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The Attempted Impeachment of Judge Lucas Flattery Smith by The Assembly of The State of California. Feb. 3, 1905 - March 19, 1905.

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The Attempted Impeachment of Judge Lucas Flattery Smith

**by The Assembly of The State of California.
Feb. 3, 1905 - March 19, 1905**

**In the Matter of the Investigation of Charges Against
Honorable Lucas Flattery Smith
Judge of the Superior Court of the County of Santa Cruz,
State of California, praying for his Impeachment.**

**Before a Special Committee of Investigation
consisting of Assemblymen H. S. G. McCartney (Chairman),
Thomas E. Atkinson, R. L. Beardslee,
Aubrey M. Lumley and John J. Burke.**

**In Three Volumes:
Volume I — Testimony on behalf of the Memorialists.
Volume II — Testimony on behalf of the Defendant.
Volume III — Testimony on behalf of Defense.**

Ellsworth F. Duden, Court Reporter.

**The volumes from which this transcription was made are from
the Donald Younger Collection, MS59,
Special Collections, University Library, University of California, Santa Cruz.**

**Each volume bears a notation that they were presented to Charles B. Younger Jr.,
with the Compliments of Assemblyman “Hon. R. L. Beardslee.”**

**They contain the Testimony of F. A. Hihn,
Charles B. Younger, Sr. and Charles B. Younger, Jr.,
and many other prominent citizens of Santa Cruz County,
including several Members of the Santa Cruz County Bar.**

**Biographical Sketches of Persons Named in these Impeachment Transcripts
are Provided in a Sections 7 & 8**

Annotated, corrected, transcribed, and indexed by

Stanley D. Stevens

**Librarian Emeritus
University of California at Santa Cruz
2021**

**The Attempted Impeachment of Judge Lucas Flattery Smith
by The Assembly of The State of California.
Feb. 3, 1905 - March 19, 1905**

**Compiled by
Stanley D. Stevens
2021**

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The Attempted Impeachment of Judge Lucas Flattery Smith
by The Assembly of The State of California.
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Section 1

Foreword

The Attempted Impeachment of Judge Lucas Flattery Smith
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Foreword

Judges of Superior Courts of any California County are removed from office under the following Impeachment procedures:

Selection and retention methods and term lengths are prescribed by Article VI of the California Constitution of 1879 (prior to any amendments); the pertinent provisions are:

ARTICLE VI. JUDICIAL DEPARTMENT.

SECTION 1. The Judicial power of the State shall be vested in the Senate sitting as a Court of Impeachment, in a Supreme Court, Superior Courts, Justices of the Peace, and such inferior Courts as the Legislature may establish in any incorporated city or town, or city and county.

SECTION 10. Justices of the Supreme Court, and Judges of the Superior Courts, may be removed by concurrent resolution of both Houses of the Legislature, adopted by a two thirds vote of each House. All other judicial officers, except Justices of the Peace, may be removed by the Senate on the recommendation of the Governor, but no removal shall be made by virtue of this section, unless the cause thereof be entered on the Journal, nor unless the party complained of has been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the Journal.

SECTION 17. The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two thirds of the members elected.

SECTION 18. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, Chief Justice and Associate Justices of the Supreme Court, and Judges of the Superior Courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust or profit under the State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment according to law. All other civil officers shall be tried for misdemeanor in office in such manner as the Legislature may provide.

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The following information, derived from the website of the National Center for State Courts [<http://www.judicialselection.com>], provides a summary of California's current procedure: California judges may be removed in one of three ways:

- **Judges may be impeached by the assembly and convicted by two thirds of the senate.**
- **Judges are subject to recall election.**
- **The Commission on Judicial Performance investigates complaints of judicial misconduct and incapacity and may privately admonish, suspend, censure, retire, or remove a judge. The commission's decisions are subject to review by the supreme court.**

The Chairman's statement on page 232 of Volume 3 draws attention to the fact that Judge Smith was never tried by the Senate. The recommendations of the Assembly did not reach the Senate before the Legislative Session ended.

The Attempted Impeachment of Judge Lucas Flattery Smith
by The Assembly of The State of California.
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Section 2

Timeline for the Attempted Impeachment

Timeline for the Attempted Impeachment of Lucas Flattery Smith

Timeline for the Attempted Impeachment of Lucas Flattery Smith Superior Court Judge, Santa Cruz County, California



- 1844 November 3 Born in Bluffton, Wells County, Indiana
- 1862 August 20 Volunteered for Company G, 101st Indiana Infantry, as Musician
(He was too young to be appointed as a soldier.)
- 1865 June 24 Mustered out of Army. After the war he returned to his native town in Indiana and attended the high school, declining the appointment as cadet to West Point, which was tendered to him.
- 1866 October 1 Enter the University of Michigan, Ann Arbor.
- 1868 March 25 Graduated from Law School, University of Michigan, Ann Arbor.
- 1869-1870 After visiting the Western states in search of a location, he settled at Bonham, Texas. He was elected county attorney of Fannin county in 1869, and was appointed district attorney of the Eleventh judicial district, composed of five counties, in 1870
- 1874 In 1874 he formed a law partnership with Gov. J. W. Throckmorton and Judge Brown, at Sherman, Texas. Soon afterwards he was appointed United States district attorney for New Mexico, which office he resigned to raise a company to fight the Apache Indians, who were then murdering the settlers indiscriminately. For this service, he was offered a commission in the regular army, but did not accept it. He then formed a law partnership with E. W. Crozier, Esq. While there, he was offered and accepted a law partnership with Judge J. M. Hurt, of Dallas, Texas. He continued with Judge Hurt until the latter was elected to the Appellate Court bench of Texas in 1878, when he formed a law partnership with Col. W. L. Crawford, one of the ablest and best known lawyers in the Southwest.

Timeline for the Attempted Impeachment of Lucas Flattery Smith

- 1882 In 1882, he was married to Miss Delia Gouldey, of Louisiana, and had six children by this union.
- 1885 He visited California, and was so pleased with the State that he closed up his business in Texas and moved to Santa Cruz, where he engaged in the practice of law.
- 1889 January 31 The Santa Cruz Surf reported that “L. F. Smith, Attorney-at-law, who arrived here recently from Dallas, Texas, has been joined by his wife and family, and intends making Santa Cruz his future home.”
- 1890 January 17 Smith and J. H. Skirm represented William Fleckner in a suit against F. A. Hihn for damages that Hihn’s horses did to Fleckner’s land, causing water to be shut off for five months, among other serious damages.
- 1890 November 8 [An incident worthy of being included in Impeachment charges.] “The proceedings of the Superior Court yesterday afternoon were disturbed by an "action" which will not figure among the Court records. It was during the trial of the case of D. H. Rice vs. Jos. Kenville concerning the ownership of wood at Ben Lomond, that the episode occurred. L. F. Smith is attorney for the plaintiff while E. Spalsbury represents the defendant. W. A. Walker was on the stand testifying as to a certain agreement with Kenville. | Smith accused Spalsbury of speaking to his client so that the jury, composed of three citizens, could hear. Spalsbury remarked that Smith's statement was untrue, and proceeded to address the Court, whereupon **Smith struck Spalsbury** in the left cheek, the force of the blow causing Spalsbury to be pinned between a table and the railing of the jury box. Kenville, who was sitting near his attorney, jumped in between the attorneys, and in some manner Smith got Kenville's head in chancery. Walker pulled Smith away, and then Kenville, who was now free to protect himself, once more made towards Smith, but was prevented from proceeding further by Rice. | The Court called for order and rang for the Sheriff, who rushed breathlessly upstairs in time to witness the "wind up." | Kenville remarked in a tone several degrees above a whisper: "Such conduct is outrageous and might be allowed in Texas, but is unfit for any court in California." | The Judge ordered Kenville removed from the Court-room by the Sheriff, saying that he would consider his matter after the case was finished. | Spalsbury's cheek is bruised, and under the eye surrounding the bruise is a black and blue mark. Kenville received a scalp wound. | After things had been quieted the case was proceeded with. It is probable that the matter will be considered by the Court this morning. The affair caused considerable comment on the streets, as it is not within the recollection of the attorneys in recent years that such an episode has taken place.” (Santa Cruz Sentinel, November 8, 1890, 3:3)

Timeline for the Attempted Impeachment of Lucas Flattery Smith

- 1893 September 3 Upon the death of Judge Ferdinand Jay McCann [Aug. 8, 1893] Mr. Lucas F. Smith was an applicant for the appointment to fill the vacancy, and had a strong Grand Army of the Republic backing for the position, he being at that time identified with the Republican party. However, Governor Markham appointed former Superior Court Judge James Harvey Logan to serve out the balance of the unexpired term of the late Judge McCann.
- 1896 November 4 Elected to a Term of six years: salary, \$4,000 per annum. The vote for incumbent Judge James Harvey Logan, 1,888, was not enough to retain him. His opponent, Lucas Flattery Smith garnered 2,008 votes.
(Santa Cruz Evening Sentinel, November 10, 1896, 1:3)
- 1905 February 3 Lucas F. Smith petitioned the California Assembly to appoint a committee to investigate “the false and malicious charges preferred against me ... made by this disreputable gang of cowardly and malicious scoundrels and notorious liars and slanderers”
- 1905 February 6 John H. Leonard, Santa Cruz Attorney, presented to the California Assembly his Memorial showing “that Lucius Flattery Smith, Judge of the Superior Court in and for the said County of Santa Cruz, has been guilty of misdemeanors in office, and respectfully requests your honorable body to investigate the hereto annexed specific charges against ... Smith, numbered from one to twelve, inclusive ... And if the same or any of the same be found true that by proper proceeding said Lucius Flattery Smith be duly impeached and removed from office. JOHN H. LEONARD.
- 1905 February 6 **SPECIFICATION 1.**
That Lucas Flattery Smith, as Judge of the Superior Court of the County of Santa Cruz, State of California, has been guilty of great partiality and favoritism to one Charles M. Cassin, a practicing attorney in said court. That said partiality and favoritism has been manifested to such a degree by said Smith, while presiding in cases in which Cassin represented one of the litigants, and has become so well known that it has created a general impression that to succeed in that court before said Smith it is necessary to retain said Cassin.
JOHN H. LEONARD.
- Specification 1 was accompanied by Affidavits from the following:
Harrison Rich, H. W. Rich, William M. Aydelotte, John H. Leonard, M. T. Langley, Julius H. Haesters, W. M. Gardner, William F. White.
- SPECIFICATION 2.**
That on or about December 6, 1902, said Smith told Peter P. Hartmann, a litigant, one of the parties to a case which was tried before said Smith during September and October, 1902, but in which no decision had been rendered, that he should have employed Mr. Cassin, who was a friend of said judge, and that he, said Hartmann, was very unfortunate in having a

Timeline for the Attempted Impeachment of Lucas Flattery Smith

different attorney to represent him; that he, the said Smith, would be more than human should he not let his personal prejudice guide his decision.

JOHN H. LEONARD.

Specification 2 was accompanied by Affidavits from the following:
John H. Leonard, Peter Paul Hartmann;

SPECIFICATION 3.

That on or about the 19th day of April, 1904, during the trial of a case in which one Thomas Dakan was a defendant, which was being tried before said Smith as judge of said court, and a jury, said Smith suffered said Cassin, who represented the plaintiff, to commit an unprovoked assault and battery upon the person of said Thomas Dakan, without punishment or reprimand, and punished said Dakan for defending himself against the assault of said Cassin.

JOHN H. LEONARD.

Specification 3 was accompanied by Affidavits from the following:
John H. Leonard

SPECIFICATION 4.

That during the month of February, 1901, after the trial and conviction, in the Superior Court of the County of Santa Cruz, of one Nathan Smith, who was convicted of assault with a deadly weapon, and the jury recommended to the mercy of the court, and before the time set for passing sentence upon said Nathan Smith said Lucas Flattery Smith, as said judge, requested one George B. Fletcher, the attorney who represented said Nathan Smith, during his trial, to secure from the citizens of the City of Watsonville, in the County of Santa Cruz, a petition setting forth the good character of said Nathan Smith, and petitioning said Lucas Flattery Smith, as judge of said court to sentence said Nathan Smith to as light a sentence as the law would permit. Said petition, signed and verified by more than one hundred of the said citizens, was obtained and presented to said Lucas Flattery Smith, as said judge, before the day appointed for the passing of sentence upon said Nathan Smith. That on the day appointed for the passing of sentence on said Nathan Smith, said Lucas Flattery Smith, as judge of said court, stated that he had received said petition, and would act thereon, and he would sentence said Nathan Smith to the lightest punishment which the law would permit, and thereupon he sentenced said Nathan Smith to six months in the county jail.

JOHN H. LEONARD.

Specification 4 was accompanied by Affidavits from the following:
John H. Leonard

Timeline for the Attempted Impeachment of Lucas Flattery Smith

SPECIFICATION 5.

That said Lucas Flattery Smith, as Judge of said Superior Court, arbitrarily, as his own motion, and without notice, struck from the files of the court the compliant in the case of Helen Younger, plaintiff, versus Charles Moore, et al., defendants. In said case said Smith was made a party defendant.

JOHN H. LEONARD.

Specification 5 was accompanied by Affidavits from the following:
John H. Leonard

SPECIFICATION 6.

That said Lucas Flattery Smith, during the trial of Nicholas Sambuck versus the Southern Pacific Company, as judge of said court, before whom said action was being tried, called into his chambers one John H. Leonard, attorney for said Sambuck, in said action, and advised said Leonard to permit the doctors in the employ of said Southern Pacific Company to examine said Sambuck, client of said Leonard, and to have said Sambuck bend and squeal when said doctors touched him.

JOHN H. LEONARD.

Specification 6 was accompanied by Affidavits from the following:
John H. Leonard

SPECIFICATION 7.

That said Smith has been guilty of great oppression and tyranny and mal-administration in the affairs of the conduct of his office.

JOHN H. LEONARD

Specification 7 was accompanied by Affidavits from the following:
John H. Leonard

SPECIFICATION 8.

That said Smith has openly expressed himself in open court in such manner as to show great disrespect for the Supreme Court of California, and calculated to bring said Supreme Court into disrepute.

JOHN H. LEONARD

Specification 8 was accompanied by Affidavits from the following:
John H. Leonard

Specification 9.

That on the 15th day of November, 1904, and after the conviction of one Louis Buelna of a statutory crime, in said court, before said Lucas Flattery Smith, and before the time appointed for the sentencing of said Louis Buelna, said Lucas Flattery Smith had a conversation with Frances Buelna, the mother of said Louis Buelna, in which said Lucas Flattery

Timeline for the Attempted Impeachment of Lucas Flattery Smith

Smith, for the sole purpose of preventing said Louis Buelna from being in a position to appeal his case to the Supreme Court, informed said Frances Buelna that he, said Lucas Flattery Smith, pitied her very much, and that he would do all in his power in favor of her son Louis Buelna, and told said Frances Buelna to inform her boy, the said Louis Buellna, that if he, the said Louis Buelna, did not ask or permit his attorneys to ask for a new trial of his case, he, the said Lucas Flattery Smith, would sentence him, the said Louis Buelna, very lightly. JOHN H. LEONARD

Specification 9 was accompanied by Affidavits from the following:

John H. Leonard

Specification 9-A was accompanied by Affidavits from the following:

Frances Buelna

SPECIFICATION 10.

That said Lucas Flattery Smith has been guilty of oppression and tyranny in his office, incorrectly and oppressively and without just cause imprisoning one P. E. Zabala and one J. J. Wyatt upon feigned, fictitious, and false charges of contempt of his said court. JOHN H. LEONARD

Specification 10 was accompanied by Affidavits from the following:

John H. Leonard

SPECIFICATION 11.

That said Lucas Flattery Smith, through ignorance, incompetence, favoritism, partiality, wilful disregard of the facts, and permitting attorneys and litigants privately, in chambers and out, to freely discuss causes before decision thereon, has wrongfully and incorrectly decided a great percentage of the cases tried before him, as is evidenced by the fact that about fifty per cent of the civil cases appealed to the Supreme Court from his judgment, and about seventy-five per cent of the criminal cases appealed to the Supreme Court from the decisions of said Lucas Flattery Smith, have been reversed by the Supreme Court, at great expense to litigants and to the people of the State of California.

JOHN H. LEONARD.

Specification 11 was accompanied by Affidavits from the following:

John H. Leonard

SPECIFICATION 12.

That said Lucas Flattery Smith has been guilty of conduct unbecoming an upright and impartial judge. Under this specification are included all the charges contained in the specifications herein numbered, from one to eleven, inclusive, and also the following:

Timeline for the Attempted Impeachment of Lucas Flattery Smith

I.

Denying motion of Louis Buelna for continuance when his counsel failed to appear, and Charles C. Houck and Duncan McPherson, Esqs., were appointed by said Smith to defend said Buelna, not giving the newly appointed counsel, who were both young lawyers, any time to prepare the defense. Buelna was sentenced for ninety years.

II.

Denying the motion of Louis Buelna to have the public excluded from the trial. It was shown that public sentiment was greatly aroused over the case. (See editorial printed in Santa Cruz "Surf.")

III.

Denying motion of M. T. Langley in case of Bloom vs. Langley, for a new trial where the statement on motion for new trial, signed and certified to be correct by said Smith, shows on its face that the verdict of the jury was contrary to the evidence and in direct violation of the instructions of the court. In this case, which was won by Mr. Langley in the justice's court and appealed to the Superior Court, Mr. Cassin was employed as of counsel for Mr. Bloom when the case was tried in said Superior Court.

IV.

In giving, on all manner of occasions, both in court and out, expressions, gestures, smiles of recognition, deferential acquiescence, encouragement by look, word, and deed, signs of extreme friendliness, to and toward the warm personal friends of said Smith.

V.

Making it known by look, act, word, and deed, both in court and out, on all possible occasions, that a person who opposed the warm personal friends of said Smith is persona non grata with the said Superior Court and with said Judge Smith.

JOHN H. LEONARD.

Specification 12 and its 5 sub-divisions were accompanied by Affidavits from the following:
John H. Leonard

1905 February 6

Assemblyman Cleveland introduced a Resolution to the California Assembly which contained a clause: WHEREAS, It appears from said memorial and the charges therein made, and the affidavits of the citizens of said County of Santa Cruz, and the records therein referred to, that there is probable cause to believe that said Lucas Flattery Smith has been guilty of misdemeanors in office, willful misconduct and partiality, and favoritism and conduct unbecoming an upright judge; now, therefore, be it Resolved, That a committee of five members of this Assembly be appointed by the Speaker thereof to inquire into the conduct of said Lucas

Timeline for the Attempted Impeachment of Lucas Flattery Smith

Flattery Smith, Judge as aforesaid of the Superior Court of the State of California, ...

1905 February 7

“The Speaker [of the California Assembly, The Honorable Frank C. Prescott] announced the appointment of the following-named gentlemen to constitute a committee on resolution to consider memorial against Superior Judge Lucas F. Smith, of Santa Cruz County:

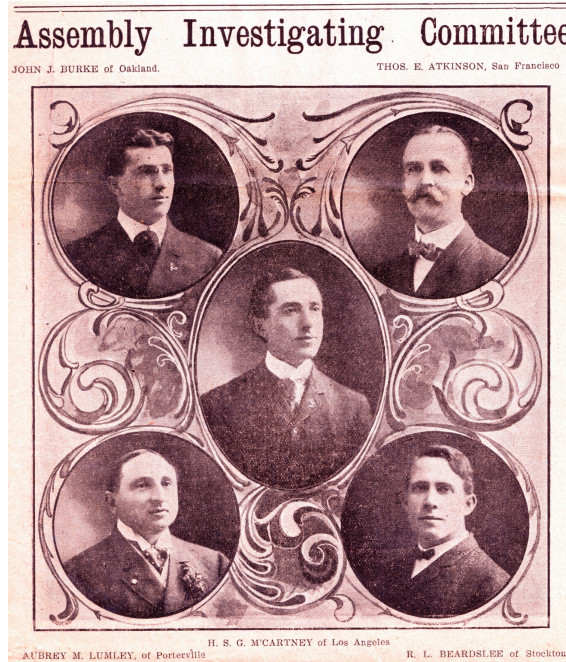


Illustration from *Santa Cruz Surf*, March 7, 1905, page 1, col. 1-3

Herbert Smith Greenwood **McCartney**, Chairman of Committee
[22nd Assembly District, Los Angeles County]
Thomas E. **Atkinson** [39th Assembly District, San Francisco County]
Robert L. **Beardslee** [23rd Assembly District, San Joaquin County]
Aubrey M. **Lumley** [27th Assembly District, Inyo & Tulare Counties]
John J. **Burke** [49th Assembly District, Alameda County]

1905 February 16

THURSDAY, FEBRUARY 16, 1905.

The investigation of charges against Honorable Lucas F. Smith, Judge of the Superior Court of the State of California, in and for the County of Santa Cruz, praying for his impeachment, was commenced at the City of Santa Cruz on Thursday, February sixteenth, 1905, at eight o'clock in the evening, all members of the Special Committee appointed for the investigation of said charges being present. They met at the Courthouse. Carl E. Lindsay, William M. Aydelott [sic] and John H. Leonard appeared as counsel for the memorialists.

