questions and by making statements and reading reports and asking the witness whether or not they were true.

40 Fourteenth. That the said prosecutor did not receive a fair and reasonable opportunity to

make proper defenses at his said alleged trial, as he was entitled to have under the law and the statutes of this State.

Fifteenth. That the proceedings against and dismissal of the prosecutor were in divers other respects irregular, illegal, unjust and oppressive to the prosecutor.

ZIEGENER & LANE, 10
Attorneys for Prosecutor.

It is hereby consented that within reasons be filed as within time.

JOHN BENTLEY,
Attorney for Defendants.

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New Jersey Court of Errors and Appeals.

PATRICK CRANE,	}	
<i>Prosecutor below,</i>		
<i>Appellant,</i>		On Certiorari. On Appeal from Supreme Court.
<i>vs.</i>		10
THE MAYOR AND ALDERMEN OF JERSEY CITY, et al.,		
<i>Respondents below,</i>		
<i>Respondents.</i>		

MEMORANDUM FOR RESPONDENTS.

This is an appeal from judgment of the Supreme Court dismissing the writ of certiorari and affirming discharge of Prosecutor from the Jersey City Police Department, the facts being, briefly, as follows: 20

Prosecutor prior to October 21, 1915, was a member of the Jersey City Police Department. On that day he was dismissed after trial upon charges of conduct unbecoming an officer. The gravamen of the charges is that (a) he used vile language, assaulted and attempted to shoot Lieutenant Lynch, his superior, and (b) when ordered to make out a report by the same superior used vile and threatening language toward him (Case, pp. 69, 70). 30

Prosecutor makes four points:

- (1) He was dismissed without a fair trial.
- (2) He was entitled to trial at the hands of the full Board of Commissioners and not by the Commissioner of Public Safety alone.
- (3) He was dismissed without sufficient evidence to justify the same. 40
- (4) Illegal evidence was admitted.

I.

Prosecutor had a fair trial. He was represented by counsel; had the privilege of cross-examining witnesses produced against him, was permitted to and did call witnesses on his own behalf, and took the stand himself.

10 Whatever may have been the opinion of the Director of Public Safety as to the desire of Prosecutor to shirk his duty as expressed by him in February, 1915, there is nothing in the case to justify the necessary inference on the part of Prosecutor that the Director of Public Safety violated his sworn duty.

20 What instance is there in the record of "oppressive conduct and bad motives upon the part of the Director of Public Safety"? Prosecutor assumes a condition exists of which there is absolutely no proof. What was the "oppressive conduct"? and what were the "bad motives"? Are we to believe there was a conspiracy between Lieutenant Lynch and Director of Safety to cause Crane to pick a fight with Lynch? And that Sullivan, Lockwood and Johnson were co-conspirators? Certainly not without some proof.

II.

30 Prosecutor was not entitled to trial before the entire Board of Commissioners. Prior to the enactment of Ch. 275, P. L. 1915, the Board of Commissioners as a whole was required to sit upon the trials of delinquent city employees.

Herbert v. Atlantic City, supra.

The statute just referred to, however was passed evidently as a result of the Supreme Court opinion in the Herbert case.

40 Prosecutor does not dispute the power of the Legislature to authorize the distribution of judi-

cial and other powers by a board among its members. The cases cited in his brief are not authority against such legislative power, but rather upon the point that where the Legislature has failed to authorize it no municipal board or body can so delegate.

Herbert v. Atlantic City is in point. Here it is said that if the word "judicial" had been used by the Legislature in the portion of the fourth section of the "Walsh Act" dealing with the distribution of powers it would have authorized municipal action in pursuance thereof. The Legislature immediately following the publication of the opinion in the *Herbert* case amended the section in question in that respect. 10

III.

Prosecutor would like to "whistle down the wind" the testimony of Lynch and the corroboration of Sullivan, Lockwood and Johnson. 20

He puts his seal of approval upon the veracity of Lockwood (case, p. 62 l. 10 et seq.).