Hon. Lucas F. Smith was represented by attorneys Matthew Sullivan, Hon. William T. Jeter and H. A. V. Torchiana.

Timeline for the Attempted Impeachment of Lucas Flattery Smith

The following proceedings were had and testimony given:

THE CHAIRMAN: Gentlemen, the Committee designated by the Assembly of this state is now ready to proceed with the organization and proceed to receiving the evidence. I will ask who represents the prosecution.

Mr. LEONARD: Mr. Chairman, I do not appear here alone as the memorialist in this matter at the present time, because there are several other attorneys associated with me in the matter of the prosecution; but all of us are to be represented by counsel, by Mr. Lindsay of San Francisco, and Mr. Lindsay was down there trying a case to-day, and he is at present on his way to Santa Cruz; consequently we are to some degree handicapped, and we would like, of course, to have the principal matters gone over until Mr. Lindsay's arrival. He will be here at half past ten to-morrow.

THE CHAIRMAN: To-morrow at half past ten o'clock?

Mr. LEONARD: Yes sir.

THE CHAIRMAN: To-morrow at half past ten o'clock?

1905 February 19 The proceedings in Santa Cruz by the Assembly Committee to Investigate the charges against Superior Judge Lucas Flattery Smith concluded.

Those proceedings are transcribed and presented in a separate file containing:

Transcript In the Matter of the Investigation of Charges Against Honorable **Lucas Flattery Smith** (Judge of the Superior Court of the County of Santa Cruz, State of California), praying for his Impeachment.

In Three Volumes:

Volume 1 — Testimony on behalf of the Memorialists.

Volume 2 — Testimony on behalf of the Defendant.

Volume 3 — Testimony on behalf of Defense.

1905 March 7 The Assembly Committee to Investigate the charges reported to the full Assembly as follows:

Timeline for the Attempted Impeachment of Lucas Flattery Smith

p.1142, ASSEMBLY JOURNAL [Mar. 7, 1905]

REPORT OF SPECIAL COMMITTEE—(OUT OF ORDER).

The special investigating committee on charges preferred against Hon. Lucas F. Smith, Judge of the Superior Court of Santa Cruz County, submitted the following report (out of order):

REPORT OF THE INVESTIGATING COMMITTEE ON CHARGES OF MISDEMEANOR IN OFFICE PREFERRED AGAINST THE HON. LUCAS F. SMITH, JUDGE OF THE SUPERIOR COURT OF SANTA CRUZ COUNTY, STATE OF CALIFORNIA.

ASSEMBLY CHAMBER, SACRAMENTO, March 7, 1905.

MR SPEAKER: In the matter of the memorial and resolution presented to the Assembly on the 6th day of February, 1905, by Assemblyman Cleveland, wherein the Honorable Lucas F. Smith, Judge of the Superior Court of Santa Cruz County, California, is charged by certain persons with certain misdemeanors in office, and in accordance with a petition by said Lucas F. Smith, Judge of the Superior Court



Courtesy of UCSC, McHenry Library, Special Collections.

Cooper Street Courthouse—1895-1906

Scene of The Impeachment Inquiry to Investigate the Charges against Judge Lucas Flattery Smith February 16, 1905, to March 7, 1905

[continued on next page]

Timeline for the Attempted Impeachment of Lucas Flattery Smith

Mar. 7, 1905]

ASSEMBLY JOURNAL

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of Santa Cruz County, State of California, requesting an investigation of the charges preferred against him, your committee appointed by the Hon. Frank C. Prescott, Speaker of the Assembly, to investigate said charges of misdemeanors in office, beg leave to report as follows:

Your committee took up the investigation in the City of Santa Cruz on Thursday, February 16, 1905, at the hour of eight o'clock p. m., in the courtroom of the Superior Court of Santa Cruz County, all parties being present and represented by counsel, and the hearing was concluded at the hour of two o'clock a. m. February 19, 1905. The hearing was held open to the public. Forty-eight witnesses were sworn and examined orally. There was a great mass of record evidence, consisting of court records and other miscellaneous papers, which was introduced by the respective parties and examined by your committee. The hearing was conducted in accordance with the resolution of this Assembly, limiting the testimony offered to what the committee considered material and relevant to the twelve different specifications charged against said Judge Smith. After duly considering all the testimony, both written and oral, introduced by the memorialists in support of the different specifications charged against said Judge Lucas F. Smith, and the evidence, both written and oral, adduced by the defendant in his behalf, your committee finds and recommends as follows:

First—That Specification 1, as follows: "That Lucas Flattery Smith, as Judge of the Superior Court of the County of Santa Cruz, State of California, has been guilty of great partiality and favoritism to one Charles M. Cassin, a practicing attorney in said court. That said partiality and favoritism have been manifested to such a degree by said Smith, while presiding in cases in which said Cassin represented one of the litigants, and has become so well known that it has created a general impression that to succeed in that court before said Smith it is necessary to retain said Cassin"—is not sustained for want of sufficient evidence to show any probable cause or good reason for preferring articles of impeachment, but the evidence shows that Judge Smith has on several occasions committed indiscretions in this: That he has allowed certain attorneys practicing before his court to take certain liberties in the courtroom and in his chambers that should not be allowed, and has severely censured other attorneys for taking liberties of less consequence.

Second—That Specification 2, as follows: "That on or about December 6, 1902, said Smith told Peter P. Hartmann, a litigant, one of the parties to a case which was tried before said Smith, during September and October, 1902, but in which no decision had been rendered, that he should have employed Mr. Cassin, who was a friend of said judge, and that he, said Hartmann, was very unfortunate in having a different attorney to represent him; that he, the said Smith, would be more than human should he not let his personal prejudice guide his decision"—is not sustained by the evidence.

Third—That Specification 3, as follows: "That on or about the 19th day of April, 1904, during the trial of a case in which one Thomas Dakan was a defendant, which was being tried before said Smith as judge of said court, and a jury, said Smith suffered said Cassin, who represented the plaintiff, to commit an unprovoked assault and battery upon the person of said Thomas Dakan, without punishment or reprimand, and punished said Dakan for defending himself against the assault of said Cassin"—is sustained by the evidence, except that it was not shown that the assault committed by Mr. Cassin was entirely unprovoked; and the evidence further shows that Judge Smith committed an error in the case of *Forgeous vs. Dakan et al.*, when he fined said Dakan for contempt and allowed the attorney for the plaintiff to go without being fined, when the evidence shows that they were equally at fault, taken in connection with the fact that an attorney is an officer of the court and more amenable than a layman for an infraction of its rules.

Fourth—That Specification 4, as follows: "That during the month of February, 1901, after the trial and conviction, in the Superior Court of the County of Santa Cruz, of one Nathan Smith, who was convicted of assault with a deadly weapon, and by the jury recommended to the mercy of the Court, and before the time set for passing sentence upon said Nathan Smith, said Lucas Flattery Smith, as said judge, requested one George B. Fletcher, the attorney who represented said Nathan Smith, during his trial, to secure from the citizens of the City of Watsonville, in the County of Santa Cruz, a petition setting forth the good character of said Nathan Smith, and petitioning said Lucas Flattery Smith, as judge of said court, to sentence said Nathan Smith to as light a sentence as the law would permit. Said petition, signed and verified by more than one hundred of the said citizens, was obtained and presented to said Lucas Flattery Smith, as said judge, and before the day appointed for the passing of sentence on said Nathan Smith, said Lucas Flattery Smith, as judge of said court, stated that he had received said petition, and would act thereon, and he would sentence said Nathan Smith to the lightest punishment which the law would permit, and thereupon sentenced said Nathan Smith to six months in the county jail"—is not sustained by the evidence.

Fifth—That Specification 5, as follows: "That said Lucas Flattery Smith, as judge of said superior court, arbitrarily, of his own motion, and without notice, struck from the files of the court the complaint in the case of *Helen Younger, plaintiff, vs. Charles Moore et al., defendants.* In said case said Smith was made a

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party defendant"— is fully sustained by the evidence, but the act complained of in this specification, as shown by the evidence, was an inexcusable error in law on the part of Judge Smith, but was not of itself such conduct on his part as to warrant his impeachment, and, as the evidence shows in this case where Judge Smith himself was named as one of the defendants, said Judge Smith committed a grievous error in, of his own motion and without notice to the plaintiff or other parties to the suit, and without testimony of any kind or nature and relying on his own personal knowledge, striking the complaint from the files of the court when there was, as the evidence plainly shows, nothing contained in the complaint which suggested any disrespect to the court or the judge thereof. That thereafter, in the same case, as the evidence shows, said judge committed a further grievous error in issuing an order to show cause upon John H. Leonard and the Youngers why they, and each of them, should not be punished for contempt of court because, as the judge stated on the stand, John H. Leonard was attorney for the plaintiff in said cause and the other gentlemen, the Youngers, were thought by him to have had some interest in filing the complaint. This order was issued, as the evidence shows, upon the affidavit of one W. C. Hoffmann, based merely upon information and belief.

Sixth—That Specification 6, as follows: "That said Lucas Flattery Smith, during the trial of Nicholas Sambuck vs. The Southern Pacific Company, as judge of said court, before whom said action was being tried, called into his chambers one John H. Leonard, attorney for said Sambuck, in said action, and advised said Leonard to permit the doctors in the employ of said Southern Pacific Company to examine said Sambuck, client of said Leonard, and to have said Sambuck bend and squeal when said doctors touched him"—is not sustained by the evidence.

Seventh—That Specification 7, as follows: "That said Smith has been guilty of great oppression and tyranny and mal-administration in the conduct of the affairs of his office"—is not sustained by the evidence, except that the evidence shows that Judge Smith committed an indiscretion in the case of the People vs. Otto Lavish when he publicly rebuked, before the jury, one of the attorneys for the defendant without just cause.

Eighth—That Specification 8, as follows: "That said Smith has openly expressed himself in open court in such manner as to show great disrespect for the Supreme Court of California, and calculated to bring said Supreme Court into disrepute"—no evidence was introduced in support of this specification.

Ninth—That Specification 9, as follows: "That on the 15th day of November, 1904, and after the conviction of one Louis Buelna of a statutory crime, in said court, before said Lucas Flattery Smith, and before the time appointed for the sentencing of said Louis Buelna, said Lucas Flattery Smith had a conversation with Frances Buelna, the mother of said Louis Buelna, in which said Lucas Flattery Smith, for the sole purpose of preventing said Louis Buelna from being in a position to appeal his case to the Supreme Court, informed said Frances Buelna that he, said Lucas Flattery Smith, pitied her very much, and that he would do all in his power in favor of her son Louis Buelna, and told said Frances Buelna to inform her boy, the said Louis Buelna, that if he, the said Louis Buelna, did not ask or permit his attorneys to ask for a new trial of his case, he, the said Lucas Flattery Smith, would sentence him, the said Louis Buelna, very lightly"—is not sustained by the evidence, except that the evidence shows that in his conduct in the case of the People vs. Louis Buelna, when he sentenced the defendant, an ignorant Mexican, to the penitentiary for ninety years, and who at the time was barely of age, in the absence of his attorney of record, who had requested and been granted a continuance of the case, thereby leaving the defendant without the right to move for a new trial or appeal. This was a grievous error and denied to the defendant the rights guaranteed by the Constitution; and further, that his action evidences an undue and hasty exercise of judicial power.

Tenth—That Specification 10, as follows: "That said Lucas Flattery Smith has been guilty of oppression and tyranny in his office, incorrectly and oppressively and without just cause imprisoning one P. E. Zabala and one J. J. Wyatt, upon feigned, fictitious, and false charges of contempt of his said court"—is not sustained by the evidence.

Eleventh—That Specification 11, as follows: "That said Lucas Flattery Smith, through ignorance, incompetence, favoritism, partiality, willful disregard of facts, and permitting attorneys and litigants privately, in chambers and out, to freely discuss causes before decision thereon, has wrongfully and incorrectly decided a great percentage of the cases tried before him, as is evidenced by the fact that about fifty per cent of the civil cases appealed to the Supreme Court from his judgment, and about seventy-five per cent of the criminal cases appealed to the Supreme Court from the decisions of said Lucas Flattery Smith, have been reversed by the Supreme Court, at great expense to litigants and to the people of the State of California"—is not sustained by the evidence, except that there is some evidence to show that Judge Smith has during the progress of a trial called attorneys into his chambers and discussed the case with them before decision thereon.

Twelfth—That Specification 12, as follows: "That said Lucas Flattery Smith has been guilty of conduct unbecoming an upright and impartial judge. Under this specification are included all charges in the specifications herein numbered,

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from one to eleven, inclusive, and also the following 1. Denying motion of Louis Buelna for continuance when his counsel failed to appear, and Charles C. Houck and Duncan McPherson, Esqs., were appointed by said Smith to defend said Buelna, not giving the newly-appointed counsel, who were both young lawyers, any time to prepare the defense. Buelna was sentenced for ninety years. 2. Denying the motion of Louis Buelna to have the public excluded from the trial. It was shown that public sentiment was greatly aroused over the case. 3. Denying motion of M. T. Langley, in case of Bloom vs. Langley, for a new trial where the statement on motion for a new trial, signed and certified to be correct, by said Smith, shows on its face that the verdict of the jury was contrary to the evidence and in direct violation of the instructions of the court. In this case, which was won by Mr. Langley in the justice's court and appealed to the superior court, Mr. Cassin was employed as of counsel for Mr. Bloom when the case was tried in said superior court. 4. In giving, on all manner of occasions, both in court and out, expressions, gestures, smiles of recognition, deferential acquiescence, encouragement by look, word, and deed, signs of extreme friendliness, to and toward the warm personal friends of said Smith. 5. Making it known by look, act, word, and deed, both in court and out, on all possible occasions, that a person who opposed the warm personal friends of said Smith is *persona non grata* with the said superior court and the said Judge Smith—is not fully sustained by the evidence. The evidence introduced under this specification shows that either some of the lawyers and litigants in Santa Cruz County are unruly and disrespectful to the Court, or that Judge Smith by his conduct as a judge has in part failed to command the respect due to the Court and to uphold the dignity of the position he occupies; and the evidence further shows that he has in an unusual manner for a judge favored some attorneys to the disparagement of others, and the preponderance of the evidence in this respect is on the side of the lawyers and litigants who claim that the Judge has in some instances shown unwarranted partiality.

That the communication of Judge Smith addressed to this Assembly under date of February 2, 1905, was entirely uncalled for, and has a tendency to impair his usefulness as a judge, as it will plainly appear from his petition. His evidence before the committee was of like character in some respects, which evidence has given us much information of his conduct as a jurist, and more than the evidence of any other witness justifies some criticism of his conduct.

Finally—While it is not necessary that the crime in office of which a judge may be impeached must be an indictable offense, your committee feels that it must be governed in this case in its report by the uniform rule that a judge could be impeached for any misbehavior in office which shows such turpitude, or such a condition of mind or body as rendered him unfit to perform the duties of his office, or for any misbehavior in office that would destroy the confidence, respect and dignity of the court. That should the Assembly prefer articles of impeachment against Judge Smith at the bar of the Senate, it will devolve upon it to establish the truth of these specifications, or some of them, beyond a reasonable doubt. While the evidence shows that Judge Smith is lacking in many judicial traits, and has upon several occasions seemingly disregarded the dignity and respect due to the position which he occupies, his character as a private citizen is unchallenged.

Wherefore, your committee, after due consideration of all the evidence adduced at the hearing, find therefrom and therefore recommend to the Assembly that the Honorable Lucas Flattery Smith, Judge of the Superior Court of Santa Cruz County, State of California, be not impeached upon any of the charges preferred by the memorialists for want of sufficient evidence to sustain the same.

Very respectfully submitted.

McCARTNEY, Chairman.
ATKINSON.
BURKE.
BEARDSLEE
LUMLEY.

MADE A SPECIAL ORDER.

On motion of Mr. McCartney, the report was ordered printed in the Journal, and consideration of the same made a special order for tomorrow (Wednesday), immediately after the reading of the Journal.

1905 March 7

The Chairman's statement on page 232 of Volume 3 draws attention to the fact that Judge Smith was never tried by the Senate. The recommendations of the Assembly did not reach the Senate before the Legislative Session ended. Furthermore, verification of that conclusion appears in the very last *Wherefore* statement of the Committee (above).

Timeline for the Attempted Impeachment of Lucas Flattery Smith

- 1905 September 4 Arthur A. Taylor, Editor, *Santa Cruz Surf*, September 4, 1905, summarized his view of Judge Smith's fate:
"The result of that hearing was a report embodying the most severe reprimand ever administered to a judge in this State."
- 1908 October 24 Editor-Publisher Arthur Adelbert Taylor of *The Santa Cruz Surf*, wrote in his editorial, addressed to "Mr. Newcomber"*[sic]* [for those who were not in Santa Cruz during the events]: "A few years ago these specifications were presented to the Assembly of the State, on a demand for impeachment of Lucas Flattery Smith. The Assembly appointed a committee to investigate. The committee made a report, of which the following is a condensed synopsis: Forty eight witnesses were sworn and examined orally. There was a great mass of record evidence which was introduced by the respective parties and examined by your committee. The evidence shows that Judge Lucas F. Smith has on several occasions committed indiscretions allowing certain attorneys to take liberties in the court room and in his chambers which should not be allowed, and has unduly and severely censured other attorneys for taking liberties of less consequence. Judge Lucas F. Smith committed an error in the case of *Forgeus vs. Dakan*, when he fined said *Dakan* for contempt and allowed the attorney for the plaintiff to go without being fined when the evidence shows that they were equally at fault. The next specification is lengthy, but the report states that in connection with this, Judge Lucas F. Smith committed "an inexcusable error in law," also in another paragraph a greivous [*sic*; *i.e.*, grievous] error," and later on "a further grievous error." The next specification is lengthy, but the report states that in connection with this, Judge Lucas F. Smith committed "an inexcusable error in law," also in another paragraph a greivous error," and later on "a further greivous error." The next specification states: That Judge Lucas F. Smith committed an indescretion [*sic*] in the case of *The People vs. Otto Lavish*, when he publicly rebuked before the jury, one of the attorneys for the defendant without just cause. In the next specification, the report states that Judge Lucas F. Smith committed a greivous error, and that his action evidences and [*sic*] undue and hasty exercise of judicial power. The next specification is sustained in that it shows that Judge Lucas F. Smith during the progress of a trial called attorneys into his chamber and discussed the case with them before the decision thereon. The last specification shows that Judge Lucas F. Smith by his conduct as a Judge has failed to command the respect due to the Court, and to uphold the dignity of the position he occupied. The evidence further shows, that he has in an unusual manner favored some attorneys to the disparagement of others and in some instances shown unwarranted partiality. **The legislative committee** of five members, Messrs. McCarty of Los Angeles, Mr. Beardslee of Stockton, now speaker of the Assembly, Mr. Burke of Oakland,

Timeline for the Attempted Impeachment of Lucas Flattery Smith

Mr. Atkinson of San Francisco, **were agreed that but for the near expiration of the Legislative session, articles of impeachment ought to be brought against Judge Lucas F. Smith.**" (*Santa Cruz Surf*, Oct. 24, 1908, 2:1-3)

- 1908 November 3 In a three-way race, Nathan L. Griest, Carl E. Lindsay, and Lucas F. Smith, - Smith was re-elected for his third term as Superior Court Judge. Total Vote for each was: Griest 374; Lindsay 1,692; Smith 3,028
- 1914 March 25 Judge Smith announced his candidacy for re-election to a third term. [Note: Curiously, during the November 4th 1914, election for Superior Court Judgeship, Lucas F. Smith was not mentioned by the *Santa Cruz Surf* when it came to reporting the vote. Arthur A. Taylor must have given up on trying to influence the election. "**What's the Use?**" he would write. Benjamin K. Knight, on-the-other-hand, was reported to have received 7,313 votes. His opponent is not listed. (*Santa Cruz Surf*, Friday Evening, Nov. 6, 1914, 4:1)
- 1914 November 6 Smith lost his seat on the bench at the election of 1914, having been beaten by Benjamin K. Knight Jr.
- 1924 September 22 Died after service for a period of 18 years (three terms) as Judge of the Superior Court of Santa Cruz County. He would have been 80-years-old if he had lived until November 3rd.

The Attempted Impeachment of Judge Lucas Flattery Smith
by The Assembly of The State of California.
Feb. 3, 1905 - March 19, 1905

Compiled by

Stanley D. Stevens
2021

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by The Assembly of The State of California.
Feb. 3, 1905 - March 19, 1905

Compiled by

Stanley D. Stevens
2021

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by The Assembly of The State of California.

Feb. 3, 1905 - March 19, 1905

In the Matter of the Investigation of Charges Against
Honorable Lucas Flattery Smith
Judge of the Superior Court of the County of Santa Cruz,
State of California, praying for his Impeachment.

Before a Special Committee of Investigation
consisting of Assemblymen H. S. G. McCartney (Chairman),
Thomas E. Atkinson, R. L. Beardslee,
Aubrey M. Lumley and John J. Burke.

In Three Volumes:
Volume I — Testimony on behalf of the Memorialists.
Volume II — Testimony on behalf of the Defendant.
Volume III — Testimony on behalf of Defense.

Ellsworth F. Duden, Reporter.

The volumes from which this transcription was made are from
the Donald Younger Collection, MS59,
Special Collections, University Library, University of California, Santa Cruz.

They contain the Testimony of F. A. Hihn,
Charles B. Younger, Sr. and Charles B. Younger, Jr.,
and many other prominent citizens of Santa Cruz County,
including several Members of the Santa Cruz County Bar.
Each volume bears a notation that they were presented to Charles B. Younger Jr.,
with the Compliments of Assemblyman "Hon. R. L. Beardslee."

Biographical Sketches of Persons Named in these Impeachment Transcripts
are Provided in a Separate Appendix

An extensive biography of Lucas Flattery Smith and his family is in preparation.

Transcribed, Annotated, Corrected, and Indexed by

Stanley D. Stevens
Librarian Emeritus
University of California at Santa Cruz

Introduction

Volume I — Testimony on behalf of the Memorialists.

Transcriber's Notes:

Preservation of the data that appears in the original volumes has been a primary goal. In the following "Index," numbers on the left, in the original documents, are handwritten, on the right the numbers are typewritten. The page numbers do not necessarily correspond to the text. The spacing, the page content, and the seemingly inconsistent page-numbering have been reproduced as close to the original as possible so that users of the original documents have a reference page number. In order to reduce the printed pages, however, whenever possible the content of more than one page has been combined with the next page. The actual, physical pages are numbered in square brackets at the left.

To avoid the confusion of the numbering schemes, all references in the Transcriber's Index will refer to the Page Numbers that appear in the Footer; e.g. I:56

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1.

CALIFORNIA LEGISLATURE - - - ASSEMBLY.

Thirty-sixth Session.

---000---

In Assembly.

Assembly Chamber,

Friday, February 3, 1905.

---000---

Petition.

Speaker Prescott presented the following petition:

Santa Cruz, California, February 2, 1905.

To the Honorable F. C. Prescott, Speaker, and Members of the General Assembly of the State Legislature of California:

Gentlemen: Recognizing the fact that your valuable time should not be consumed, and that the people of the State should not be put to the great expense of investigating the false and malicious charges preferred against me as Judge of the Superior Court of Santa Cruz County by a few cowardly and disreputable conspirators who tried to defeat me at the election two years ago by circulating similar and even worse vile and malicious falsehoods, I have delayed addressing you this communication until the present time.

Yet, as these few disreputable pettifoggers and disgruntled litigants persist in willfully and knowingly slandering me by formulating pretended charges of impeachment, but their real and only purpose being to injure me by having their false and malicious slanders published in the newspapers throughout the State, I therefor most respectfully request that in order to save any member of your honorable body the deep mortification of fathering these vile slanders by offering a resolution regarding them, that the same be considered as filed with my consent, and that a committee be appointed, with full power to act, to investigate the charges made by this disreputable

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2.

gang of cowardly and malicious scoundrels and notorious liars and slanderers, and if I fail to prove by the leading citizens of Santa Cruz County, and by numerous witnesses of unquestioned integrity, beyond all reasonable doubt and to the satisfaction of the committee and all other honorable persons, that the charges made are rank and malicious falsehoods, and that the authors thereof are vile and cowardly slanderers without reputable characters or standing in the County where they reside, then I will cheerfully pay all the expenses of the investigation, so that the taxpayers of the State will not be compelled to pay the same.

Being a Democrat in politics, I would further request that the entire committee be composed of

disinterested Republicans, which alone would exempt Mr. Cleveland of your body from serving on said committee, he being desired as a witness.

I would further request that the investigation be had in Santa Cruz County, where my character and standing both as a judge and citizen are well known, and also where the characters of the disreputable cowards who have so unjustly and maliciously assailed me are also well known.

Awaiting your pleasure in this matter, and assuring you that I am ready to have the investigation commence at the very earliest moment possible, I remain,

Very respectfully, your obedient servant,
Lucas F. Smith,
Judge of the Superior Court of Santa Cruz County,
State of California.

---000---

Ordered printed in Journal.

Mr. Waste moved that the petition be printed in the Journal.
Motion carried.

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3.

CALIFORNIA LEGISLATURE --- ASSEMBLY.
Thirty-sixth Session.

---000---

In Assembly.
Assembly Chamber,
Monday, February 6, 1905.

---000---

Memorial.

Mr. Cleveland presented the following memorial against Lucas Flattery Smith, Judge of the Superior Court of Santa Cruz County, which, on motion of Mr. Cleveland, was ordered printed in the Journal:

Memorial.

To the Assembly of the State of California:

Greeting: John H. Leonard, an attorney at law, licensed to practice in all the Courts of the State of California, a citizen and a resident of the County of Santa Cruz, in said State, respectfully presents to the Assembly of said State, this, his memorial, and shows unto your honorable body that Lucius[sic] Flattery Smith, Judge of the Superior Court in and for the said County of Santa Cruz, has been guilty of misdemeanors in office, and respectfully requests you honorable body to investigate the hereto annexed specific charges against said Lucius[sic] Flattery Smith, numbered from one to twelve inclusive, and hereby referred to and made a part thereof.

And if the same of any of the same be found true, that by proper proceeding said Lucius[sic] Flattery Smith be duly impeached and removed from office.

John H. Leonard.

Note: The originals of the affidavits herein referred [sic] to preserved for evidence.

----- Transcriber's Insert -----

[Transcriber's Notes: "preserved"? Evidently not! My query to the California State Archives was answered in the negative. In fact, there is no Committee Report extant. I was told that the Legislative Committees, at that time, were not required to retain such documents and reports.

Mr. Aydelotte's name is misspelled throughout (e.g., Adyelott).
Mr. Gardner's name is misspelled throughout (e.g., Gardiner).]

----- End of Transcriber's Insert -----

.[6]

4.

Specification 1.

That Lucas Flattery Smith, as Judge of the Superior Court of the County of Santa Cruz, State of California, has been guilty of great partiality and favoritism to one Charles M. Cassin, a practicing attorney in said Court. That said partiality and favoritism has been manifested to such a degree by said Smith, while presiding in cases in which said Cassin represented one of the litigants, and has become so well known that it has created a general impression that to succeed in that Court before said Smith it is necessary to retain said Cassin.

John H. Leonard.

See affidavits marked "Affidavit to Specification 1".

Affidavit to Specification 1.

State of California,)
 ss.
County of Santa Cruz.)

Harrison Rich, being first duly sworn, upon oath, states as follows: That he is the affiant herein and has resided in the County of Santa Cruz for about thirty years last part;

That affiant knows it is common rumor and common talk among the citizens of said County that Judge Lucas F. Smith unduly favors one Charles M. Cassin, a practicing lawyer in the Superior Court of said County, and shows said Cassin great partiality and favoritism in cases in which said Cassin represents one of the litigants;

That affiant knows that said partiality and favoritism of said Judge Smith toward and for said Cassin is and has become so well known that it has created a general impression that to succeed in that Court before said Judge Smith, it is necessary to retain said Cassin.

Harrison Rich.

Subscribed and sworn to this 4th day of February, 1905, before me,
Wm. Aydelotte, Notary Public in and for the County of Santa Cruz,
State of California. (Seal).

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5.

Affidavit of Specification 1

State of California,)
 ss.
County of Santa Cruz.)

H. W. Rich, being first duly sworn, upon oath, states as follows; that he is the affiant herein, and has resided in the County of Santa Cruz for about one year last past;

That affiant knows it is common rumor and common talk among the citizens of said County that Judge Lucas F. Smith unduly favors one Charles M. Cassin, a practicing lawyer in the Superior Court of said County, and shows said Cassin great partiality and favoritism in cases in which said Cassin represents one of the litigants;

That affiant knows that said partiality and favoritism of said Judge Smith toward and for said

Cassin is and has become so well known that it has created a general impression that to succeed in that Court before said Judge Smith it is necessary to retain said Cassin.

H. W. Rich.

Subscribed and sworn to before this 4th day of February [sic], 1905, before me, Wm. M. Aydelotte,
Notary Public in and for the County of Santa Cruz,
(Seal), State of California.

Affidavit of Specification 1.

State of California,)
 ss.
County of Santa Cruz.)

William M. Aydelotte, being first duly sworn, upon oath, states as follows:

That he is the affiant herein and has resided in the County of Santa Cruz for about three and one half years last past.

That affiant knows it is common rumor and common talk among the citizens of said County that Judge Lucas F. Smith unduly favors

[8] 6.

one Charles M. Cassin, a practicing lawyer in the Superior Court of said County, and shows said Cassin great partiality and favoritism in cases in which said Cassin represents one of the litigants;

That affiant knows that said partiality and favoritism of said Judge Smith toward and for said Cassin is and has become so well known that it has created a general impression that to succeed in that Court before said Judge Smith, it is necessary to retain said Cassin.

Wm. M. Aydelotte.

Subscribed and sworn to, this 21st day of January, 1905, before me, Harry Bias, Notary Public in and for the County of Santa Cruz,
(Seal) State of California.

Affidavit to Specification 1.

State of California,)
 ss.
County of Santa Cruz.)

John H. Leonard, being first duly sworn, upon oath, states as follows:

That he is the affiant herein and has resided in the County of Santa Cruz for about thirty-five years last past;

That affiant knows it is common rumor and common talk among the citizens of said County that Judge Lucas F. Smith unduly favors one Charles M. Cassin, a practicing lawyer in the Superior Court of said County, and shows said Cassin great partiality and favoritism in cases in which said Cassin represents one of the litigants,

That affiant knows that said partiality and favoritism of said Judge Smith toward and for said Cassin is and has become so well known that it has created a general impression that to succeed in that Court before said Judge Smith, it is necessary to retain said Cassin.

John H. Leonard.

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Testimony For & Against the Impeachment of Judge Lucas Flattery Smith
of the Superior Court of Santa Cruz County — Feb. 3, 1905 – March 19, 1905
Volume I — Testimony on behalf of the Memorialists

County of Santa Cruz.)

W. M. Gardner, being first duly sworn, upon oath, states as follows:

That he is the affiant herein and has resided in the County of
Santa Cruz for about _____ years last past;

That affiant knows it is common rumor and common talk among the citizens of said County that
Judge Lucas F. Smith unduly favors one Charles M. Cassin, a practicing lawyer in the Superior Court of
said County, and shows said Cassin great partiality and favoritism in cases in which said Cassin
represents one of the litigants;

That affiant knows that said partiality and favoritism of said

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9.

Judge Smith toward and for said Cassin is and has become so well known that it has created a general
impression that to succeed in that Court before said Judge Smith, it is necessary to retain said Cassin.

W. M. Gardner.

Subscribed and sworn to this 23rd day of January, 1905, before me, Wm. M. Aydelotte, Notary Public
in and for the County of Santa Cruz, State of California. (Seal)

Affidavit to Specification 1.

State of California,)

ss.

County of Santa Cruz.)

William F. White, being first duly sworn, upon oath states as follows:

That he is the affiant herein and has resided in the County of Santa Cruz for about nineteen years
last past;

That affiant knows it is common rumor and common talk among the citizens of said County that
Judge Lucas F. Smith unduly favors one Charles M. Cassin, a practicing lawyer in the Superior Court of
said County, and shows said Cassin great partiality and favoritism in cases in which said Cassin
represents one of the litigants;

That affiant knows that said partiality and favoritism of said Judge Smith toward and for said
Cassin is and has become so well known that it has created a general impression that to succeed in that
Court before said Judge Smith, it is necessary to retain said Cassin.

William F. White.

Subscribed and sworn to this 24th day of January, 1905, before me, Wm. M. Aydelotte, Notary Public
in and for the County of Santa Cruz, State of California. (Seal)

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10.

Specification 2.

That on or about December 6th, 1902, said Smith told Peter P. Hartmann, a litigant, one of the
parties to a case which was tried before Smith during September and October, 1902, but in which no
decision had been rendered, that he should have employed Mr. Cassin, who was a friend of said Judge,
and that he, said Hartmann, was very unfortunate in having a different attorney to represent him; that
he, the said Smith, would be more than human should he not let his personal prejudice guide his
decision.

John H. Leonard.

Note: See affidavit marked 2 A.

State of California,)
 ss.
County of Santa Cruz.)

Peter P. Hartmann, contestant of the alleged last will of George Kohl, deceased, being first duly sworn, deposes and says: That he is the affiant herein; that affiant on or about December 6th 1902, visited the Hon. Lucas Flattery Smith, Judge of the Superior Court of the County of Santa Cruz, State of California, at the chambers of said Judge, for the purpose of asking the said Hon. Lucas Flattery Smith how soon he could render his decision in the matter of the Kohl estate, which has been on trial before him during September 17th, 18th and 19th, and October 6th, 7th and 8th of said year 1902, and asked said Judge when he could render his decision; that said Hon. Lucas Flattery Smith answered in the following words:

“I am very busy at present, as there are quite a number of cases awaiting my decision. I think you are very unfortunate, Mr. Hartmann, for having that drunken lawyer of yours (meaning George P. Burke), to represent you in this case. It was him who spread those lies about me during the last campaign. You should have had another lawyer - Mr. Cassin, for instance, he is a friend of mine.”

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11.

That affiant replied: “You should not let your personal prejudice guide your decisions to the detriment of any party concerned in any case, but decide the matter before you solely upon the merits of the case involved.”

That said Judge replied: “In such cases I would be more than human; however, I will see what I can do for you. Good day, Mr. Hartmann.”

Peter Paul Hartmann.

Subscribed and sworn to before me this 26th day of September, A.
D. 1904, W. M. Gardner, Notary Public Santa Cruz County, California. (Seal).
Specification 3.

That on or about the 19th day of April, 1904, during the trial of a case in which one Thomas Dakan was a defendant, which was being tried before said Smith as Judge of said Court, and a jury, said Smith suffered said Cassin, who represented the plaintiff, to permit an unprovoked assault and battery upon the person of said Thomas Dakan, without punishment or reprimand, and punished said Dakan for defending himself against the assault of said Cassin.

John H. Leonard.

Specification 4.

That during the month of February, 1901, after the trial and conviction in the Superior Court of the County of Santa Cruz of one Nathan Smith, who was convicted with assault with a deadly weapon, and by the jury recommended to the mercy of the Court, and before the time set for passing sentence upon said Nathan Smith, said Lucas Flattery Smith, as said Judge, requested one George B. Fletcher, the attorney who represented said Nathan Smith during his trial to assure from the citizens of the City of Watsonville, in the County of Santa Cruz, a petition setting forth the good character of said Nathan Smith, and petitioning said Lucas Flattery Smith, as Judge of

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12.

said Court, to sentence said Nathan Smith to as light a sentence as the law would permit. Said petition, signed and verified by more than one hundred of the said citizens, was obtained and presented to Lucas Flattery Smith, as said Judge, before the day appointed for the passing of sentence upon said Nathan Smith.

That on the day appointed for the passing of sentence on the said Nathan Smith, said Lucas

Flattery Smith, as Judge of said Court, stated that he had received said petition and would act thereon and he would sentence said Nathan Smith to the lightest punishment which the law would permit, and thereupon he sentenced the said Nathan Smith to six months in the County Jail.

John H. Leonard.

See petition in cause No. 3593, People vs. Nathan Smith, filed February 15th, 1901.

Specification 5.

That said Lucas Flattery Smith, as Judge of said Superior Court, arbitrarily, of his own motion, and without notice, struck from the files of the Court the complaint in the case of Helen Younger, plaintiff, versus Charles Moore, et al., defendants. In said case said Smith was made a party defendant.

John H. Leonard.

Note: See Younger vs. Superior Court, 136 Cal. 682.

Specification 6.

That said Lucas Flattery Smith during the trial of Nicholas Sambuck versus the Southern Pacific Company, as Judge of said Court, before whom said action was being tried, called into his chambers one John H. Leonard, attorney for said Sambuck in said motion, and advised said Leonard to permit the doctors in the employ of said Southern Pacific Company to examine said Sambuck, client of said Leonard, and to have said Sambuck bend and squeal when said doctors

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touched him.

John H. Leonard.

Note: See affidavit marked 6 A.

State of California,)

ss.

County of Santa Cruz.)

John H. Leonard, being first duly sworn, deposes and says: That he is the affiant herein; that affiant as attorney for Nicholas Sambuck, and conducted the trial on the part of said Sambuck in the case of Sambuck vs. Southern Pacific Company, a corporation; that on or about the 13th day of March, A. D. 1900, and while said trial was being heard before Lucas Flattery Smith, as Judge of the Superior Court of the County of Santa Cruz, State of California, and a jury, said Smith, invited this affiant into his chambers, adjoining the Courtroom of said Court, and stated to this affiant, that affiant had a good damage suit, but had ruined it by not permitting the doctors in the employ of the Southern Pacific Company to examine plaintiff, Nicholas Sambuck, and further stated to this affiant: "You ought to offer to let them examine him (meaning Sambuck), and when they touch him have him bend and squeal **; that is the way to try these kind of cases."

John H. Leonard.

Subscribed and sworn to before me this 24th day of January,
A. D. 1905, Wm. M. Aydelotte, Notary Public in and for the County of Santa Cruz, State of

California. (Seal).

Specification 7.

That said Smith has been guilty of great oppression and tyranny and mal administration in the affairs of the conduct of his office. John H. Leonard.

Illustrations: See Hartmann against Smith, 140 Cal. 461; Trafton vs. Quinn, Cal. s.c. 77 Pac. Rep. 164; copy certify copy judgment in Marquis vs. Gardner, attached.

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14.

(In the Superior Court of the State of California, in and for the County of Santa Cruz).

J. Marquis, Plaintiff.

vs.

H. E. Gardner, Defendant.

Order.

This cause came on regularly for hearing on the 29th day of November, 1904, on plaintiff's motion to dismiss the appeal from the Justice's Court of Santa Cruz Judicial Township, upon the ground "that no undertaking on appeal had been filed as required by section 978 of the Code of Civil Procedure," George F. Stanley, Esquire, appearing as counsel for plaintiff, and W. P. Netherton, Esquire, for the defendant. Whereupon witnesses on the part of plaintiff and defendant were duly sworn and examined, and documentary evidence introduced by plaintiff, and the cause, after argument by respective counsel, was submitted to the Court for consideration and decision; and after due deliberation thereon, the Court finds: That a judgment was rendered and entered in the Justice's Court of Santa Cruz Judicial Township on October 12th, 1904, for the sum of \$106. in favor of plaintiff herein; that on November 2nd, 1904, defendant herein served and filed in the said Justice's Court a notice of appeal to the Superior Court; that on November 2nd, 1904, said defendant deposited with Harry J. Bias, Esquire, a Justice of the Peace of said Justice's Court, the sum of \$50 in gold coin; that on November 7th, 1904, the transcript on appeal, together with \$50 in gold coin, were delivered to Harvey H. Miller, Esquire; Clerk of this Court, by said Justice of the Peace Harry J. Bias; that on November 23rd, 1904, plaintiff filed herein a notice of motion to dismiss the appeal; that thereafter, and more than forty days subsequent to the entry of said judgment in the Justice's Court the defendant deposited with the Clerk of this Court the further sum of \$56 in lieu of an undertaking

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on appeal; that under the provision of section 874 and 978 of the Code of Civil Procedure, the appeal herein from the said Justice's Court was not perfected, and this Court has no jurisdiction to hear the case on its merits.

Wherefore, by reason of the law and the findings aforesaid, it is hereby ordered and adjudged that the appeal herein from the Justice's Court be and it is hereby dismissed, and the judgment of the lower Court affirmed.

And it is further ordered that the sum of \$106 gold coin, deposited with H. H. Miller, Clerk of this Court, in lieu of an undertaking on appeal of this action, be paid by said Clerk to

the plaintiff in satisfaction of the judgment appealed from.

Lucas F. Smith,
Judge of the Superior Court.

Dated and signed this 13th day of January, 1905.

The foregoing judgment entered this 14th day of January, A. D. 1905.

Attest: H. H. Miller, Clerk of said Court,

By Harry E. Miller, Deputy Clerk.

(Endorsed: Filed January 13th, 1905. H. H. Miller, Clerk.)

Specification VIII.

That said Smith has openly expressed himself in open Court in such manner as to show great disrespect for the Supreme Court of California, and calculated to bring said Supreme Court into disrepute.

John H. Leonard.

See Reporter's transcript in case of Hartmann v. Hihn.

Specification 9.