Prosecutor has but himself to rebut the stories told by the four witnesses produced on the part of the city. How can he say the conviction was against the clear weight of the evidence.

No one can read the record without coming to the conclusion that the evidence fairly sustains the charges and the result arrived at. 30

Being so, the finding of the Director of Public Safety under the cases will not be disturbed.

See *Herbert v. Atlantic City*, 93 Atl. Rep., p. 80, citing with approval *Reilly v. Jersey City*, 64 N. J. L., 510, and other cases.

Should the Court desire to depart from the established practice of not weighing the evidence, we are content to rest our case upon the testimony of those witnesses who had no interest or bias—Sullivan, Lockwood and Johnson. 40

IV.

The alleged illegal evidence admitted was the report of Lieutenant Lynch upon which Inspector Leonard, as a matter of routine duty made the complaint against Prosecutor. The only purpose of offering and admitting the report it is quite evident from the record, was to show the reason for Leonard's action in making the complaint.

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If it was illegally admitted, the error was of slight consequence, and was subsequently cured by the production of Lieutenant Lynch, the author, and his cross-examination by Prosecutor.

It is respectfully submitted that the action of the Director of Public Safety was regular and legal in every respect and that the judgment of the Supreme Court should be affirmed.

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JOHN BENTLEY,
Attorney for Respondents.

JOHN MILTON,
Of Counsel.

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New Jersey Court of Errors and Appeals.

PATRICK CRANE
Prosecutor below,
Appellant,

v.

THE MAYOR and ALDERMEN OF
JERSEY CITY, *et al.*,
Respondents below,
Respondents.

On Certiorari.
On Appeal to
Supreme Court.

BRIEF OF APPELLANT.

Statement of the Case.

This is an appeal from the judgment of the Supreme Court, dismissing the writ of certiorari, and affirming the dismissal of the prosecutor from the Police Department of Jersey City, by the Director of Public Safety of Jersey City. The charges and specifications on which the prosecutor was tried are found on pages 68-70 of the record.

Grounds of Appeal.

The grounds of appeal are twelve in number and are found on pages II, III and IV of the state of case.

All of the grounds of appeal are summed up in the following four points or grounds for a reversal of the judgment of the Supreme Court, and the setting aside of the dismissal of the prosecutor from the Police Department of Jersey City.

First.—The prosecutor was dismissed without a fair trial to which he was entitled, under the statutes of this State. His dismissal was the result of oppressive conduct and bad motives upon the part of the Director of Public Safety. The Director of Public Safety was disqualified to try the prosecutor.

Second.—The prosecutor was dismissed without a trial by the Board of City Commissioners of Jersey City. The Director of Public Safety had no power or authority to try the prosecutor and dismiss him. He was entitled to a fair trial by the full Board of City Commissioners.

Third.—The prosecutor was dismissed without sufficient evidence to justify his dismissal, the evidence neither proving the charges nor furnishing a rational basis for the judgment. The conviction was against the clear weight of the evidence.

Fourth.—Illegal evidence was admitted over objection of counsel.

FIRST.

The prosecutor was dismissed without a fair trial to which he was entitled, under the statutes of this State. His dismissal was the result of oppressive conduct and bad motives upon the part of the Director of Public Safety. The Director of Public Safety was disqualified to try the prosecutor.

At the opening of the trial, objection was made to the trial being conducted by the Director of Public Safety, and an application was made for a trial before the full Board of City Commissioners. The motions are found on pages 4-6 of

the record. It was shown that in February, 1915 (eight months previous to the trial of prosecutor under review), the Director of Public Safety, directed the Chief of Police to issue a general order solely respecting the prosecutor. The full text of the general order is found on pages 66-67 of the record.

In his letter to the Chief of Police directing the order to issue and which was incorporated in the order, the director says:

“This man is constantly reporting sick, and I am convinced that his ailments are only imaginary, with the purpose of shirking his duties. I have stated before in a communication to you, that I am determined to drive such men as these out of the department and I only regret that I have not sufficient evidence to place Crane [the prosecutor] before the commissioners on charges, and recommend his dismissal.”