That on the 15th day of November, 1904, and after the conviction of one Louis Buelna of a statutory crime in said Court, before said Lucas Flattery Smith, and before the time appointed for the sentence-

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ing of said Louis Buelna, said Lucas Flattery Smith had a conversation with Frances Buelna, the mother of said Louis Buelna, in which said Lucas Flattery Smith, for the sole purpose of preventing the said Louis Buelna from being in a position to appeal his case to the Supreme Court, informed said Frances Buelna, that he, said Lucas Flattery Smith, pitied her very much, and that he would do all in his power in favor of her son Louis Buelna, and told said Frances Buelna to inform her boy, the said Louis Buelna, that if he, the said Louis Buelna, did not ask or permit his attorney to ask for a new trial of his case, he, the said Lucas Flattery Smith, would sentence him, the said Louis Buelna, very lightly.

John H. Leonard.

Note: See affidavit of Frances Buelna, marked 9 A.

Affidavit 9 A.

State of California,)
ss.

County of Santa Cruz.)

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Santa Cruz, in which said Hon. Lucas Flattery Smith made the following statement: "Mrs. Buelna, I pity you very much, and I promise you I will do all within my power for your boy, keep

very quiet, don't say a word to any one, and tell your boy not to ask for a new trial and I will sentence him very lightly"; that affiant relying upon said promises of said Judge, informed her said son, Louis Buelna, of the statements made by said Hon. Lucas Flattery Smith, and advised him, her said son, Louis Buelna, to not ask for a new trial, upon which advice, and by reason of the said promises of said Hon. Lucas Flattery Smith, said Louis Buelna in open Court waived the right to move for a new trial, and agreed that sentence he passed upon him, whereupon said Lucas Flattery Smith, Judge of said Court, disregarding the promises made by him to affiant, sentenced said Louis Buelna, the son of this affiant, to ninety years in the State Prison at San Quentin.

Frances Buelna.

Subscribed and sworn this 27th day of December, 1904, before me, James O. Wanzer,
Notary Public in and for said County of Santa Cruz. (Seal).

State of California,)

ss.

County of Santa Cruz.)

Wm. M. Aydelotte, being first duly sworn, upon oath states as follows: That he is affiant herein. That on the _____ day of November, 1904, one Louis Buelna was convicted of a statutory crime, by a jury, in the Superior Court of said County; that Charles C. Houck and Duncan McPherson, Jr. were the attorneys appointed by Lucas Flattery Smith, Judge, to defend said Buelna; that a substitution of attorneys of which the following is a copy, was duly signed by the persons whose names appear thereon, and filed in said Superior Court.

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In the Superior Court of the County of Santa Cruz, State of
California.

The People of the State of California,

vs.

(Substitution of Attorneys)

Louis Buelna.

I, the undersigned defendant in the above entitled cause, do hereby substitute Wm. M. Aydelotte as attorney for defendant herein, in the place and stead of Duncan McPherson, Jr. and Charles C. Houck, Esquires.

November 15th, 1904.

Louis Buelna, Defendant.

We hereby consent to the above substitution this 15th day of November, 1904.

Duncan McPherson, Jr.

Charles C. Houck.

I hereby accept the above substitution this 15th day of
November, 1904.

Wm. M. Aydelotte.

(endorsed). Filed November 15th, 1904.

H. H. Miller, Clerk.

That upon obtaining said substitution, affiant immediately notified the District Attorney and said Judge Smith, and secured a continuance from Friday, November 18th, 1904, until the following Monday, November 21st, 1904, until the following Monday, November 21st, 1904, so as to enable affiant to duly prepare for making a motion for a new trial for said Buelna before sentence was pronounced; that affiant went to San Francisco, California, on Wednesday, November 16th, 1904, and did not return until Monday, November 21st, 1904.

That from and after said 15th day of November, 1904, affiant was the only duly authorized attorney of record for said Buelna;

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That on Friday morning, November 18th, 1904, without notice or knowledge of affiant and during the absence of affiant, said Lucas Flattery Smith, Judge, without right and justice, and in violation of the common principles of law, justice, morals, and ethics, which should govern the conduct of an upright and impartial Judge sentenced said Buelna to ninety years in the State Prison;

That, in consultation with said Houck, McPherson and affiant said Buelna stated, after being fully advised by said Houck, McPherson and affiant that he had everything to gain and nothing to lose by a new trial, that he desired affiant to properly move for a new trial so that an appeal might be properly taken to the Supreme Court;

That said Buelna was fully advised by said Houck, McPherson and affiant, that the treatment he had received at the hands of said Smith was outrageous, that the record contained many reversible[sic] errors, and that without doubt the Supreme Court would reverse the case and grant said Buelna a new trial;

That affiant did not see said Buelna after November 15th, 1904; that on Monday, November 21st, 1904, affiant called at the Chambers of said Smith the following conversation, in substance and effect took place:

Smith: "Good morning, Mr. Aydelotte. Your man Buelna went back on you and concluded not to ask for a new trial and asked that sentence be pronounced.

Aydelotte: "Good morning, Judge. I am not sure that he went back on me, but am constrained to believe that some evil influence has been at work."

Smith: "Oh, no. He asked to be sentenced."

Aydelotte: "And was deprived of his counsel's advice and assistance. However, since affairs have taken that course, I will have nothing further to do with the case unless I am called on again."

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Smith: "Well, Mr. Aydelotte, that is a nasty case, and you could not afford to have anything to do with it." (This with great emphasis).

Aydelotte: "I don't care how nasty it is Judge. I would never be dishonest and cowardly enough to throw down a man whose case I accepted."

Smith: "I understand he was taken away this morning."

Aydelotte: "Yes, before I could consult with him. Good day, Judge."

Smith: "Good day."

That, upon the above and foregoing facts, and upon reading the affidavit of Frances Buelna, and upon much more which affiant has a right to suspect, affiant verily believes that said Judge Smith used his influence wilfully [sic] and maliciously, utterly disregarding every

principle of justice, to prevent said Buelna from obtaining a new trial or an appeal in his case.

Wm. M. Aydelotte.

Subscribed and sworn to January 25th, 1905, before me,
D. B. Richards, Notary Public in and for the City and County of San Francisco. (Seal).

Specification 10.

That said Lucas Flattery Smith has been guilty of oppression and tyranny in his office, incorrectly and oppressively and without just cause imprisoning one P. E. Zabala and one J. J. Wyatt upon feigned, fictitious [sic] and false charges of contempt of his said Court.

John H. Leonard.

Note: See attached copy of decision of Supreme Court of California discharging the above named Zabala and Wyatt on habeas corpus, marked 10 A.

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(10 A. Crim. No. 1207. In Bank. December 5, 1904. In Chambers of the Chief Justice).

Exparte P. E. Zabala and J. J. Wyatt on habeas corpus.

Application for a writ of habeas corpus prayed to be directed against H. V. Trafton, Sheriff of Santa Cruz County.

For petitioners, C. F. Lacey.

The petitioners were in the custody of the sheriff under an order adjudging them guilty of a contempt of court. It is conceded that the return to the writ does not sustain the jurisdiction of the Court to make the order. The petitioners are discharged from custody.

Beatty, C. J.

(10 A Copy decision of Supreme Court).
(Surf, November 12, 1904).

A Relenting Mood.

The “Surf’s” attention has been called to a statement in the alleged morning paper anent the case of attorneys Wyatt and Zabala. It says: “Judge Smith, being in a somewhat relenting mood, told the Sheriff to release them, although the proceedings were not quite regular.”

Judge Smith commenced to “relent” as expected, when he heard the matter had been taken to the Supreme Court. The attorneys put up cash to secure their release from custody.

Judge Smith is always in a “relenting” mood on fines. This disposition dates back to the time he was fined \$25 for contempt of Court, as an attorney, for an assault upon the late Edgar Spalsbury, which remains unsatisfied on the records.

An outrage against womanhood and common decency.

Against the plea of the attorneys on both sides of the case, Judge Smith has refused to close the doors of the courtroom during

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the trial of the Buelna rape case.

The prosecutrix, a woman who has suffered to the limit possible for her sex, was compelled to repeat her testimony before a courtroom crowded full of masculine curiosity mongers, whose possible favor was regarded by the Court as more important than the dictates of manly chivalry or the demands of common decency.

Courts and Constitutions.

One L. F. Smith, Judge of the Superior Court, in the alleged morning paper, says: "The Supreme Court, in construing the Constitution, holds that it is an error for the Superior Court to exclude the public in any criminal trial.

Once upon a time another rape case was tried in this Court, when there was an able, independent, high minded judge on the bench. One L. F. Smith was attorney for the defendant. The Judge ordered the case heard behind closed doors, although the details of the case were wholesome in comparison of the one now on trial.

L. F. Smith's client was convicted and sent to prison.

Why did not L. F. Smith, attorney, secure a new trial for his client, on the error of the Judge in excluding the public from the Courtroom?

Contempt of Court.

**Two prominent attorneys of Salinas suffering from the
disfavor of the Superior Court.**

At the arraignment of Buelna, the rape fiend, J. J. Wyatt and P. Zabala, attorneys of Salinas, appeared for the defense, but yesterday when the case was called for trial, they were not present.

Judge Smith ordered a citation issued for their appearance. When they came into Court this morning, the Judge ordered them to assist in the defense of the prisoner. They declined to do so on the ground that they were not members of the Santa Cruz County bar,

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and could not be compelled to defend the prisoner without compensation.

Whereupon the Court fined them \$50 each for contempt of Court and remanded them to the custody of the Sheriff until paid.

The beleaguered [sic] lawyers wired a friend in Salinas of their position, and this afternoon Hon. C. F. Lacy of that City left for San Francisco to bring the matter before the Supreme Court on a writ of habeas corpus.

The opinion about the courthouse is that when the Judge learns that the matter is going before the Supreme Court he will, remit the fine and discharge the attorneys who are now in durance vile.

----- Transcriber's Insert -----

["Noun. durance vile (uncountable) (obsolete) A long prison sentence. If you continue on your present course, my reckless and rowdy friend, you will find yourself in durance vile." Google]

----- End of Transcriber's Insert -----

Messrs. Zabala and Wyatt are among the most prominent members of the bar in Monterey County, and the affair has created quite a stir in Salinas.

Specification II.

That said Lucas Flattery Smith, through ignorance, incompetence favoritism, partiality, wilful disregard of facts, and permitting attorneys and litigants privately, in chambers and out, to freely discuss causes before decision thereon, has wrongfully and incorrectly decided a great percentage of the cases tried before him, as is evidenced by the fact that about fifty per cent of the civil cases appealed to the Supreme Court from his judgment, and about seventy five per cent of the criminal cases appealed to the Supreme Court from the decisions of said Lucas Flattery Smith, has been reversed by the Supreme Court, at great expense to litigants and to the people of the State of California.

John H. Leonard.

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**Revealed by the records.
Slump in the standing of the Superior Court of Santa Cruz County in
six years of Smith.**

Logan and McCann's record for 17 years.-

Criminal cases reversed, -----	1.
Criminal cases affirmed, -----	6.
Criminal cases dismissed, -----	2.
Criminal cases modified, -----	None.

Appealed in 17 years, -----	9.
-----------------------------	----

Civil cases reversed, -----	19.
Civil cases affirmed, -----	38.
Civil cases modified, -----	2.
Civil cases dismissed, -----	9.

Appealed in 17 years, -----	68.
-----------------------------	-----

Total number both civil and criminal reversed, -----	20.
Total number both civil and criminal affirmed, -----	44.
Total number both civil and criminal modified, -----	2.
Total number both civil and criminal dismissed, -----	11.
Total number both civil and criminal pending, -----	0.

Total number both civil and criminal appealed in 17 years, -----	77.
---------------------------------------------------------------------	-----

Judge Smith's record for 5,2/3 years.

Criminal cases appeals reversed, -----	6.
Criminal cases habeas corpus reversed, -----	2.
Criminal cases habeas corpus affirmed, -----	1.
Criminal cases appeals reversed, -----	1.
Criminal cases appeals pending, -----	1.

Criminal cases appealed in 5,2/3 years,	11.
-----------------------------------------	-----

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Civil cases reversed, -----	5.
-----------------------------	----

Civil cases modified, -----	1.
Civil cases affirmed, -----	11.
Civil cases dismissed, -----	6.
Civil cases pending in Supreme Court, -- -----	24.

Civil cases appealed to Supreme Court in 5,2/3 years, -----	47.
Total number both civil and criminal reversed,-----	
Total number both civil and criminal modified,-----	1.
Total number both civil and criminal affirmed,-----	12.
Total number both civil and criminal dismissed,-----	6.
Total number both civil and criminal pending,-----	25.

Total number both civil and criminal appealed in 5,2/3 years, -----	57.

Judges Logan and McCann had 77 appeals in 17 years, and Judge Smith has had 57 in 5,2/3 years. Logan and McCann had 1 criminal case reversed, and 6 affirmed; Smith had 1 affirmed and 6 reversed. Logan and McCann had an average of one in three cases reversed. (The average all over the United States), and Smith had one in two, or 13 cases out of 26 reversed.

There were 252 cases tried by Judge Smith during the 5,2/3 years he has been on the bench, in which there was a contest, and which might have been taken to the Supreme Court, provided the litigants had money to do so, and provided further, Smith did not “doctor” the records; 14 contested cases were removed to other Counties, and 89 cases are yet undisposed of. All others were either appeals from the justice’s courts -- which are not appealable to a higher court -- or dismissed by the parties, or no contest filed.

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Specification XII.

That said Lucas Flattery Smith has been guilty of conduct unbecoming an upright and impartial judge. Under this specification herein numbered, from one to eleven, inclusive, and also the following:

I.

Denying motion of Louis Buelna for continuance when his counsel failed to appear, and Charles C. Houck and Duncan McPherson, Esqs. were appointed by said Smith to defend said Buelna, not giving the newly appointed counsel, who were both young lawyers, anytime to prepare the defense. Buelna was sentenced for ninety years.

II.

Denying the motion of Louis Buelna to have the public excluded from the trial. It was shown that public sentiment was greatly aroused over the case. (See editorial printed in Santa Cruz “Surf”.)

III.

Denying motion of M. T. Langley in case of Bloom v. Langley, for a new trial where the statement on motion for new trial signed and certified to be correct by said Smith, shows on its face that the verdict of the jury was contrary to the evidence and in direct violation of the instructions of the Court. In this case, which was won by Mr. Langley in the Justice’s Court and appealed to the Superior Court, Mr. Cassin was employed as of counsel for Mr. Bloom when the case was tried in said Superior Court.

IV.

In giving, on all manner of occasions, both in Court and out, expressions, gestures, smiles of recognition, deferential acquiescence, and encouragement by look, word and deed, signs of extreme friendliness to and towards the warm personal friends of said Smith.

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V.

Making it known by look, act, word and deed, both in Court and out, on all possible occasions, that a person who opposed the warm personal friends of said Smith is persona non grata with the said Superior Court and with said Judge Smith.

John H. Leonard.

Pandering to the populace.

Beneath the cupola of the Courthouse in Santa Cruz no scene has ever been enacted as revolting to public decency, as debasing to public morale, as humiliating to all right minded persons, as the trial of the rape case now in progress in a chamber filled by a prurient crowd of men, women, and youth.

The rudiment instincts of chivalry that well up in the heart of a savage would make him scorn to impose upon a female of his kind the embarrassment [sic] and humiliation that the Court imposed yesterday on the prosecutrix in this case.

A judge in Arizona or Idaho would blush at the suggestion of unnecessarily purveying indecencies before the public.

The alleged morning paper to-day says: "Judge Smith, in an interview Thursday evening, repudiates the insinuations made against his character 'by an obscure local sheet', and goes on to say, 'the reason why I did not exclude spectators from the Courtroom Thursday during the trial of Louis Buelna was because the State Constitution states explicitly that all criminal cases must be tried publicly. The Supreme Court, in construing the Constitution, holds that it is an error for the Superior Court to exclude the public in any criminal trial.'" etc. etc.

If the local court is an ignorant as it claims to be, the matter would be pitiful as well as repulsive. What the Supreme Court does say, and which Judge Smith knows, -- -or ought to know--- is this:

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"Criminal law -- constitutional construction -- excluding persons from courtroom -- public trial. The provision of the Constitution, article 1, section 13, which guarantees to every person accused of a crime the right to a public trial is not violated by an order of Court excluding all persons from the courtroom except the judge, jurors, witnesses, and persons connected with the case, during the trial of a criminal charge. The word public in that clause of the Constitution is used in opposition to secret.

"Id. Presumption -- assent. In the absence of any showing as to what took place when the court made an order, the appellate court will presume, in support of the action of the Court below, that the defendant assented to the order."

In the present case, the defendant's attorneys not only consented, but solicited that the doors be closed.

We cannot find in the dictionary a word to express the sense of shame and outrage which right minded people feel at the added indignities heaped on this suffering girl by the Court.

Aside from this aspect of the matter, only contempt and disgust can be felt for one in high position who would thus deliberately pander to the vulgar curiosity of the crowd.

Voice of the people.

**A courtroom scene which was no credit to Santa Cruz nor the Court.
(Surf, November 12, 1904).**

Editor “Surf”: Your words in the last issue of your paper on “pandering to the populace,” in the trial of this heinous rape case, are certainly worth the consideration of the goof thinking people of Santa Cruz. I dropped in the courtroom one morning during the trial to study the situation. Before the hour came for opening court a crowd of men, especially young men, who would not be attracted by a public library or art gallery, were waiting outside, as impetuously

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as a buzzard for carrion. It chilled me to see the character of the gang that filled up the courtroom. I couldn’t count three representative citizens present at that time. There were drunks, those who are ever feverish to fan the fire of moral pollution, a lot of hangers on who ought to be compelled to be in school.

It does seem to me that in this day of enlightenment if a trial of this nature must be open, the officers should close the doors of the courtroom against certain classes. It is very evident, in this case, that the better citizens don’t desire a public trial, for they are noticeable by their absence. If the trial must be public, let the officers debar the classes mentioned. The pressing need of the hour is a purer regard for women as mothers, wife and maiden.

Yours for a purer public sentiment,

Citizen.

The law and the Court.

We have no desire to prolong comment concerning an affair now passed, but in view of the defense (?) set forth in the Sentinel on Sunday morning by some friend of the Court, presumably the Judge himself, in attempted justification of his action in admitting the indiscriminate public, including young girls and boys, as listeners in the trial of the Buelna rape case, we invited a legal opinion in the matter.

Any citizen can do the same and secure like information.

Our informant says: Judge Smith gives an absolutely false construction to the case of People vs. Hartmann, 103 Cal. 242, which is relied upon to sustain his action. He states the law correctly, but not in point. You will find there these words:

“The appellant was convicted of an assault with the intent to commit rape, and now presents this appeal from the judgment of conviction.

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“When the information had been read to the jury and the defendant’s plea stated, on motion of the district attorney and against the objection of the defendant, the Court made an order excluding from the courtroom during the trial of the case all persons except the officers of the Court and the defendant. This was a novel procedure, and has no justification in the law of

modern times.”

Bear in mind, please, against the objection of the defendant, who under our Constitution is guaranteed a public trial if he wants it.

And then the Supreme Court goes on to say that the lower Court had no right to do this over the objection of the defendant, who had “a right to a public trial.”

In the Buelna case the defendant Buelna asked that the spectators be excluded.

Judge Smith knows this. Any body knows it who was in the courtroom -- and dare Judge Smith, or any one else, say that if Judge Smith had granted Buelna request to exclude spectators that Buelna could be granted a new trial on that ground after he had thus waived his constitutional right to public trial?

The Constitution says, Article 1, section 13: “In criminal prosecution in any court whatever, the party accused shall have the right to a speedy and public trial.”

Judge Cooley says: “The requirement of a public trial is for the benefit of the accused,” *** and the requirement is fairly observed if, without partiality or favoritism, a reasonable proportion of the public is suffered to attend, notwithstanding that these persons whose presence could be of no service to the accused, and who would only be drawn hither by a prurient curiosity and excluded all together.”

This quotation is embodied in full in the very case Judge Smith relies on, to-wit: 103 Cal. 244, and is also found quoted in full

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in the case of People vs. Swafford, 65 Cal. 244, relied upon by the “Surf”, and which was not overruled by the case in 103 Cal. 242, as related in the “Sentinel”.

In the case of People vs. Tarbox, 155 Cal. 57, the Supreme Court says, in deciding a case where the defendant requests a private examination before committing magistrate:

“There can be no question that a defendant has the ‘right’ to a public examination before the committing magistrate, but under the provisions of the Penal Code above quoted, he may waive that right whenever he deems it to his interest to do so.”

In view of the law as it stands, why does Judge Smith try to bamboozle, deceive and hoodwink the public by declaring that the Judge had to deny Buelna request because the Constitution of our State “provides that a person accused of a crime must be granted a ‘public trial?’”.

The Constitution provides no such thing, and Judge Smith knows it, or ought to know it.

Judge Smith knows, or ought to know, that a defendant in a criminal case may waive his constitutional right to a public trial, and that if he so waives his right he cannot go back on it and ask for a new trial because his request for an order excluding spectators was granted.

If all here said is not true, why did Judge Smith agree that when the prosecuting witness testified that he would exclude spectators from the Courtroom - which he did not do?

There is but one right answer to these questions - an answer which any reader can make for himself.

Courts and their purpose.

To listen to some persons talk about the rights of the public and the duties of a Judge, one would suppose that courts were conducted to afford entertainment for the idle populace, and that the

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secondary function was to convict and punish criminals.

Criminal courts were instituted to protect the innocent.

In early days in California, as any of the pioneers can testify, there was no lack of punishment for criminals. The horse thief and the murderer alike both swung speedily into eternity. It was not the aid of law and the Courts that was required to convict the criminal, but with a higher civilization they were instituted to protect the innocent, from lynch law as administered often failed to discriminate between the innocent and the guilty. The “right” to a public trial to-day is not the right of the public to attend the trial, but it is the right of the prisoner to the protection of public sentiment if he feels that he has been falsely accused.

This right is one that a guilty man is usually willing to waive, for the exploitation of his crime before the crowd is a part of the penalty which he desires to escape.

That was true in the case which is now causing so much comment in Santa Cruz.

The attorneys for the prisoner in his behalf, requested that spectators be excluded.

Freedom from the gaze of curiosity, and from the wrath of the indignant was part of the protection to which he was entitled by law.

Another phase of the matter is the protection due -- not legally but on the higher grounds of chivalry - to the prosecuting witness.

In a large section of this country the crime of rape is punishable by burning at the stake without recourse to judge or jury. The excuse offered for this summary proceeding is that the people of the South will not permit their womenkind to suffer the humiliation of becoming witnesses in cases of this character. That is practically the only defense that is put up for the application of lynch law.

It may be taken for granted that there will never be another rae case tried in the Santa Cruz courts under the present judgeship.

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Should the crime occur, the victim will either suffer in silence or her friends will take the administration of punishment into their own hands.

The mental torture and humiliations inflicted upon the victim in this case by the Court to gratify the course curiosity of a crowd was greater than the physical outrage from which she suffered.

Furthermore, the great crime of the Court was in turning loose upon the public through the minds of the curious and the thought-less a mass of impure suggestions which, like poison, percolates through the community and permeates susceptible [sic] minds for years.

The Judge of the Superior Court is not always strenuous about the open door.

Divorce cases in this County are heard in privacy, between trains, and after dark, and at “any old time”. Divorces are granted “while you wait”, and sometimes before the parties in interest are aware of it -- leading, in one instance, at least, to a very embarrassing [sic] situation.

It is to be regretted that the secretive influences at work in other instances could not have been applied for the protection friendless girl, and the defense of the public morals.

Resolution.

Mr. Cleveland introduces the following resolution.

(For the Appointment of a committee on investigation of charges against Lucas Flattery Smith).

Whereas, John H. Leonard of the County of Santa Cruz, State of California, has presented

to the Assembly of said State his memorial charging that Lucas Flattery Smith, Judge of the Superior Court of California in and for said County of Santa Cruz, has been guilty of misdemeanors in office; and,

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Whereas, said memorial contains specific charges supported by affidavits of a number of citizens of Santa Cruz, and by decisions of the Supreme Court of California, and by records of said Superior Court, and requests this honorable to investigate said charges; and,

Whereas, if said charges stated in said memorial be found to be true, that said Judge should be dealt with according to law, and if found to be untrue, that the judicial character of said judge should be vindicated and said Superior Court be relieved from all suspicion; and,

Whereas, it appears from said memorial and the charges therein made, and the affidavits of the citizens of said County of Santa Cruz, and the records therein referred to, that there is probable cause to believe that said Lucas Flattery Smith has been guilty of misdemeanors in office, willful misconduct and partiality and favoritism and conduct unbecoming an upright judge; now therefore, be it,

Resolved, that a committee of five members of this Assembly be appointed by the Speaker thereof to enquire into the conduct of said Lucas Flattery Smith, Judge as aforesaid of the Superior Court of the State of California in and for the County of Santa Cruz, and to report to this House whether the said Lucas Flattery Smith has so acted in his judicial capacity or other wise as to require the exercise of the constitutional power of this Assembly to remove him by impeachment or otherwise; and, be it further

Resolved, that for the purpose of this investigation the said Committee and such sub committees as the said Committee may appoint are hereby authorized and empowered to send for persons and papers, to administer oaths, to take testimony, and to employ such clerical help and other assistance as may be necessary, and the said committee

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or sub committee, while so employed, shall have full power to enforce the attendance of witnesses with the sergeant at arms, who shall serve the process of said committee and sub committee, and shall execute its orders, and shall attend the sittings thereof, as ordered and directed thereby; and, be it further

Resolved, that the expenses of such investigation shall be paid out of the contingent fund of the Assembly.

Resolutions made special order.

Mr. Cleveland moved that the resolutions be printed in the Journal, and placed under the head of special orders for to-morrow (Tuesday) morning.

Motion carried.

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CALIFORNIA LEGISLATURE--ASSEMBLY.

Thirty-sixth Session.

In Assembly.

Assembly Chamber,

Tuesday, February 7, 1905.

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Appointment of Investigation Committee.

The Speaker announced the appointment of the following named gentlemen to constitute a committee on resolution to consider memorial against Superior Judge Lucas T.[sic] Smith, of Santa Cruz County:

Messrs. McCartney (Chairman), Atkinson, Beardsley [sic], Burke, Lumley.

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**CALIFORNIA LEGISLATURE--ASSEMBLY.
Thirty-sixth Session.**

---000---

In Assembly.

Assembly Chamber,

Monday, February 13, 1905.

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Report of Special Committee -- (out of order).

Mr. McCartney, on behalf of the special committee to investigate charges against Lucas F. Smith, Superior Judge of Santa Cruz County, submitted the following report and resolutions, which were read:

(To investigate charges against Lucas F. Smith, requesting leave of absence, and appropriation for witness fees, and for full power to act).

Sacramento, Cal., February 13, 1905.

To the Hon. Frank C. Prescott,
Speaker of Assembly of the State of California:

We, your committee, appointed to investigate the specific charges of misdemeanor in office on the part of the Hon. Lucas F. Smith, Judge of the Superior Court in and for the County of Santa Cruz, State of California, beg leave to preliminarily report as follows:

We have had under consideration the specific charges presented to this body against the Hon. Lucas F. Smith, and are of the opinion that to fully and fairly investigate the said charges and the facts in relation thereto, it will be necessary for said committee to go to the City of Santa Cruz, California, for the purpose of taking testimony in relation to said charges.

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And it will be necessary for this Committee to have at their disposal and assistance a sergeant at arms and a short hand reporter.

And it will be necessary for this Committee to have a sum of money at their disposal with which to pay witnesses who may demand witness fees, and with which to pay incidental expenses

incurred by said Committee and your committee is of the opinion that the sum of Two Hundred and Fifty Dollars (\$250) should be allowed for this purpose.

This Committee therefor asks for a leave of absence for the purpose herein stated, and that they may be granted the sum of \$250. with which to pay incidental expenses of said Committee.

McCartney, Chairman.

The following resolutions were read:

Resolution.

By Mr. McCartney:

Whereas, certain specific charges preferred against the Hon. Lucas F. Smith, Judge of the Superior Court of the State of California, in and for the County of Santa Cruz, have been presented to, and filed with this Assembly; and,

Whereas, in compliance with the petition of John H. Leonard, Esq. and others, making said charges, and the petition of said Lucas F. Smith, asking that investigation of said charges be made, a select committee of five members of this House has been appointed by the Speaker to investigate said charges; and,

Whereas, said Committee has, or is about to make a prelim-inary report to this Assembly; Therefore be it

Resolved, that H. S. G. McCartney, Chairman; T. E. Atkinson, R. S. [i.e., L.] Beardsley [i.e., Beardslee], J. J. Burke, and A. M. Lumley, members of the Committee heretofore appointed, are hereby given leave of absence from this Assembly for such time as they may deem necessary

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for the purpose of going to such places as may be necessary to investigate the specific charges as above mentioned, that the said Committee be and is hereby empowered to issue all necessary subpoenas [sic], and to have full power to send for persons and books, and papers, and to compel the attendance of any and all necessary witnesses before said Committee within this State, and require the production of any and all necessary papers, books or documents, in order that the powers herein given may be fully carried out; and that it shall report its investigation to this Assembly at the earliest possible moment; and be it

Resolved, that the said Committee shall be invested with all powers granted to legislative committees by the Constitution and laws of this State, and said Committee in conducting said investigation shall be governed by the rules and procedure of trial courts of this State; and be it

Further resolved, that the expenses of said Committee be paid out of the contingent fund of the Assembly; and be it also

Further resolved, that said Committee above named be given the sum of Two Hundred and Fifty Dollars (\$250) with which to pay witness fees and other incidental expenses incurred in said investigation.

The Controller is hereby authorized to draw his warrant in favor of H. S. G. McCartney for the sum of \$250, and the Treasurer is hereby directed to pay the same.

Mr. McCartney moved the adoption of the resolution presented by him.

The roll was ordered called on the motion to adopt the resolutions.

[41] THURSDAY, FEBRUARY 16, 1905.

The investigation of charges against Honorable Lucas F. Smith, Judge of the Superior Court of the State of California, in and for the County of Santa Cruz, praying for his impeachment, was commenced at the City of Santa Cruz on Thursday, February sixteenth, 1905, at eight o'clock in the evening, all members of the Special Committee appointed for the investigation of said charges being present.

Carl E. Lindsay, William M. Aydelott [sic] and John H. Leonard appeared as counsel for the memorialists.

Hon. Lucas F. Smith was represented by attorneys Matthew Sullivan, Hon. William T. Jeter and H. A. V. Torchiana.

The following proceedings were had and testimony given:

THE CHAIRMAN: Gentlemen, the Committee designated by the Assembly of this state is now ready to proceed with the organization and proceed to receiving the evidence. I will ask who represents the prosecution.

Mr. LEONARD: Mr. Chairman, I do not appear here alone as the memorialist in this matter at the present time, because there are several other attorneys associated with me in the matter of the prosecution; but all of us are to be represented by counsel, by Mr. Lindsay of San Francisco, and Mr. Lindsay was down there try-ing a case to-day, and he is at present on his way to Santa Cruz; consequently we are to some degree handicapped, and we would like, of course, to have the principal matters go over until Mr. Lindsay's arrival. He will be here at half past ten to-morrow.

THE CHAIRMAN: To-morrow at half past ten o'clock?

Mr. LEONARD: Yes sir.

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THE CHAIRMAN: I will state for the benefit of the Committee and the gentlemen, we consent to cut out all formalities in this proceeding and get right down to the facts of the case. We want to rush the matter through, and if possible, get through here by Saturday night. If Mr. Lindsay [is] willing [to] be here at ten o'clock, this Committee is will to stay here until ten o'clock to-night, and go on early in the morning and continue the sessions in that manner until we get through. In the meantime, we can take up the matter of organization and call all the witnesses you have here and proceed in that manner.

Mr. LEONARD: Very well.

THE CHAIRMAN: I would like if you, for the benefit of the stenographer, should state who represents the prosecution, so that he may enter it.

Mr. LEONARD: Mr. Carl E. Lindsay of San Francisco.

THE CHAIRMAN: Are there any other attorneys representing the memorialists? Are there any other attorneys?

Mr. LEONARD: No; no other attorneys associated at this time. THE CHAIRMAN: Who are representing the defendant?

Mr. SULLIVAN: Mr. Sullivan, myself, -- Matthew Sullivan, Governor Jeter and Mr. Torchiana of the bar of Santa Cruz county will represent the respondent.

THE CHAIRMAN: Now, shall we have the stenographer to read our authority to be here, or do you waive that?

Mr. LEONARD: We waive it on our part. Mr. SULLIVAN: We waive it.

THE CHAIRMAN: Do you desire to hear read the memorial filed in the Legislature against Judge Smith, and the resolution authorizing us to be here?

Mr. SULLIVAN: We might waive the reading of it, if you

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gentlemen have read it fully; we waive it.

Mr. LEONARD: We waive it.

THE CHAIRMAN: That is understood, -- all those matters are waived?

Mr. AYDELOTT: Mr. Chairman, it is understood that that matter is to be considered as read, and the reading of it waived absolutely?

THE CHAIRMAN: Waived, and, as I understand it, considered read.

Mr. AYDELOTT: That is not in the record at this time. I suggest it be considered as read, and let the record show.

Mr. SULLIVAN: That is satisfactory. We waive the reading of it.

Mr. LEONARD: That is satisfactory.

THE CHAIRMAN: Now, is there any stipulation as to the procedure, before you go into the evidence?

Mr. SULLIVAN: No. I think we ought to proceed in the ordinary manner; there are twelve specifications here of charges against Judge Smith. The orderly way to proceed would be to take up the first specification and introduce proof in support of that specification, and go on through the list.

Mr. AYDELOTT: Mr. Chairman, I would like to ask whether or not the proceeding is to be governed by the strict rules of law, or is to be governed by the procedure authorized by the House of Representatives of the United States.

THE CHAIRMAN: I believe our authority empowers us, -- I will read the part of the resolution: "Resolved, that said Committee shall be invested with all powers granted to legislative committees by the Constitutional and laws of this State, and said Committee, in conducting said investigation, shall be governed by the rules and procedure of trial courts of this State". That is the

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resolution authorizing us to be here and conduct this proceeding.

Mr. TORCHIANA: Then we understand the same rules of evidence will govern us as in a court of law, will guide you gentlemen here.

THE CHAIRMAN: That is the Committee's understanding. It is suggested that I inquire of you gentlemen if you are ready to proceed.

Mr. SULLIVAN: Ready to proceed, your Honors.

THE CHAIRMAN: Now, have the prosecution any documentary evidence that they wish to present to the Committee?

Mr. LEONARD: If your Honors please, we have some documentary evidence here; of course it is in the custody of the County Clerk, the principal part of it, other than that which is in the keeping of the Assembly. Of course as you well know, we were without subpoena or power to have that here at this time, so we have not any to present in the documentary line; I would be willing to produce it at some later time, perhaps, by stipulation.

Mr. SULLIVAN: Have you any documentary evidence in support of specification 1?

Mr. AYDELOTT: No.

Mr. SULLIVAN: I suppose we will consider documentary evidence later.

THE CHAIRMAN: I thought possibly you could take that up and save time, that is until the witnesses were here. Still, the Committee is ready to hear evidence.

Mr. AYDELOTT: Mr. Chairman.

THE CHAIRMAN: Mr. Aydelott.

Mr. AYDELOTT: With the consent of counsel, we can begin with some documentary evidence. We can begin with specification 4.

Mr. SULLIVAN: I prefer to begin at the commencement.

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THE CHAIRMAN: Well, Mr. Sullivan, owing to our limited time, the Committee has decided to hear witnesses on any specification; that is, of course, this is done to save our time and your time and the time of the witnesses, and the convenience of the witnesses who are brought here, but the Committee has decided that any witness who is introduced here, it must be stated to what special specification he testifies.

Mr. LEONARD: With the privilege, I suppose of being recalled for the other specification. We would like to have the witness questioned on his testimony and gone into as thoroughly as we can when he is on the stand.

Mr. AYDELOTT: That applies to where one witness is a witness to a special specification.

THE CHAIRMAN: Yes sir; he can testify to all at one time.

Mr. AYDELOTT: We are ready to proceed with specification number 4 at this time. I wish to ask for County Clerk Miller, -- is he here present in the Court Room? I will ask Mr. Miller to bring in the papers in case 3593, -- People versus Nathan Smith. Mr. Chairman, while we are waiting for Mr. Miller, may I ask whether or not the prosecution is limited to the precise specifications as filed in the Assembly?

Mr. SULLIVAN: Mr. Chairman, it seems to me that is an absurd [sic] question. We are brought here to answer certain charges. These charges have been formulated nearly a month ago. Judge Smith has received copies of those charges; he is here to meet those charges and no other charges. We submit that the prosecution ought to know we are here present to answer the charges contained in the specifications.

Mr. LEONARD: If your Honors feel any doubt as to being here to answer certain specifications, of course the Judge, at this

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time, is not on trial. Of course he is not called upon to answer anything if he does not see fit to do so. This is merely a matter of investigation, and since Judge Smith has made a request for a thorough investigation from the Committee at this time, and since you telephone or telegraphed me to furnish the specific charges, we attempt at this time to furnish the charges in detail as near as possible, and all the facts which we expect to prove here, and consequently have those charges on hand if you are ready and willing to have them. Of course the proposition that they are here to answer those specified charges as filed is not well taken, because they are not called upon to answer any at this time. They are simply here to meet us with whatever evidence we are prepared to introduce.

Mr. SULLIVAN: The resolution appointing the Committee directs you to be guided by the rules of practice and proceeding prevailing in courts of justice. Here are certain charges against Judge Smith, who is called upon to answer those charges. You are appointed to investigate those charges and no other charges; but we are satisfied to make this proposition: Investigate those charges which are contained in the twelve specifications, and if Mr. Leonard or any other here

desires to make additional charges against Judge Smith, Judge Smith will be ready to answer the charges.

Mr. AYDELOTTE: I think that answers the proposition, Mr. Chairman.

THE CHAIRMAN: I will state in answer to Mr. Leonard, that I telegraphed him at the same time I telegraphed to the defense. My idea then, -- I had not then read the memorials myself; the Committee had no meeting; but since that time, we have had a meeting, since our appointment, -- my idea in writing that telegram to take those charges specified, was for the benefit and the convenience

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of all concerned, so that the trial would proceed regularly.

Mr. AYDELOTT: Mr. Chairman and Gentlemen of the Committee, the specification is as follows---

THE CHAIRMAN: We have all read it, and we can save time; I do not think it is necessary to read it.

Mr. AYDELOTT: I am here to read it and to bring it before the Committee.

THE CHAIRMAN: We all have before us a copy of it.

Mr. AYDELOTT: Oh, I beg your pardon. I would like to have Harvey H. Miller to be sworn.

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TESTIMONY
of

HARVEY H. MILLER,

S w o r n.

Direct Examination:

Mr. AYDELOTT: (Q) Please state your name to the Committee.

A. HARVEY H. MILLER.

Q. Are you a resident of the County of Santa Cruz, Mr. Miller?

A. I am.

Mr. SULLIVAN: We will admit he is county clerk and has custody of the papers.

Mr. AYDELOTT: The defense admits that.

Q. Mr. Miller, are those papers here in your custody as the county clerk of this county? A. They are.

Q. I will ask you, Mr. Miller, if the handwriting on this paper that I hand you is in your handwriting.

A. It is; yes sir.

Q. I will ask you, Mr. Miller, if you have ever seen that paper before (exhibiting to witness a document.)

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A. I have.

Q. Where did you first see it? A. Well, it is filed in my office; it bears the date of the filing. I have no independent recollection of first seeing it. There is my signature attached to the file mark. Some four years ago, I think. I have no recollection, independently, of it.

Q. It bears date of February fifteenth, 1901?

A. Yes sir.

Q. I will ask you to state, Mr. Miller, who handed you that paper in the first instance for

filing.

A. I do not recollect.

Q. I will ask you what that paper is, Mr. Miller.

Mr. SULLIVAN: The paper speaks for itself. Do you offer the paper in evidence?

Mr. AYDELOTT: Not yet, Mr. Sullivan.

Mr. SULLIVAN: We submit the paper speaks for itself, Mr. Chairman.

THE CHAIRMAN: Proceed.

A. It purports to be a petition. It is entitled "In the Superior Court of the County of Santa Cruz. The People of the State of California vs. Nathan Smith, Defendant." It is a petition from the citizens of Watsonville, California.

Mr. AYDELOTT: I offer in evidence the paper. Mr. SULLIVAN: No objection.

Mr. LEONARD: Considered as read?

Mr. AYDELOTT: I will offer to read it. Mr. SULLIVAN: Read it in evidence.

Mr. AYDELOTT: (Reading:) "In the Superior Court of the County of Santa Cruz, State of California. The People of the State of California against Nathan Smith, Defendant. The under-

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signed, each being duly sworn "---

THE CHAIRMAN: (Interrupting:) It is satisfactory, Gentlemen, that the stenographer take this paper and make a copy of it?

Mr. SULLIVAN: That is satisfactory to us. (The petition is as follows:

[The balance of this page is blank.]

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Mr. SULLIVAN: Just read a few of those names.

Mr. AYDELOTT: Julius Hall, attorney at law; L. D. Holbrook; Alfred Dickerman--

Mr. SULLIVAN: (Interrupting:) What is the business of those people? Read it as it is written.

Mr. AYDELOTT: Those are attorneys at law. Mr. SULLIVAN: Is the business given?

Mr. AYDELOTT: Just as I am reading here, attorneys at law.

Albert Dickerman, -- those are all attorneys. H. P.[sic] Fletcher, cashier of the Bank of Watsonville. Shall I read some more?

Mr. SULLIVAN: Yes sir; those are nive[sic] sounding names.

THE CHAIRMAN: Mr. Sullivan, we would like to know what is the object of reading the names. I cannot see any use of reading the names.

Mr. SULLIVAN: The character of the signers.

Mr. AYDELOTT: The character of the signers has not anything to do with it. Mr. Sullivan may read it.

Mr. SULLIVAN: I think, Mr. Miller, you are familiar with those names. Will you read it?