The prosecutor, under the statutes of this State, is entitled to a fair trial. The attitude of the Director towards the prosecutor is clearly shown by his general order of February, 1915. He was determined to drive the prosecutor out of the department. It is folly to say that under the circumstances he was in a position to fairly try the prosecutor.

From a reading of the testimony, this attitude, condition of mind and desire of the Director is very clearly shown. Taking it all into consideration, as must be done in determining whether or not the prosecutor could—or *did*—receive a fair trial, the prosecutor did not receive a fair trial.

The above argument is made on the basis that the opinion of the Director as stated in the General Order (pp. 66-67), of February, 1915, was true. It is much stronger when the proofs show

that Crane was actually sick prior to February, 1915, showing conclusively the motives, attitude, malice, and oppressive conduct of the Director toward the prosecutor and his unfitness and inability to fairly try the prosecutor. The uncontradicted testimony of Crane (pp. 57-58) shows that Crane had received injuries in the performance of his duty and was never sick a day, except from injuries. Crane certainly at the time the order was issued had not violated any of the rules or at that time the Director would have placed him on trial and speedily driven him out of the department, as he said he was determined to. *He says he has not the evidence, yet his only regret is that he cannot recommend his dismissal.* That being his attitude toward Crane when he has no evidence before him he certainly could not sit as an unbiased judge and fairly weigh the evidence for and against Crane and fairly try him on the charges preferred, thus giving Crane a fair trial as contemplated by the statutes.

The Director of Public Safety has no power to try police officers, unless there is expressed statutory authority permitting him to. The statutory authority cannot be delegated.

In the case of *Carey v. Plainfield*, 53 N. J. L., 311, this Court held that the statutory power to remove police officers cannot be delegated. On page 314, Mr. Justice Depue says:

“By the charter of Plainfield, the power to remove officers is conferred upon the Common Council. That power cannot be delegated to any of the administrative boards or committees, and that body is the appropriate tribunal before which the charge is required to be investigated on the testimony of witnesses produced and examined. The trial by the Police Board was *coram non iudice*,

and the judgment and proceedings must be set aside."

The Board of City Commissioners cannot delegate its statutory authority nor declare antecedently the effect and operation of a judgment by the Director of Public Safety or some other body.

Lambert *v.* Rahway, 58 N. J. L., 578.
2 Dill. Mun. Cor. (4th Ed.), Sec. 779.
28 Cyc., 704.

In the case of Volk *v.* Newark, 18 Vr., 117, the Court held that the Common Council cannot divest itself of the trust which the Legislature had confided to it, to revoke licenses.

SECOND.

The prosecutor was dismissed without a trial by the Board of City Commissioners of Jersey City. The Director of Public Safety had no power or authority to try the prosecutor and dismiss him. He was entitled to a fair trial by the Board of City Commissioners.

The prosecutor could not be removed from office, except for cause, and after a fair trial (Pamph., L. 1885, p. 163).

Jersey City adopted and is acting under the commission form of government, under the provisions of Chapter 221, Law 1911, p. 462, commonly known as the Walsh Act. Section Four of this Act provides that the Board of Commissioners shall have and possess all administrative, judicial and legislative powers and duties, now had and possessed by the Mayor and City Council and all other executive and legislative bodies of said city, etc.

Section Four further provides for the removal of any officer or employee from office at any time for cause after public hearing, and *that the Board of City Commissioners shall be the sole judge of the sufficiency of the cause of such removal.*

Section 4 of Rule 32 of the Manual, Rules and Regulations of Police Department, provides for a hearing by the Board (referring to the old Police Board). See page 72 of record. Under the Walsh Act the powers of this Board are conferred on the Board of City Commissioners.

The Director of Public Safety claimed to be acting, and to have had the power to try and remove the prosecutor under two resolutions of the Board of City Commissioners. These resolutions are found on page 73-78 of the record. From a reading of the resolutions, it will be seen that they are based on Chapter 275 of the Laws of 1915.