Mr. AYDELOTT: I respectfully suggest, Mr. Chairman, that the fact that they are of high standing before a court does not give one any additional power to a sign a petition of this character. They are here, all the names.

(Mr. Miller here read the names.)

Mr. SULLIVAN: I think that is enough, if that is satisfactory to the prosecution and the

defendant. Signed by about--

Mr. AYDELOTT: One hundred and twenty three names, I think, Mr. Sullivan. The number is one hundred and twenty three names as numbered by him. I suppose some one has counted them.

Mr. SULLIVAN: All right.

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JUDGE SMITH: The petition is asking the Court to extend mercy.

Mr. AYDELOTT: And the petition is sworn to before some person, --part of them before one notary public, and part before another, I believe.

Mr. BURKE: All on the same day?

Mr. AYDELOTT: I think not, One seems to be on the fifteenth or thirteenth; the first page seems to be on the twelfth, signed before George P. Fletcher, Notary Public of Santa Cruz county, with the seal attached.

Mr. SULLIVAN: It is signed by residents of Watsonville.

THE CHAIRMAN: It is all signed by residents of Watsonville. Mr. AYDELOTT: I think so, Mr. Sullivan.

THE CHAIRMAN: Has the defense any objection to the petition?

Mr. SULLIVAN: We have no objection whatever to that paper.

THE CHAIRMAN: Proceed.

Mr. AYDELOTT: (Q) I will ask, Mr. Miller, if you were county clerk at that time and filed that paper?

A. I was.

(Q) When and where and by whom, if you can state, was that paper handed to you? A. Well, it was handed to me on the date it was filed, but I could not state who handed it to me. I presume it was the attorney for the defendant, George P. Fletcher.

Mr. AYDELOTT: I object to what the witness presumes, and move that be stricken out from the evidence.

THE CHAIRMAN: You cannot object to your own witness.

Mr. AYDELOTT: I can object to that part of his testimony where he presumes.

Mr. SULLIVAN: We did not object to it. He is your witness.

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THE CHAIRMAN: Proceed.

Mr. AYDELOTT: (Q) I will ask you to state, Mr. Miller, if Judge Smith did not hand you that petition from the bench.

A. I do not recollect of his handing it to me, or when it was handed to me, or who handed it to me.

Mr. SULLIVAN: That is all, Mr. Miller.

Mr. AYDELOTT: Were you in Court at the time?

A. At the time the petition was filed?

Q. At the time he was sentenced?

Yes sir.

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TESTIMONY
of

JOHN H. LEONARD,

S w o r n.

Direct Examination:

Mr. AYDELOTT: (Q) Please state your name.

A. JOHN H. LEONARD is my name.

Q. What is your business, Mr. Leonard?

A. Attorney at law.

Q. Where do you reside?

A. In Santa Cruz.

Q. I will ask you if you were present in the Superior Court of Santa Cruz county on the fifteenth day of July, 1901.

A. Well, refreshing my memory from the paper on file, I can say I do not remember, otherwise than by refreshing my memory from the paper, --but I know it was --

Q. (Interrupting:) Were you present in the superior court of Santa Cruz county when one Nathan Smith was sentenced?

A. I was.

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Q. I will ask you to look at this paper which I have just introduced in evidence and ask you if you have ever seen that paper before. A. I did.

Q. Where did you first see that paper, Mr. Leonard?

A. In Judge Smith's hands.

Q. Where was Judge Smith at the time?

A. Sitting on the bench right here in this court room.

Q. Did Judge Smith make any remarks in your presence in reference to this petition?

A. He did.

Q. Please state fully what those remarks were and the time of their occurrence.

A. The occasion of their occurrence?

Q. Upon this occasion when you say you saw the paper in Judge Smith's hands, that was on the occasion of the sentence of Nathan Smith, a negro who was convicted of assault. Please state the circumstances, -- as nearly as you can the whole of the circumstances of the remarks that Judge Smith made at that time when he had this paper in his hands, if he made any such remarks.

A. After going through the usual formalities of saying, "Stand up, Mr. Smith and be sentenced," Judge Smith stated, -- asked the witness, or the prisoner, whether he had any excuse to offer why the sentence of the law should not be passed upon him; that is the substance of it; and immediately stated: "I have received from the citizens of Watsonville", or "the best citizens of Watsonville", -- something to that effect, -- "a petition signed by more than one hundred names", -- I remember that petition, -- "and it sets forth the fact that you have a very high character, and I am very glad of it. I am going to act on this petition and sentence you very lightly". Judge Smith then proceeded to sentence the prisoner to the County Jail, and handed the paper to the clerk over the bench. The clerk was sitting down there where the stenograph-

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er is now sitting.

Q. Did Judge Smith make these remarks before the prisoner was sentenced on that occasion, Mr. Leonard?

A. He did.

Q. And you say Judge Smith handed that paper to the clerk?

A. He did.

Q. And if I understand you correctly, Judge Smith, with the petition in his hand, said that he was going to act on it, and sentence him lightly?

A. That is correct.

Mr. AYDELOTT: That is all.

(The witness and Attorney Aydelott here consulted.)

Mr. SULLIVAN: We object to the witness consulting with the counsel, -- the chief counsel in the case.

Mr. AYDELOTT: With the permission of the Chairman, I will ask Mr. Leonard if there are any other facts in connection with the matter which he deems to be pertinent to the specification.

Mr. SULLIVAN: That is calling for a legal conclusion of the witness. Ask him to state if there were any other facts took place at that time.

Mr. AYDELOTT: (Q) Please state if there were any other facts that occurred at that time relative to this matter, Mr. Leonard.

A. It did not all occur right at that time.

Q. At any other time? A. After this prisoner's case had been continued, Mr. Fletcher, who was his attorney representing him at the trial, engaged me to associate with him.

Mr. SULLIVAN: I object to anything that took place between him and Mr. Fletcher as not binding upon Judge Smith.

A. That may be. It is explanatory.

Mr. SULLIVAN: We object to the explanatory part of your

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testimony.

Mr. AYDELOTT: I take it, if the Committee please, that the witness would necessarily have time in order to get the facts.

Mr. SULLIVAN: The witness can testify to anything said by Judge Smith. Ask your question as to what Mr. Fletcher said.

Mr. AYDELOTT: Oh, yes; that is wholly objectionable, -- clearly so.

Q. What was done in reference to this petition, -- I respectfully insist is not objectionable.

A. All I wished to state was in regard to my connection with the case itself.

Mr. SULLIVAN: We object to the witness' connection with the case, as not binding upon Judge Smith.

Mr. AYDELOTT: I submit, if your Honors please, that if Mr. Leonard's connection with the case brought him to this court room, it is pertinent to the investigation.

Mr. SULLIVAN: We object.

Mr. AYDELOTT: It seems that is clearly admissible in evidence.

Mr. SULLIVAN: We object to any connection. THE CHAIRMAN:

We will overrule the objection.

Mr. SULLIVAN: I suppose there is no use taking an exception.

THE CHAIRMAN: I will state, Mr. Sullivan, that we want to get the facts if it is possible.

THE WITNESS: I had been engaged in this case for the purpose of appealing it, is how I came to be in court at the time of the sentence of the prisoner.

Mr. AYDELOTT: That is all.

Mr. SULLIVAN: You did not appeal the case, did you, though?

A. No sir.

Q. And you lost a fee? A. No sir.

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Mr. AYDELOTT: I object, if the Court please, to what fee he lost.

Mr. SULLIVAN: Question withdrawn to save time.

Q. So the time you came into the case, the motion for a new trial was made; the motion for a new trial had been decided?

A. What time do you mean?

Q. The time the court passed upon the petition?

A. No sir.

Q. When were you call[ed] in the case?

A. I was engaged in the case just the day before the petition which was in evidence.

Q. On the same day? A. No sir; before the petition was at all circulated.

Q. Was that after the conviction? A. Yes sir.

Q. Did you circulate the petition? A. No sir.

Q. Did you get any one to sign that petition?

A. No sir.

Q. How long before the petition was filed were you retained by the defendant Nathan Smith? A. I could not remember the number of days, but it was after his conviction.

Q. A short time afterwards? A. I was retained by his attorney; not by Nathan Smith.

Q. Who was his attorney? A. Mr. George Fletcher.

Q. Did you render any services in the case?

A. No sir.

Q. Was any effort taken to appeal it after the filing of the petition? A. No sir; I had no interest in the case. I was at this end of it, as Mr. Fletcher suggested, for the appeal.

Q. Did you know the petition was to be filed? A. I did not. I knew it was to be circulated.

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Q. Did you take any steps to prevent the circulation of the petition?

Mr. AYDELOTT: I object. This line of questioning is wholly irrelevant. I think it is irrelevant.

Q. Did you take any steps to prevent the circulation of the petition? A. I did not.

Q. Did you take any steps to prevent the filing of the petition? A. No sir; I did not.

Q. Did not you see George P. Fletcher hand that petition to the Judge while the motion for a new trial was being argued?

A. I might have but I don't remember.

Q. Is not it a fact that that petition was handed to the Judge in open Court by George P. Fletcher, attorney for Nathan Smith?

A. I think that is a fact, although I do not remember it well enough to swear to it.

Q. You heard Mr. Fletcher make the plea to the Court for mercy for his client, didn't you?

A. No sir.

Q. You did not? A. No sir; not that I remember of; I don't remember that, if he did.

Q. Your best recollection is, during the argument of the motion for a new trial, Mr. Fletcher handed this petition to the Judge in open Court? A. No sir; I do not think it was during the argument of the motion for a new trial. I don't remember that part of it. The first I remember is of seeing the petition in Judge Smith's hands.

Q. Don't you know it was in Mr. Fletcher's hands?

A. No sir.

Q. Don't you know that the paper was handed by Mr. Fletcher to Mr. Smith? A. I told you I believe it was, although I can-

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not recollect of having seen it in Mr. Fletcher's hands that day.

Q. Did not Mr. Nathan Smith thank the Court for his leniency? A. I don't remember whether he did or not.

Q. You remember the Jury recommended Nathan Smith to the extreme mercy of the Court? A. To the extreme mercy of the Court, -- I do not remember whether it was extreme or not.

Q. The extreme mercy? A. I do not remember whether it was extreme.

Q. You are the memorialist who presented these charges against Judge Smith here, are you not?

A. Yes sir.

Q. To the Legislature of the State of California?

A. Yes sir.

Q. You have made several affidavits in connection with those charges? A. Yes sir.

Q. You have been active in the prosecution of this case against Judge Smith, have you?

A. Yes sir.

Q. You have taken steps to employ counsel to prosecute these charges against Judge Smith, have you not?

Mr. AYDELOTT: I object to this on the ground it is not proper cross examination.

Mr. SULLIVAN: We want to show the interest of the witness.

Mr. AYDELOTT: I think the witness should be confined to specified acts.

Mr. SULLIVAN: We have a right to show the interest of the witness and his feeling. We have a right to show that on cross examination; always on cross examination we have a right to test a witness for the purpose of showing his interest and his bias and prejudice and his motives.

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Mr. AYDELOTT: If the Committee please, the reason why I made my objection is because my understanding is we are confined to the rules of evidence.

Mr. SULLIVAN: He is produced here as a witness in support of specification 4, and on cross examination we have a right to question the witness for the purpose of ascertaining his interest, his motive and his prejudice, his bias and his feeling and so forth; that is an elementary rule of cross examination.

Mr. AYDELOTT: As to specification 4?

Mr. SULLIVAN: As to the specification he first testified to.

THE CHAIRMAN: The Committee is of the opinion, inasmuch as this petition was filed at the instance of Mr. Leonard, that the evidence would be material; but other witnesses who have not taken a prominent part in the memorial, it is different.

(The Reporter read the last question:)

A. I have.

Mr. SULLIVAN: (Q) You formulated these charges against Judge Smith, did you?

A. Yes sir.

Q. Had them published in the papers before they were filed in the Legislature? A. No sir; I did not have them published.

Q. Did not have the charges published?

A. No sir.

Mr. AYDELOTT: I object as wholly irrelevant, I submit.

Mr. SULLIVAN: There may be a conflict between the testimony of this witness and the testimony of Judge Smith and other witnesses, and we have a right, upon the cross examination, to show the feeling and prejudice of this witness, so that the Committee may discard his testimony if there is a conflict. I understand that he is to be produced here to support other specifications, is he not?

Mr. AYDELOTT: I think so; yes sir.

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Mr. SULLIVAN: I would rather postpone this line of testimony until he is put on the stand in support of other specifications.

THE CHAIRMAN: Very well. You are through with the witness?

Mr. SULLIVAN: Just one or two more questions:

Q. Mr. Leonard, in specification 4, you do not recite the exact language used by the Judge on the occasion, do you, as you remember? A. Well, now I do not know the exact language, but I do not think I did; I said in principle and substance.

Q. There is the language of the affidavit accompanying that specification. Did you in fact state the language of Judge Smith used upon that occasion?

A. I did.

Q. Did you, in effect, state the language used by Judge Smith upon that occasion when the petition was filed and the sentence was imposed upon Nathan Smith?

A. I do not think I did state the language; I stated his action in the matter, if I remember right. However, the memorial speaks for itself.

Q. Now, you are positive, you say, that on the day that sentence was imposed, the petition was filed?

A. No sir; I did not say so. My impression is that is the day it was filed.

Q. Was it presented to Judge Smith before the day appointed for the passing of sentence upon Nathan Smith?

A. I do not know, but I think it was on that day.

Q. Your best recollection is now it was on the day the sentence was imposed that this petition was presented to the Judge? A. I do not know, but I think so. I do not know whether it was presented or when it was presented, but it was the first

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time I saw it.

Q. On that day? A. Yes sir.

Q. Now is this memorial do you remember using this language in specification number

4; “Said petition, signed and verified by more than one hundred of the said citizens was obtained and presented to said Lucas Flattery Smith as such Judge before the day appointed for the passing of sentence upon said Nathan Smith”. Is that statement in specification number 4 true?

A. Well, it is true as I recollect the facts to be.

Q. You have stated upon your direct examination that the first time you saw the petition was on the day the sentence was imposed on Nathan Smith? A. Let me explain.

Q. I want to know which statement is true, -- the statement set forth that it was presented to Judge Smith before the day fixed for sentence, and the statement that it was presented to Judge Smith upon the day of sentence, -- which statement is true?

A. If you will let me explain--

Q. (Interrupting:) Will you just answer the question?

A. Yes sir, I will answer it by an explanation.

Q. Answer the question, and give your explanation.

A. I told you I did not know whether it was filed on that day or not, Mr. Sullivan.

Q. You said on direct examination you saw it presented to Judge Smith by Mr.

Fletcher?

Mr. AYDELOTT: I object, if the Committee please.

A. If you please, I did not say so.

Mr. SULLIVAN: I will withdraw the question.

Q. You say you saw it for the first time in the hands of Judge Smith on the day the sentence was imposed?

A. Yes sir; that is the first time I remember of seeing it.

Q. Is that the first time you saw it? A. That is the first

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I remember of seeing it.

Q. That is, the first time you saw it, it was presented to Judge Smith? A. Yes sir.

Q. Is that so? How do you reconcile your present testimony with the statement contained in specification 4, that said petition, signed and verified by more than one hundred of the said citizens was obtained and presented to said Lucas Flattery Smith as such Judge before the day appointed for the passing of sentence upon said Nathan Smith”, -- how do you reconcile your present testimony and the statement contained in this memorial presented to the Legislature?

A. That is what I wish to explain.

Q. Go on. A. At the time I formulated these charges of mine there, I did not have the date; I did not know it, because they were retaining the affidavits; they were not ready.

Q. Do you know now that it was before this petition was presented to the Judge? A. I told you several times I did not. I am not positive, I told you, what day it was.

Q. Had you rendered any services in the case of the People against Nathan Smith up to that time?

A. To this extent that I had counseled with Mr. Fletcher and I came from my office after the trial of Nathan Smith to this Court House for the purpose of instructing the stenographer to transcribe the testimony, and at the Court House door I met Mr. Fletcher and he told me that Judge Smith had requested him to get this petition --

Mr. SULLIVAN: Never mind. I object to anything he told you.

A. You wanted to know what services I rendered.

Q. Yes sir; I am not asking you what Mr. Fletcher told you.

I am asking you what services you rendered. A. Then I came to

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the Court House door and upon learning it was not to be appealed, I returned to my office. That is all I had to do with this case.

Q. As I understand you left your office and were coming to the Court House and met Mr. Fletcher at the Court House door?

A. Yes sir.

Q. And at the Court House door you learned that no further services were required of you; is that so?

A. Yes sir.

Q. And remained in your office until the day of sentence?

A. I did not remain all the time of the office. I did not go into the case again until the day of sentence.

Q. So the day of the sentence you came to the Court House door and met Mr. Fletcher?

A. No sir.

Q. Are you sure of that?

A. Yes sir; it was before the petition was circulated, so far as I know.

Q. Can you remember of the day? A. No sir; I cannot. It was after his trial, any way.

Q. What day of the week was it you appeared in court and saw this petition in the hands of Judge Smith?

A. I do not know.

Q. Do you know the day of the week? A. No sir.

Q. Do you know what month? A. Well, I could not recollect now, without refreshing my memory.

Q. Do you know any attorney who was present in the court upon that day? A. I cannot recollect. Mr. Fletcher was there, as a matter of fact.

Q. Do you know any other member of the Santa Cruz bar who was present in the court on that day? A. I could not remember, except one attorney in court on that day.

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Q. What attorney? A. Mr. Charles B. Younger Sr.

Q. Charles B. Younger has been consulted with in connection with this prosecution against Judge Smith, hasn't he?

A. No sir.

Q. Were not you consulting in Mr. Younger's office about this prosecution of Judge Smith?

A. Not with Mr. Younger.

Mr. AYDELOTT: We object as not cross examination. I wish to be heard when I raise an objection, and I wish Mr. Sullivan would permit me.

Mr. SULLIVAN: Certainly, I am pleased to hear you make objections.

Mr. AYDELOTT: I object to this line of testimony upon the ground it is wholly immaterial whether anybody consulted with him about the matter. It has nothing whatever to do with

specification 4. It is only taking up the time of the Committee, and we will never get through.

THE CHAIRMAN: Direct your questions to the memorial.

Mr. SULLIVAN: All right. (Q) Do you remember if it was in the forenoon of the day?

A. My best recollection, it was; I am not sure about that; my best recollection, it was.

Q. Was Mr. Miller or his deputy present as clerk of the court on that occasion?

A. I do not know which one of them. I know one of them was.

Q. Can you give me the exact language, -- repeat the exact language which was used by Judge Smith on that occasion?

A. It is so long ago, I could not attempt to do it.

Q. You have already attempted to do it.

A. As near as I can remember.

Q. Attempt, as near as you can remember, to give the exact language used by Judge Smith on that occasion.

A. Oh, I can give you the substance of it as before; that is my

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my memory of it. [sic]

Q. Give it. A. I remember one of the expressions. "I am glad of it". I remember that distinctly.

Q. Give us the balance of it. A. He said: "I have received a petition from some of the best citizens of Watsonville, signed by more than one hundred, who say you have a very good reputation down there, and I am glad of it"; that is as near as I can remember that, - - "and I am going to act on the petition".

Q. "Going to act on the petition."?

A. Yes sir.

Q. Are you sure those words were used?

A. I remember he said: "I am going to act upon it", or "upon the petition"; in substance, he was going to act upon the petition. I am positive about that.

Q. Mr. Leonard, was Mr. Williamson, the official shorthand report of this court, present on that occasion?

A. I think he was.

Q. Did he take down the proceedings in court on that occasion? A. I do not know.

Q. Well, he was in his usual place? A. I think he was.

Q. In the Court Room? A. I do not remember distinctly, but I think he was.

Q. Did you, before the preparing of this petition, consult with the official shorthand report to find out the exact language used by the Judge on that occasion? A. No sir; I know he is biased to the Court.

Q. You simply depended upon your recollection of an occurrence which happened about, -- how long ago?

A. Three or four years, -- what year was it? No sir; that was not all.

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Q. What year was it? Do you remember if it was in the year 1904? A. Oh, it was long before that.

Q. Was it in 1903 or 2? A. Before that.

Q. 1901? A. I guess it was about that time.

Q. Three or four years ago? A. Yes sir.

Q. And in preparing these specifications or this specification 4, you relied solely upon your recollection as to what occurred, did you not? A. Yes sir.

Q. Well, that is a fact, is it? A. No sir.

Q. That is not a fact. Did you consult the records of this Court? A. Yes sir.

Q. What records did you consult? A. That petition filed in the clerk's office.

Q. That is the only record you consulted? A. Yes sir; that is the only one I could consult.

Q. There is nothing in that petition containing the language used by the Judge?

A. No sir.

Q. That is the only record you consulted, you say? A. Yes sir.

Q. Why not consult the official reporter to find out the language used? A. I sought his notes, but could not find them.

Q. You sought his notes? A. Yes sir; I could not find them.

Q. What? A. The notes of the shorthand reporter.

Q. The stenographer's notes? A. Yes sir.

Q. Had they been written up? A. Not that I know of.

Q. Did you ask Mr. Williamson for the notes?

A. No sir; I did not.

Q. You did not ask him to read the notes to you?

A. I did not ask him for them or to read them for me.

Q. You did not ask him where they were? A. No sir; I

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had some one else to do it.

Q. Where did you seek the notes? A. In the clerk's office, where they should be filed.

Q. Can you read the shorthand report of Mr. Williamson?

A. No sir; but I have some one who can.

Q. Read his stenographic notes? A. Yes sir.

Q. Don't you know that Mr. Williamson does not keep any, -- never kept his stenographic notes in the clerk's office?

A. Oh, he does, some of them, yes sir; there is[sic] some of them there now.

Q. Not having found the stenographer's notes, why did not you call upon Mr. Williamson so as to get the correct record of what took place on that occasion when you published to the world that Judge Smith has been guilty of a misdemeanor?

A. Because in the first place I could not consult the notes, in the first place, and in the second place, I was very sanguine I could not find the notes.

Q. Was not the best way to go to Mr. Williamson and ask him for the notes?

A. You might think so; I did not.

Q. You did not think so? A. No sir.

Q. You think Mr. Williamson was dishonestly concealing the notes? (Objected to and question withdrawn.)

Mr. BURKE: Mr. Chairman, I would like to ask him a question:

Q. Mr. Leonard, do you know who circulated this petition in evidence? A. No sir; not of my own knowledge, I do not; no.

Mr. AYDELOTT: I would like to refer your Committee to--

Mr. SULLIVAN: (Interrupting:) We object to any argument of the case until all the facts are in evidence.

Mr. AYDELOTT: I am not going to make any argument. I re-

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spectfully refer the Committee to sections 166, subdivision 8, of the Penal Code, and sections 1203 and 1204 of the same Code.

THE CHAIRMAN: What is the first section?

Mr. AYDELOTT: Section 166, Subdivision 8, and sections 1203, 1204, and also section 176 of the Penal Code which applies to the presenting to the Court of a petition of this kind. If the Committee please, that concludes the evidence on that specification, and in support of that, and I would like to make a few remarks in favor of those charges, calling the Committee's attention to this particular matter.

Mr. SULLIVAN: We object to argument of the case now. **THE CHAIRMAN:** I will state now it is the opinion of the Committee that we have not any time to listen to any argument or any remarks. All we want is the evidence.

Mr. AYDELOTT: You just want the evidence?

THE CHAIRMAN: We propose to treat all attorneys in the same manner. I do not want any argument.

Mr. AYDELOTT: No arguments at all?

THE CHAIRMAN: No sir. Of course if you wish to submit a brief on any particular point in the proceeding hereafter, we will receive it.

Mr. AYDELOTT: You will receive a brief?

THE CHAIRMAN: Yes sir.

Mr. AYDELOTT: That will naturally save the Committee much time.

THE CHAIRMAN: Now, have you got any more witnesses?

Mr. AYDELOTT: Yes. I was going to take up now specification number 2. I see the witnesses present in Court, and if counsel will agree to that, we will take up that matter and dispose of it.

THE CHAIRMAN: The only question is, the Committee wants

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to know whether the defense would take up and answer the specification, or wait until you get through.

Mr. SULLIVAN: We would rather wait until they get through on all the specifications.

Mr. AYDELOTT: That is satisfactory. With the counsel of counsel and permission of the Committee and counsel, we will take up specification 2.

THE CHAIRMAN: Proceed.

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TESTIMONY

of

PETER P. HARTMANN,

S w o r n.

Direct Examination:

Mr. AYDELOTT: (Q) Please state your name to the Committee, Mr. Hartman?[sic] A. PETER PAUL HARTMANN.

Q. Where do you reside?

A. Santa Cruz at present.

Q. I will ask you, if you lived in Santa Cruz during the month of December, 1902?

A. Yes sir.

Q. I will ask you if at that time, during the month of December, 1902, and prior to that you had any litigation in the superior court of the County of Santa Cruz, State of California, and if you answer yes, state the character of that litigation.

Mr. SULLIVAN: We object to that as the best evidence of the case would be the record of the case.

Mr. AYDELOTT: I will withdraw the latter part of the question and let it stand as to whether or not he had any litigation.

THE CHAIRMAN: Answer the question. **A.** Yes.

Mr. AYDELOTT: (Q) I will ask you whether or not, pending that litigation, Mr. Hartmann, -- withdrawn that question in that

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form, I will ask you to state whether or not, Mr. Hartmann, while that litigation was pending in the superior court of the county of Santa Cruz, you had any conversations with Judge Lucas F. Smith in reference to that litigation. **A.** Yes sir; I had.

Q. Please tell the Committee the substance or as nearly as you can the whole of the substance of that conversation?

A. The object of my visit to the Judge was--

Mr. SULLIVAN: We object to the statement of his object.

THE CHAIRMAN: Never mind that, Mr. Hartmann.

A. The object of my visit to the Judge was to inquire of him how soon he could render a decision in my case in litigation before the Court at that time; I asked him that question; told him that I could not stay in down very long, as I was out of employment and had to go and rustle and seek a place. He replied that he was very busy at the time, as there was quite a few cases awaiting his decision. He continued, saying: "I think you are very unfortunate, Mr. Hartmann, in having that drunken lawyer of yours to represent you. You should have had another lawyer, Mr. Cassin, for instance; he is a friend of mine". I replied, -- the reply I made to the Judge was this: "You should not allow your personal prejudice to guide your decision to the detriment of any party concerned in any case, but should decide the matter before you solely upon the merits involved in the case, -- the merits in the matter".

Q. Did Judge Smith make any reply to that statement of yours? **A.** Yes sir.

Q. What did he say? **A.** He said: "[n] such case I would be more than human, -- however, I will see what I can do for you. Good day, Mr. Hartmann".

Q. Where did that conversation take place? **A.** In the

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chambers of the court.

Q. In that room over there to the right?

A. Yes sir.

Q. Was that before the decision was rendered in your case?

A. Yes sir; it was about ten days before the decision was rendered.

Q. Was that before or after the case had been tried, Mr. Hartmann? **A.** That was after the case had been tried.

Q. Was it a jury case? **A.** No sir; it was tried in open Court.

Q. Was Judge Smith presiding at that time?

A. Yes sir.

Q. If I understand you correctly, he stated, -- Judge Smith stated to you that you were very unfortunate in having that drunken lawyer? **A.** Yes sir.

Q. Whom did Judge Smith refer to making that remark?

A. George P. Burke[sic] of Watsonville.

Q. Did you have any other conversation with Judge Smith in reference to that matter?

A. No sir.

Mr. SULLIVAN: We object to this, Mr. Chairman, on the ground that the oral conversations set forth in the examination is that now stated by the witness; if you will read the affidavit and take specification 2, you will find that the language set forth there is exactly as it appears in the affidavit annexed to this specification, and we object.

THE CHAIRMAN: Objection sustained. He has covered this testimony; he has covered the specification.

Mr. AYDELOTT: That is all. Cross examine the witness.

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Cross Examination.

Mr. SULLIVAN: (Q) What is your business? **A.** I am a baker by trade.

Q. What is your present business?

A. I am occupied in working in a saloon.

Q. In what capacity?

A. I clean up and serve lunches.

Q. How long have you been occupied in that occupation?

A. About five months.

Q. What was your occupation before?

A. I was a baker for fifteen years.

Q. You were a baker for fifteen years?

A. Yes sir.

Q. In what year did this conversation take place? **A.** 1902.

Q. What month of that year? **A.** December.

Q. What day of the month?

A. About the second or third.

Q. About the second or third?

A. Yes sir.

Q. Do you remember the day of the week?

A. No sir; I do not.

Q. Do you remember the time of the day?

A. Yes sir; it was shortly after twelve o'clock noon.

Q. Shortly after twelve o'clock noon? **A.** Yes sir.

Q. Was anybody else in the chambers at the time?

A. No sir.

Q. Had you been in the courtroom that day?

A. Had I been in the courtroom?

Q. Yes sir. **A.** No sir.

Q. You came directly to the Judge's chambers, did you?

A. Yes sir.

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Q. How long did the conversation last?

A. All together, about twelve minutes.

Q. All together, about twelve minutes? **A.** Yes sir.

Q. The contest you referred to was a will contest, was it not?

A. Yes sir.

Q. Now, give me the language that you addressed to the Judge on that occasion when you met him.

A. I said: "How do you do, Mr. Smith."

Q. "How do you do, Mr. Smith.?" **A. "I would like to know how soon you can render your decision in my case, as I cannot stay in town very much longer, as I am getting out of funds and have to go somewhere else, and would like to know how my case stands before I leave town."**

Q. What did he say to that? A. He said: "I am very busy at the present. There are quite a number of cases awaiting my decision. I think you are very unfortunate, Mr. Hartmann, in having that drunken lawyer of yours to represent you. It was him that spread those lies about me during the last campaign."

Q. Go on. **A. "You should have had another lawyer, Mr. Cassin, for instance; he is a friend of mine".**

Q. What did you reply? **A. I replied: "You should not allow your personal prejudice"---**

Q. Did you say "allow", or "let"? **A. I said: "You should not allow your personal prejudice to drive your decisions to the detriment of any party concerned in the case, but decide the matter before you upon the merits involved in the case".**

Q. Now, that is about a little over two years ago?

A. Yes sir.

Q. You are giving the language exactly as it passed from the Judge to you and from you to the Judge?

A. Yes sir; that is exactly.

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Q. Is that the entire language that took place?

A. Yes sir; that is the reply to the Judge.

What was the Judge's reply?

A. He said: "in such case"-- Mr.

AYDELOTT: I object to that; he has given that twice. Mr. SULLIVAN: No; I have right to this.

A. "In such a case I would be more than human; however, I will see what I can do for you. Good day, Mr. Hartmann".

Q. You have an ordinary memory, haven't you?

A. No; I consider myself an extraordinary memory.

Q. You do? **A. Yes sir.**

Q. So do I. Did you ever speak with any person about your conversation after it took place?

A. Yes sir; I mentioned it to several people.

Q. To whom did you mention it? A. I mentioned it to the lady that I roomed with at the time, and about two months afterwards I mention-ed it in writing to Mr. Burke; I was in San Francisco at the time.

Q. Did you write it down for Mr. Burke?

A. Yes sir.

Q. And have you seen that writing since you gave it to Mr. Burke?

A. I did not.

Q. How long ago did you give that writing to Mr. Burke?

A. About three months after the occurrence.

- Q. About two years ago?** **A. About two years ago.**
Q. About two years ago, you gave a writing, -- sent a writing to Mr. Burke, and have not seen that paper since?
A. I have not.
Q. Did you have that paper at the time you made the affidavit before W. M. Gardner, a Notary Public? **A. I did not.**
Q. Do you remember of having made an affidavit before William Gardner, a Notary Public of Santa Cruz, in which you set forth

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- that language?** **A. No sir.**
Q. Did you ever appear before Mr. W. M. Gardner, a Notary Public, and sign an affidavit containing that language?
A. No sir.
Q. You never made any affidavit to it at all stating this language that was used by you and Judge Smith during this conversation, did you?
A. Yes sir.
Q. When did you make it? **A. That was on I think the twenty eighth of September, 1904.**
Q. Before whom did you make that affidavit?
A. Before Mr. Gardner, --W. M. Gardner.
Q. Then you did make an affidavit before Gardner, did you?
A. Yes sir.
Q. Did you appear at his office?
A. I did not appear in his office.
Q. Who wrote the affidavit? **A. The legal phraseology, Mr. Gardner wrote it. The rest of it I wrote myself, and he transcribed it, -- the typewriting part.**
Q. Did you have the writing which you gave Mr. Burke with you on that occasion?
A. I did not.
Q. You did not? **A. No sir.**
Q. Was the language, and was the language which you wrote on that occasion, the exact language which was used in the paper you gave to Mr. Burke? **A. Yes sir.**
Q. It was? **A. Yes sir.**
Q. Have you got that paper now, which you gave to Mr. Burke?
A. I have not.
Q. Have not? **A. No sir.**
Q. Have you, within the last few days, seen any paper containing that language?
A. Yes sir.

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- Q. Where did you see that paper?**
A. I seen it in Mr. Aydelott's office.
Q. When did you see it?
A. About three or four days ago; four days ago, I think.
Q. Was it a typewritten paper? **A. Yes sir; the copy of the affidavit.**
Q. The copy of the affidavit? **A. Yes sir.**

- Q. Have you got it in your pocket now? A. I have not.
Q. Where is it? A. I think it is in my room.
Q. You think it is in your room? A. Yes sir.
Q. How many days have you had that paper at home?
A. Four days.
Q. Four days? A. Yes sir.
Q. How many times did you read it during those four days?
A. I didn't read it at all since.
Q. Don't you read it every night before you go to bed?
A. I do not.
Q. Did you read it at all from the time Mr. Aydelot [sic] gave it to you, up to the present time?
A. No sir.
Q. Did not look at it at all?
A. I looked at it; yes.
Q. Looked at the back only? A. No; I didn't look at the back only.
Q. Did you read the language contained in the affidavit after Mr. Aydelott gave it to you four days ago? A. I did not.
Q. You took it home with you? A. Yes sir.
Q. When you got home, you took and put it in the trunk among your papers? A. No sir; I carried it around with me until yesterday.

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- Q. Did you carry it in your pocket? A. Yes sir.
Q. During your leisure moments, did not you look at it at all?
A. No sir; I have got no leisure moments.
Q. You have got no leisure moments? A. Yes sir.
Q. You are positive you did not look at the paper at all from the day Mr. Aydelott gave it to you?
A. I did not say I did not look at it.
Q. You did not read it? A. I did not read it. Certain parties wanted to read it and asked me to give it to them. That is the reason I went to Mr. Aydelott and got the copy of it.
Q. Who are those parties?
Mr. AYDELOTT: I object as not cross examination.
Mr. SULLIVAN: I submit we have a right to test the veracity of the witness.
(Objection overruled.)
WITNESS: Mr. Albert Cox.
Mr. SULLIVAN: (Q) Who else? A. Mr. W. Ed. McKissey.
Q. That is the proprietor of the saloon where you work?
A. Yes sir.
Q. Who else? A. W. W. Warren. Those are the only persons I showed it to.
Q. When you showed it to them, you did not read it?
A. I did not; they read it themselves.
Q. The only parties you gave the affidavit to were these persons? A. Yes sir; they asked me; they wished to see the affidavit.
Q. Do you remember the month in which your case, -- that will contest of yours, -- was tried?
A. Yes sir.
Q. What month was it? A. It was tried on September seventeenth, eighteenth, nineteenth, and October sixth, seventh and eighth.

Q. Now, having an extraordinary memory of that affidavit, will

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you repeat that affidavit, “Peter P. Hartmann, contestant of the last”, -- **A. (Interrupting:)**
Which affidavit do you mean?

Q. “Peter P. Hartmann, contestant of the last will”, --

A. I could not repeat the first, because I only heard that once. I know the substance of it.

Q. Did not you memorize the other portion of the affidavit?

A. No sir; I did not.

Q. Can you memorize the dates that the trial had been “In the matter of the Kohn Estate, which has been on trial before him during September seventeenth, eighteenth and nineteenth”, -- can you memorize that part of it?

A. I did not memorize it; the affidavit, I know it verbatim.

Q. Give it to me verbatim. A. About referring to the contest?

Q. About referring to the contest. A. “Peter P. Hartmann, contestant of the Kohl Estate”,

--

Q. Go ahead. A. “On trial on September seventeenth, eighteenth and nineteenth and October sixth, seventh and eight”--

Q. Go on. A. That is as far as I can give.

Q. “Of the said year 1902”? A. “Of said year 1902”.

Q. Go on. A. That is as far as I can remember.

Q. You remember that you asked said Judge when he could render said decision, -- do you remember that? A. Yes sir.

Q. Do you remember that? A. Yes sir; it is not given exactly.

Q. Is not it a fact you have had this affidavit four or five days for the purpose of appearing before this Committee?

A. It is not.

Q. You say you did not read it? A. I did not read it.

Q. Did not attempt to memorize any part of it?

A. No sir.

Q. Have you attempted to memorize any part of it in the last

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last [sic] two years? **A. Yes sir.**

Q. Don’t you know that before you called upon Judge Smith, that Mr. Burke endeavored to get Mr. Burke[sic] associated with him in that case? A. I do not know anything about it.

Q. Don’t you know that Mr. Cassin refused to be associated with Mr. Burke in that case?

A. I do not know anything about that.

Mr. AYDELOTT: I object to that line of testimony.

(Objection sustained.)

Mr. SULLIVAN: I will ask you one more question:

Q. Did not you yourself apply to Mr. Cassin to take your case, and did not he refuse to take it?

A. Yes sir.

Mr. AYDELOTT: We object as not cross examination.

(Objection sustained.)

Mr. SULLIVAN: We desire to show that for the purpose of testing the veracity of the witness, -- that he himself called upon Mr.

Cassin, and that Mr. Cassin refused to take his case, and that it is improbable, -- his story. That is the way we look at it.

Mr. AYDELOTT: That would not be any contradiction of the fact, the conversation.

Mr. SULLIVAN: Going to the credibility of the witness. That is the only purpose. I will not ask any more questions.

Mr. AYDELOTT: It seems to me the testimony is highly improper. **Mr. SULLIVAN:** We can prove by this witness that before that interview with Judge Smith, Mr. Cassin refused to take the case.

THE CHAIRMAN: What question do you want to ask?

Mr. SULLIVAN: That he personally met Mr. Cassin and requested him to act as his attorney in the case with George P. Burke.

Mr. AYDELOTT: I object as irrelevant, immaterial and incompetent.

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Mr. SULLIVAN: Before that conversation with Judge Smith.

THE CHAIRMAN: The objection is sustained.

Mr. SULLIVAN: All right.

Q. You were the candidate for the Legislature at the last session, were you? **A.** Yes sir.

Q. And were defeated? **A.** Yes sir.

Q. You were on the Socialist ticket, as I understand.

A. Yes sir.

Mr. AYDELOTT: I object.

THE CHAIRMAN: The question has been asked and answered now. Your objection comes too late. The question has been asked and the question answered.

Mr. AYDELOTT: I have endeavored to stop the witness so I can get in my objection. I will just make a motion to strike that portion of the testimony out as irrelevant, immaterial, incompetent and encumbering the record, and I ask that the testimony be stricken out.

Mr. SULLIVAN: I don't think it is of much materiality one way or the other. Of course we can spend more time making such a motion.

Mr. AYDELOTT: Then I will call the witness' attention in future to the fact that when I arise, not to answer until I make my objection.

Mr. SULLIVAN: During the election at which or during the campaign preceding that election, at which Judge Smith was elected in 1902, did Mr. Burke, your attorney, take the stump against Judge Smith?

Mr. AYDELOTT: I object as irrelevant, immaterial and incompetent.

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THE CHAIRMAN: Objection overruled.

Mr. AYDELOTT: That portion of the testimony which relates to Mr. Burke, I withdraw the objection.

(The Reporter read the question.)

A. I could not state of my own knowledge.

Mr. SULLIVAN: (Q) Did not you read his speeches in the papers?

A. I did not.

Q. Did not you hear him make several speeches?

A. I did not. He notified me to attend a meeting that he held it, as I understand it, here in front of the Court House. I did not attend. I told him I did not--

Q. That is the meeting at which he intended to roast Judge Smith; is that so?

Mr. AYDELOTT: I object to what Mr. Burke intended to say. (Objection sustained.)

Mr. SULLIVAN: (Q) Did not you yourself personally go amongst the electors and make those charges against Judge Smith?

A. I did not.

Q. Did not you seek to prevent Judge Smith from being elected?

A. I did not.

Q. Did not you ask your friends and neighbors to vote against Judge Smith? A. I did not.

Q. Did not you denounce Judge Smith as not a fit candidate for a judicial office? A. I did not.

Q. Did you tell any person about this interview [you] had with Judge Smith before your case was decided? A. I told one person, the landlady whom I roomed with at the time.

Q. You say you did not oppose Judge Smith at all?

A. I did not.

Q. In his candidacy? A. I did not.

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Q. Asked nobody to vote against him? A. No sir.

Q. Did not vote against him? A. Yes sir. Mr.

AYDELOTT: I object to that.

Mr. SULLIVAN: It goes to the probability of the truth of the witness' testimony.

Mr. AYDELOTT: I wish to make a statement at this time. I object to Mr. Sullivan commenting upon the testimony in that way.

Mr. SULLIVAN: In what way?

Mr. AYDELOTT: About the probability of his story.

Mr. SULLIVAN: I have reasons for it.

Mr. AYDELOTT: As I understand the ruling of the Chair a moment ago, we are to make no argument.

Mr. SULLIVAN: We will save time not to do it again.

Q. Do you remember the people, the speakers, -- you said you remembered Mr. Burke, -- and those who attempted to abuse and vilify Judge Smith on that occasion, about this very matter?