That statute is an amendment to Chapter 221 of the Laws of 1911, popularly known as the "Walsh Commission Government Act." This Act is in force in Jersey City. From a reading of this Act as amended it will be seen that the intent of the Legislature was to place all administrative, judicial and legislative powers in the Board of City Commissioners, consisting of five members. The contention of the City is that under the provisions of the Act, as amended in 1915, the Board of Commissioners can split up their judicial powers among themselves so that each Commissioner will exercise exclusively the judicial powers in his own department. If that could be done with judicial powers, the same could be done with executive, administrative and legislative powers, which would result in an entirely different form of government to the one

contemplated by the Act. To carry this out to its logical conclusion would result in the City Government being divided into five departments with a Commissioner assigned to each department, having and possessing, exclusively, all of the executive, administrative, judicial and legislative powers in respect to his own department. The Director of Public Safety would have all of the executive, administrative, judicial and legislative powers of his department, and the rest of the Commissioners would have no power or control over him whatsoever. *There would be no need of any further meetings of the Board as a whole Board.* It would result in the doing away with the Board of Commissioners as a whole Board. It would result in each Commissioner being an *entity* in himself. As an example, the Director of Public Safety could go ahead and purchase any number of fire engines without any authority from the full Board or make any number of appointments or retirements or incur any liabilities he desired, and impose any necessary taxes, issue bonds and do everything necessary for the running and maintaining of his department as a separate and distinct branch of the City Government. In fact, he would be in absolute control of his department and the other Commissioners would have nothing further to do with that department. The Director of Street and Public improvements could, without any authorization from the Board of City Commissioners, go ahead and make improvements, buy land, condemn lands, vacate streets and do any number of very important things. That this result is not the intention of the Act is clearly shown by a reading of the Act. If this result was what the Legislature intended, the majority of the sections of the Act

would have no force or effect and would be rendered unnecessary. The contention is so absurd and the result would be so far-reaching and disastrous that it does not require further argument. The Court will construe the statute as a whole and so as to make it a workable law in its entirety and will not give it a construction which would upset the whole scheme and form of government by a Board of five Commissioners having all of the powers of the City Government as clearly provided for in the Act. That this was the form of government intended by the Legislature and the people of Jersey City when they adopted its provisions is without question.

Similar statutes have been passed all over the country and the commission form of government with full power vested in a Board of five Commissioners has been recognized as a distinct form of government for cities and adopted by a large number of cities. This whole scheme of government would be upset by giving the statute the construction placed upon it by the City.

Furthermore, immediately following the provisions of the 1915 Statute relied on by the City, we find a provision providing for a public hearing on charges of officers and employees appointed by the Board before the full Board of Commissioners (P. L. 1915, p. 496).

THIRD.

The prosecutor was dismissed without sufficient evidence to justify his dismissal, the evidence neither proving the charges, nor furnishing a rational basis for the judgment. The conviction was against the clear weight of evidence.

The main witness against Crane was Lieutenant Lynch. His testimony is found on pages 12-37. It is full of inconsistent statements too numerous to point out each one.

The first thing to bear in mind is that Lynch is a big man (p. 21, line 28), and the prosecutor is a small man (p. 22, line 31). The most that can be spelled out of Lynch's testimony is that there was a fight between him and Crane. Lynch testifies (pp. 22-23) that he smashed Crane in the jaw and that he ran after Crane. He said, first, that the reason why he ran after Crane was to punch Crane, if Crane punched him (p. 23), and then immediately after, when taken in hand by the Director, he says he ran after Crane fearing that Crane was going to shoot him, and that his previous statement that he was going to punch Crane if Crane punched him, was untrue (p. 24). The question of Crane having a revolver is very important. On page 24 Lynch says that he feared Crane was going to shoot him, and on page 25, he says that he told Johnson, take the gun away from him; that this happened at the door of the office. On page 32 he says, he cannot account for the breaking of the window. *On page 33, he says he did not see the gun at all.* On page 33 he says that he held Crane's wrists while Johnson took the gun; on page 34 he says that he thought Crane went into a closet to get a gun.

This is very important when we come to look at the report which Lynch made shortly after the fight (see pp. 13-14). There is nothing in this report about fearing that Crane would shoot him, and the only statement about a revolver is that after returning to the stable (some four hours later) he learned from Patrolman Johnson that Johnson had taken Crane's revolver from him.

How was it possible, if Crane had made threats that he was going to shoot Lynch after he had smashed Crane in the jaw, and that he, Lynch, ran after Crane, fearing that Crane was going to shoot him; that this most important matter could have been left out of the report?

Very little reliance can be placed on the testimony of Lynch. And this inconsistent testimony was given after the report made by Lynch at the time had been read to him and he was asked by the Director if it was true (pp. 13-15).

The reason for it is very clearly shown by Lynch's testimony on pages 23-24. Knowing that he, a superior officer, had smashed Crane, a patrolman, in the jaw, he tried to cover it up on page 24, by saying that he was afraid that Crane would shoot him.

Furthermore if Lynch had been in the right and the trouble happened in the way he tried to have it appear, can the Court conceive of his going away and not suspending Crane immediately? He knew the Director was trying to "get" Crane for a General Order had been issued to that effect.

The logical construction to be placed on his actions is that after the trouble he went out about twelve o'clock and knowing he was in the wrong in assaulting Crane and provoking the entire trouble he began to reflect as to how to get

out of it and save himself. He conceived a plan whereby he not only could save himself but could curry favor with the Director by helping in the desire of the Director (expressed in the General Order of February, 1915), to drive Crane out of the Department and show the Director a way in which it could be done. A further step of his which points to the carrying out of such a plan is that when he went back (some four hours later after he had time to reflect and conceive his plan) he endeavored to trap Crane while he was in a highly nervous condition after having been severely "beaten up" by Lynch and tie him up on a further charge of refusing to make a report (see pp. 60-61).

Either that or the only other logical conclusion that can be drawn from the testimony is that he went to the stable that night, where Crane was for the purpose of provoking the trouble and thus carry out the desire of his superior officer, the Director, to drive Crane out of the Department as expressed in the General Order of February, 1915.

The next witness against Crane was Patrolman Johnson, whose testimony differs very materially from Lynch's testimony and report. His testimony is found on pages 38-44.

He says Lynch told him to take the gun away from Crane. It will be remembered that Lynch said that he did not go in the office after Crane, but only went as far as the office door. Johnson testifies (p. 39) that Crane and Lynch were in the office first, and that then he went in. He said that he heard the glass breaking before he went in the office, and that when he went in Lynch and Crane were struggling, and Lynch said, "Take the gun off of him." On cross examination, on page 39, Johnson said that he did not hear anything

until he heard Lynch and Crane struggling, and that this was in the front of the office, and not in the stable (p. 40). When he turned around, he saw both men clinched (p. 40). Johnson said that he did not see Crane with any broom (p. 40), although Lynch said that Crane did have a broom. On page 41, Johnson says that Crane went to the office, and that Lynch followed him in and that he, Johnson, went to his horse, that he did not go into the office until he heard the crash of glass. He explains the breaking of glass on page 42, by saying that while Crane and Lynch were struggling, Crane was pushed back into the closed door of the office, breaking the glass.

Johnson testifies that he saw the two men clinched, and that it took place not outside, but in the office itself.

“Q. And Lynch is the man that was clinched with Crane in the office, that is true, isn't it? A. Yes, sir” (p. 43, line 4).

The only other witness to the trouble was Patrolman Sullivan. His testimony bears out the story of Crane, that Crane, a small man, was defending himself from the attacks of Lynch, a much larger man (pp. 46-7).

The testimony of Sullivan, Johnson and Crane, are all in contradiction of the testimony of Lynch that he did not go into the office after Crane and attack him in there and did not hear any glass breaking. The attempt of Lynch to deny throwing or knocking Crane through the glass can be clearly seen. It would be impossible for Sullivan and Johnson to both hear the crash of glass and for Crane to be so severely cut by the breaking of glass through his clothes as to require three stitches to be taken in the open cut and for Lynch who was nearest to Crane and

the only one in the office with him and in fact, the actual one who had hold of Crane and pushed or knocked Crane into the glass not to hear the crash of glass or to know anything about it.

The testimony of Harry D. Crawford, a witness produced for the defendant, is found on pages 53-55.

He says that on the evening of the fight, he went into the stable at about 1:15 and saw Crane, and that Crane was in very bad physical condition; that he saw on Crane's hip a scratch about an inch long, and also saw an open cut. That Crane appeared to be suffering pain.

Doctor F. Srygley, a witness for defendant, testified that on the morning after the fight Crane went to the City Hospital and that he had a cut over his buttocks, and a contusion over his left ear; that the contusion was like a bruise and was swollen; that he did not stand the sewing very well, and that he had to be given something for his nerves; that the injury to his hip consisted in an incised wound about two inches in length; that three stitches were put into it (pp. 55-56).

The testimony of Crane is found on pages 57-65.

He says that previous to the day of the fight, he had had a fractured jaw; that he received this injury on August 6th, and that it caused him a great deal of pain and loss of sleep; he also said that he had an operation on his nose and that in 1913, he had suffered injuries as a result of an accident while in the performance of his duty.

On pages 58-59, he said that Lynch came in and started the trouble; that he did not offer any resistance or act in any way disrespectful until Lynch punched him in the jaw. The testimony shows that Crane was a man weighing about 130

pounds, and being about five feet or five and one-half feet tall (p. 59). Lynch was five feet eleven inches, weighed about 170 pounds (p. 21). Crane said that after Lynch punched him, he ran in the office trying to get away from him, and that after he got in the office, Lynch came in, took hold of him, and threw him against the window (p. 59). On page 60 he denies that he used the vile language attributed to him.

Crane testifies that what he did was entirely to defend himself, and to get away from Lynch (pp. 59-60).

Lynch, himself testifies, on cross examination, that the reason why Crane held his shirt was that he was trying to stop Lynch from hitting him again (p. 27, lines 1-5).

Johnson testifies that Crane was attempting to defend himself (p. 40, line 36).

From a reading of the testimony, there seems to be no question but that all of the witnesses are agreed, when the testimony is fully sifted that Lynch was the man that was following Crane, and that Lynch had punched Crane in the jaw, and was trying to hit him again and that Crane was trying to defend himself, and backing away from Lynch. The testimony of Lynch cannot be given very much weight. The Court can readily see, that unless Lynch produced sufficient evidence, and "stood up to the bat," so as to enable the Director to dismiss Crane from the force, that he was liable of being brought up on charges himself. The desire of the Director to "get Crane," can be spelled out from his attitude toward Crane throughout the trial. The four witnesses for the City are all police officers holding their respective offices under the sole control and at the mercy of the Director. Throughout their entire testimony the Court can spell out the fear in which

they stood of the Director. The determined conduct of the Director as a Judge, and his persistent, untiring and unfair attitude as a prosecutor, showing clearly that he was "out to get Crane," can be clearly drawn from a reading of the testimony taking into consideration all of the peculiar facts in connection with this case and the unquestioned determination of the Director to drive Crane out of the Department.

On the question of the making of the report Crane's testimony on page 59 is clear on this point and the report was made out to Lieutenant Kelly (p. 61, lines 1-18).

That Crane had no desire to do anything wrong is clearly shown by his questions to Sergeant Lockwood about making up the report (p. 50, lines 10-30).

It must be remembered that Crane had been pretty badly "beaten up" by Lynch and was in a highly nervous state.

The Supreme Court has held that:

"In reviewing the action of a Board of Police Commissioners, this Court will not weigh the evidence taken before them, for the purpose of reaching an independent conclusion on the question of the guilt or innocence of the prosecutor. It will only consider such evidence for the purpose of determining whether or not it affords a rational basis for the judgment against him. If it does, then no matter whether the evidence be weak or strong, this Court will not interfere.

"There must, however, be a legal and substantial basis shown for his removal, upon which the Commissioners acted within their authority."

Dodd v. Camden, 56 N. J. L., 258.

Ayres v. Newark, 49 N. J. L., 170.

Cavanaugh v. Police Com., 59 N. J. L., 412.

Alcutt *v.* Police Com., 66 N. J. L., 173.

Reilly *v.* Jersey City, 64 N. J. L., 508.

Herbert *v.* Atlantic City, 93 Atl., Rep., 81.

Where, however, it clearly appears that the Director who tried the prosecutor was biased and determined to drive the prosecutor out of the Department, and could not fairly weigh the evidence, it would seem that his decision should not be entitled to the same weight as the decision of an unbiased Board of Commissioners, whose motives are not questioned, would be entitled to.

Furthermore, Section 11 of the certiorari act before its amendment in 1907 provided that all cases of writs of certiorari brought to review proceedings of any special statutory tribunal, the Court should determine disputed questions of fact as well as of law.

To remove all doubt about the matter, the Legislature in 1907, Chapter 47 of the Laws of 1907, page 95, provided that in all writs of certiorari then pending or thereafter brought to review a suspension, dismissal, retirement or reduction in rank of any person holding an office or position, state, county or municipal, from which he is removable only for cause and after trial, the Court shall determine questions of fact as well as of law and inquire into the facts by depositions taken on notice or in such other manner as is according to the practice of the Court.

Section Four of the Walsh Act as amended by Chapter 275 of the Laws of 1915, provides specifically that removal of any officer, etc., by the Board of City Commissioners *shall be subject to review by the Courts as heretofore* (P. L. 1915, p. 496).

It is respectfully submitted that the decision of the Director is based purely on malice against

and oppressive conduct toward Crane, and a desire to drive him out of the Department, as shown by the record. Taking into consideration the great number of inconsistencies in the testimony of Lynch; the inconsistencies between his report, and his testimony; and the number of inconsistencies between his testimony and that of Johnson, it is respectfully submitted, that the evidence is not such, as to form a rational basis for the judgment, and the conviction was clearly against the weight of the evidence.

FOURTH.

Illegal evidence was admitted over objections of counsel.

While the Court has held that the strict technical rules of evidence do not apply in a case of this kind, nevertheless, it is error for the prosecutor to be convicted on grossly illegal evidence.

The manner of introducing the report over the many objections of counsel was illegal. It appears from the testimony that the report was not left with Leonard, and that he had no knowledge of it, except hearsay evidence (pp. 9-11). The Director admitted the report of Lynch in evidence, and had the same ordered written into the record, over the objections of counsel (p. 11).

The method of proof of the rules and regulations of the Department, without the producing of such rules and regulations (pp. 11-12), was absolutely incompetent.

Thereupon the Director had the report returned to Lieutenant Lynch, and asked him if it was true (pp. 13-15).

This report had no right in the record whatsoever, and it was not binding in any way on the

prosecutor, and all of the testimony in reference to it was absolutely incompetent, and illegal and had no place in the case.

The Director of Public Safety throughout the trial illegally gave testimony in an indirect way and by asking leading questions, putting words in the mouths of the witnesses, making statements and by reading reports and asking the witness whether or not they were true.

Conclusion.

It is respectfully submitted that the judgment of the Supreme Court should be reversed and the conviction and dismissal of the prosecutor by the Director of Public Safety should be reversed and the prosecutor reinstated.

March Term, 1917.

Respectfully submitted,

HARRY LANE,
Of Counsel with Prosecutor.

ZIEGENER & LANE,
Attorneys.

HAMMEBRIIT

HAMMILLER