Mr. AYDELOTT: I object as irrelevant, immaterial and incompetent, not pertinent to any issues in the case, and not cross examination.

THE CHAIRMAN: Objection sustained as improper cross examination.

Mr. SULLIVAN: (Q) If this conversation actually took place as you say it did, between yourself and Judge Smith, why did not you publish the fact to the world prior to the election of Judge Smith? A. I did not quite understand the question.

Mr. AYDELOTT: I object to the question on the ground it is irrelevant, immaterial, incompetent and not cross examination; the date of the conversation shows it occurred after the election, and the attempt of counsel was simply to confuse this witness as to this point.

(Objection sustained.)

Mr. SULLIVAN: (Q) Who was present at the time you signed the

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paper in the office of Mr. Gardner?

A. His stenographer; I do not know her name.

THE CHAIRMAN: I do not think anything was said about the election in the affidavit.

Mr. SULLIVAN: I will withdraw that.

Q. Now, Mr. Hartmann, have you any feeling of prejudice against Judge Smith?

Mr. AYDELOTT: I object as irrelevant, immaterial and incompetent.

(Objection overruled.)

Mr. SULLIVAN: (Q) Have you?

A. Yes sir; slightly.

Q. You have a slight prejudice against him?

A. Yes sir.

Q. Who asked you to make this affidavit, if anybody?

A. Nobody asked me to make the affidavit.

Q. Did you voluntarily go to the office of Mr. Gardner and there offer to make an affidavit against Judge Smith last December?

A. Yes sir; I did.

Q. Prior to last December, had any one asked you to make any affidavit containing a recital of this conversation that took place between you and Judge Smith? A. Yes sir; about two years before that, -- not quite two years, -- Mr. Burke asked me to make an affidavit to that effect.

Q. But after you gave the affidavit to Mr. Burke, and before you gave the affidavit that Mr. Garner had, had anybody asked you to appear before Gardner and make the affidavit?

A. No sir; nobody had.

Q. You voluntarily went to the office of Mr. Gardner with the paper which you gave Mr. Burke, and made that affidavit?

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A. Yes sir; I did.

Q. No one requested you at all to go there?

A. No sir.

Q. Mr. Aydelott did not? A. He did not.

Q. Or Mr. Leonard did not. Did Mr. Gardner send for you?

A. He did not. I went to his office.

Q. You of your own motion, voluntarily, one day appeared in the office of Mr. Gardner and said to him: "Mr. Gardner, I will make an affidavit concerning Judge Smith"; is that so?

A. Yes sir.

Q. You did not know, at this time you made this affidavit, it was to be used in the impeachment proceedings, or attempted impeachment proceedings, against Judge Smith?

A. Yes sir; I did.

Q. You did. Who paid the Notary's fees for that?

A. We had no notary's fees connected with it.

Q. Had anybody talked to you about this conversation from the day you gave the paper to George P. Burke, up to the time you appeared in the office of Mr. Gardner to make this affidavit?

A. No sir.

Q. You knew that proceedings were about being started to impeach or attempt to impeach Judge Smith?

A. Yes sir. I was actively engaged in that myself.

Q. You were actively engaged in those impeachment proceedings yourself? A. Yes sir.

Q. When did you commence your active engagement?

A. About two years ago.

Q. What? A. About two years ago.

Q. You have been thinking of this scheme of impeaching Judge Smith about two years? A. Yes sir; yes, I have done that on my own hook.

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Q. Had you consulted with any of the other impeachers before that occasion when you appeared at the office of Mr. Gardner?

(Objected to.)

Q. Did you, before you appeared at the office of Mr. Gardner and made this affidavit consult any of the other prominent residents referred to in the memorial for the purpose of impeaching Judge Smith?

A. No sir; I did not. I did not know one of the parties outside of Judge Gardner at that time.

Q. Were you considering, then, the impeachment proceedings on your own hook?

A. Yes sir; I was.

Q. But you consulted with Mr. Leonard and Mr. Aydelott, and with anybody else in Santa Cruz?

A. Yes sir.

Q. Then you are the original impeacher of Judge Smith?

Mr. AYDELOTT: I object as irrelevant, immaterial and incompetent.

Mr. SULLIVAN: (Q) Are you the originator of these impeachment charges against Judge Smith?

A. Not the charges as they stand, -- at present, -- I am not the originator of them.

Q. You are the originator of the charges contained in this specification 2? A. Yes sir.

Q. And the only one that you make in support of this specification 2; is that so? A. I think I am the only one.

Q. Did not you, after Judge Smith had decided that case against you, threaten to get even with Judge Smith? A. I did not.

Q. You would not do a thing of that kind, would you?

A. I would not; I do not believe in revenge.

Q. You do not believe in revenge. Do you affirm, or do you swear, when you take an oath? A. I affirm.

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Q. You affirm. Were you subpoenaed to testify here by the prosecution? A. Not to-night.

Q. Not to-night. Did you voluntarily appear here for the purpose of testifying? A. I did not appear to testify to-night. I came in; I was naturally interested in the proceeding.

Q. Did not come in here to testify at all?

A. I did not know that I was to be called upon to-night.

Q. Did not know you were to be called to testify here in support of specification 2? A. I knew I was to be called upon, but not to-night.

Q. When you had this affidavit, you carried it with you, I understand you, about four days; then you gave it to him.

A. I gave it to the three parties I mentioned.

Q. To whom did you return it?

A. It is in my possession, in my room, at the present time.

Q. This affidavit which you made before Mr. Gardner?

A. A copy of it; yes sir.

Q. Have you got that affidavit in your room at the present time?

A. Yes sir.

Q. Where is the original affidavit? A. I think it is in the Court at the present time. I could not state.

Q. Did you give that a copy of the affidavit to any one at all when you first made, -- first received it?

A. Yes sir; I showed it to three parties.

Q. You still have it in your custody? A. Yes sir.

Q. You never let it get out of your custody?

A. Yes sir; they got it out of my hands and read it.

Q. Did you ever take the original from the office of Mr. Gardner? A. No sir.

Q. Never had the original since the day you signed it?

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A. I did not.

Q. You left the original with Mr. Gardner, did you?

A. Yes sir; I did.

Q. Did you ever authorize Mr. Leonard or Mr. Aydelott to use that affidavit in Sacramento? A. I did.

Q. You did? A. Yes sir.

Q. When did you notify them that they could use it?

A. On the twenty eighth of December.

Q. On the same day you made it?

A. On the same day that the affidavit was made.

Q. And did you go directly from the office of Mr. Gardner to the offices of Mr. Aydelott and Mr. Leonard?

A. I did not.

Q. Where did you go? A. I left them with Mr. Gardner at noon time in the office, in his office. Mr. Gardner was in his office, and they called me in to see him.

Q. That visit to Mr. Leonard's office was purely accidental?

A. Not to Mr. Leonard's office, -- Mr. Gardner's.

Q. Mr. Gardner's office? A. Because I had been up there every day going to and from my work.

Q. Did you see Mr. Leonard that very same day?

A. Yes sir; the same day.

Q. Did you call at his office and authorize him to use the affidavit? A. No sir; I done it in Mr. Gardner's office.

Q. Did you meet Mr. Leonard in Mr. Gardner's office?

A. Yes sir.

Q. Mr. Leonard was in Mr. Gardner's office the very time you made this affidavit?

A. No sir, not at the very time; he was the same day.

Q. You were there at the time Mr. Leonard was there, of course.

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A. Yes sir.

Q. Was Mr. Aydelott there the same day?

A. No sir.

Q. When did you authorize Mr. Aydelott to use the affidavit?

A. I do not think I ever authorized Mr. Aydelott myself, because I did not know he was in the case at any time until, it was about two weeks afterwards, when I first heard Mr. Aydelott mentioned in connection with the case.

Q. Did you speak to Mr. Aydelott about that affidavit since you made it, at all? A. Oh, yes.

Q. Was this meeting between you and Mr. Leonard at Mr. Gardner's office purely accidental?

A. I think so.

Q. Did not Mr. Leonard, before you appeared at Mr. Gardner's office, speak to you in relation to the matters contained in that affidavit?

A. Yes sir; he did at one time.

Q. Did not Mr. Leonard send you to Mr. Gardner's office for the purpose of making this affidavit?

A. He did not.

Q. Did not he tell you where to go?

A. He did not tell me where to go.

Q. Did not he tell you what notary to call upon?

A. He did not.

Q. He did explain to you about the matter of making this affidavit before you had actually made it? A. Yes sir.

Q. (By Mr. Leonard:) You have, you say, a prejudice against Judge Smith; is that prejudice a prejudice against him, -- against Judge Smith personally, or as a judge?

A. As a judge; not as a man.

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Q. Have you any prejudice against Judge Smith as an individual or as a person?

A. No sir; not as an individual; not as a man.

Mr. AYDELOTT: (Q) Please state, Mr. Hartmann, what your nationality is.

A. I am a German.

Q. Have you made much of a study of the English language?

Mr. SULLIVAN: We object as immaterial what his nationality is. It does not make any difference.

Mr. AYDELOTT: With the permission of this Committee, I will follow it up.

THE CHAIRMAN: The question has been asked and answered.

Mr. BURKE: (Q) How did the Judge finally decide that case?

A. He decided against me.

Mr. AYDELOTT: (Q) Have you made much of a study of the English language?

Mr. SULLIVAN: Objected to, -- it is irrelevant, immaterial and incompetent. He has no right to cross examine his own witness. It does not come within the recitals of specification 2.

THE CHAIRMAN: Objection sustained.

Mr. AYDELOTT: (Q) Have you made much of a study of politics--of political economy?

THE CHAIRMAN: I think that is objectionable, too.

Mr. AYDELOTT: The reason I am making this statement, they have made remarks concerning the improbability of this story. I want to ask the witness whether he is a student, and what or not

he has studied political economy, and in that way remembers these things.

THE CHAIRMAN: Objection sustained. Mr. AYDELOTT:

That is all.

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Mr. SULLIVAN: (Q) If the Judge had decided in your favor, you would never had brought these charges?

(Objection sustained.)

Mr. SULLIVAN: That is all, I think.

THE CHAIRMAN: That is all; the witness is excused.

-0-

Mr. LEONARD: If your Honors please, if we can take an early adjournment to-night, I think it will possibly facilitate rather than delay, because Mr. Lindsay will be here about half past ten, and we can get our witnesses here in the morning.

Mr. SULLIVAN: I prefer to go on. These charges were preferred over a month ago against Judge Smith. They ought to be prepared with other proof. Judge Smith is anxious --

THE CHAIRMAN: (Interrupting:) You have no witnesses here on either of these specifications?

Mr. AYDELOTT: I was just looking that over.

Mr. BEARDSLEE: If you have anything you can go on with tonight, you had better go on with it.

Mr. SULLIVAN: Mr. Leonard has verified several of these specifications.

THE CHAIRMAN: I would ask at this time if the prosecution or defense wish any subpoenas issued.

Mr. SULLIVAN: Yes; we will require quite a number, Mr. Chairman.

THE CHAIRMAN: Because we desire not to have the proceedings delayed on account of the absence of witnesses.

Mr. LEONARD: The prosecution will desire a number, also.

Mr. SULLIVAN: I believe we will have a number to subpoena.

Mr. AYDELOTT: I would ask the Chair if it is the idea that copies are necessary to be served with the subpoenas; for instance, a subpoena issued by the Committee, it is necessary to serve copies?

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Mr. SULLIVAN: Look at the Code, Section 202, I think it is.

THE CHAIRMAN: I think that is the procedure.

Mr. SULLIVAN: Yes sir. The Code in express terms compels the service of copies on the witnesses.

THE CHAIRMAN: Mr. Sergeant at Arms, these are copies for the prosecution. I wish you would keep those and serve them with the originals.

Mr. SULLIVAN: We desire some, too. We have had a printed form for ourselves, -- that is, on the typewriting machine. We would like to have some of those issued by the Committeemen.

Mr. AYDELOTT: Will your Honorable Committee hear a portion of the evidence on one specification, and a portion to-morrow?

THE CHAIRMAN: Certainly.

Mr. AYDELOTT: Then we will, with the consent of the Committee, take up specification 5.

Mr. SULLIVAN: Have you introduced all the evidence you intend to introduce in support of specification 3?

Mr. AYDELOTT: We have, Sir. I would ask Mr. Miller, the clerk of the court, if the papers in the case of Helen Younger, plaintiff, versus Charles Moore, et al, defendant, are at hand.

Mr. SULLIVAN: We will admit in evidence the records, or any other records in the case of Younger against Moore.

Mr. AYDELOTT: You will admit them in evidence?

Mr. SULLIVAN: Yes sir.

Mr. AYDELOTT: If your Honorable Committee please, I offer in evidence the entire record, -- some part of the record is wholly immaterial; but I do offer in evidence the complaint.

THE CHAIRMAN: Describe it to the stenographer so he can get it in the record.

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Mr. AYDELOTT: Complaint in the case of Helen Younger, plaintiff, versus Charles Moore, et al., and Lucas F. Smith, defendants.

There are a number of defendants; I will just omit them. Filed in the superior court on the fifth day of July, 1899, by H. H. Miller, clerk, F. G. McGann, Deputy Clerk; and I call special attention of the Committee to the words written across the back of the complaint: "Stricken from the files of this Court by order of the Court. See Minutes. H. H. Miller, August 17th, 1899". Now I will ask Mr. Miller, will you bring in your minutes containing your order of dismissal, please?

Mr. MILLER: What is the date of it?

Mr. AYDELOTT: That is August seventeenth, 1899.

Mr. SULLIVAN: We will admit that as stated in the specifications, -- is it in the specifications? You have not a copy of the order in the specifications.

Mr. AYDELOTT: No; I have not, Mr. Sullivan.

Mr. SULLIVAN: The order, I think, is in the record there.

Mr. AYDELOTT: I am looking for it now.

Mr. SULLIVAN: You will find it among the papers.

Mr. AYDELOTT: We find the original order among the papers.

Mr. SULLIVAN: Please read it in evidence.

Mr. AYDELOTT: I also offer in evidence --

Mr. SULLIVAN: (Interrupting:) Read the order.

Mr. AYDELOTT: -- I offer in evidence in this connection the order of the court filed August seventeenth, 1899, by H. H. Miller, clerk, in the case of Helen Younger, Plaintiff, vs. Charles Moore, et al., being case number 3336, which order of the Court is in the words and figures follows:

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TESTIMONY
of

H. H. MILLER,

Recalled.

Direct Examination:

Mr. AYDELOTT: (Q) I will ask you, Mr. Miller, to state whether or not this writing on the back of this complaint was made by you.

Mr. SULLIVAN: We will admit it was in pursuance of that order.

Mr. AYDELOTT: You will also admit this minute order relates to the same thing?

Mr. SULLIVAN: Yes; and we will admit the minutes striking from the files.

Mr. AYDELOTT: The minute order striking it from the files.

Mr. SULLIVAN: Certainly. You may put your record in evidence and use any part you desire.

Mr. AYDELOTT: I do not think it is necessary or wise to put the whole in evidence. I also introduce in evidence the answer of the City of Santa Cruz, which shows that they claimed some interest in the land, marked filed October 2, 1903. I think it is sufficient for the purpose just to read the prayer: (Reading:)

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Mr. AYDELOTT: I also cite the Committee to the case of Younger against Superior Court, 136th California, 682, where the Supreme Court decided and declared Judge Smith had no right or power or authority to strike from the files--

Mr. SULLIVAN: You offer the case in evidence?

Mr. AYDELOTT: I offer the case in evidence, -- the opinion.

Mr. SULLIVAN: All right; no objection.

(The opinion referred to is as follows:

----- Transcriber's Insert -----

CHARLES B. YOUNGER, Jr., Petitioner, v. **SUPERIOR COURT OF SANTA CRUZ COUNTY,**
Respondent S. F. No. 2197 Supreme Court of California, Department One 136 Cal. 682; 69 P. 485;
1902

July 3, 1902

PRIOR HISTORY: [***1]

WRIT of Certiorari to annul an order of the Superior Court of Santa Cruz County. Lucas F. Smith, Judge.

DISPOSITION: For the reasons given in the foregoing opinion the order is set aside and annulled.

HEADNOTES:

CALIFORNIA OFFICIAL REPORTS HEADNOTES

Partition--Judge Made Party--Ex Parte Order Striking Complaint from Files -- Excess of Jurisdiction -- Certiorari.-- Where the judge of the court was made a party defendant to a complaint in an action for the partition of land, as the alleged claimant of an interest in the land, which interest was denied in the complaint, the court exceeded its jurisdiction in making an ex parte order, of its own motion, without notice to the other parties, or any hearing, striking the complaint from the files on the ground that the complaint was false, deceitful, and abusive in its allegation making the judge a party, and that it was done solely for the purpose of disqualifying him; and such order will be annulled upon certiorari.

Id.--Power and Duty of Judge Made Party.--A judge made a party upon proper allegation cannot arbitrarily determine that he is not a proper party, nor that he is not interested; and the question as to whether or not the judge is made a party in good faith, or whether or not he is interested, should be determined upon notice and after a hearing, so that the record can be preserved and the matter passed upon in this court, in case it becomes necessary.

Id.-- Contempt of Court -- Hearing -- Punishment -- Limitation of Power.--The mere fact of making the judge a party, if done in good faith, is not a contempt of court; but if it is found, after a hearing and trial first had, that it was done in bad faith, for the purpose of merely disqualifying the judge, and that the attorney was a party to such bad faith, as well as the client, both may be punished for contempt of court. But the client cannot in such case be punished by the deprivation of property, or by striking the complaint from the files.

Id.--Certiorari--Absence of Other Remedy--Petition by Defendant in Partition--Beneficial Interest.--No judgment having been entered, and no right of appeal from the order complained of being given, there is

no other plain, speedy, and adequate remedy to preclude a writ of certiorari to annul the order made in excess of jurisdiction; and a defendant in the partition case who is an actor seeking the partition is a party beneficially interested, and entitled to apply for the writ.

SYLLABUS: The facts are stated in the opinion.

COUNSEL: Joseph H. Skirm, and Charles B. Younger, Jr., in pro. per., for Petitioner. Lindsay & Netherton, for Respondent.

JUDGES: Cooper, C. Chipman, C., and Haynes, C., concurred. Harrison, J., Garoutte, J., Van Dyke, J.

OPINION BY: COOPER

OPINION: [*683] [**485] This is an application for a writ of certiorari, for the purpose of reviewing an order of the superior court of the county of Santa Cruz, striking a complaint from the files. It appears from the verified petition and return that on July 15, 1899, one Helen Younger, as plaintiff, commenced an action in the superior court of Santa Cruz County for the partition of a tract of land in said county, described in the complaint, according to the respective rights of the parties to said action. The petitioner, Charles B. Younger, Jr., was made defendant, and the complaint in said cause alleges that the plaintiff therein and said Charles B. Younger, Jr., as joint tenants with each other, [***2] hold as tenants in common with certain other defendants therein named.

In said complaint Hon. Lucas F. Smith, the judge of the superior court of Santa Cruz County, was made a defendant, and it is alleged that he "claims to have some interest in or claim to or upon said above-described tract of land," but that he has no interest in the same, nor in any part thereof. On the eighteenth [**486] day of July, 1899, a summons was issued upon said complaint, which was served upon the Hon. Lucas F. Smith on the eighth day of August, 1899. On the seventeenth day of August, 1899, after some of the defendants had appeared in the said action, and before any answer or appearance had been made by said Hon. Lucas F. Smith, the judge of said superior court, he, as superior judge, caused to be made and entered the order complained of here, directing the said complaint to be stricken from the files of the said court.

The said order recites that the complaint is false, deceitful, and abusive of the process and proceedings of the court in the matter of the allegation that Hon. Lucas F. Smith claims to have some interest in or claim to the land described in the complaint, and the order recites, [***3] "it further appearing to the court that said allegation in so far as it relates to the said Lucas F. Smith is absolutely false, and was known by the said plaintiff Helen Younger at the time of the signing [*684] of said complaint, and also at the time of the filing thereof, to be false, and was therein alleged, as the court is satisfied, for the sole purpose of making said Lucas F. Smith a party defendant in said action in order to disqualify him as judge of said court in the trial of said action, and to prevent him from acting therein as such judge, and for no other reason, and to thereby impede and embarrass the due administration of justice in said superior court. Believing that every court of record has and should have the inherent right to protect itself against all forms of insult, deceit, and fraud, however attempted to be practiced upon it, and that it is the duty of the court so to do, and for the foregoing reasons, it is now therefore by the court here considered and ordered that the said complaint so filed as aforesaid be and the same hereby is stricken from the files of this court. Done in open court this seventeenth day of August, 1899. Lucas F. Smith, Judge of [***4] said Superior Court."

The above order was made by the judge of said court of his own volition, without notice to any one, in the absence of plaintiff, and without any motion or suggestion by any party to said action, save the judge of said court. There was nothing in the complaint containing even a suggestion of disrespect to the court or the judge thereof.

There is nothing to prevent a party from bringing an action against the judge of the superior court, or any other judge, in a proper case. The mere fact of bringing the suit and making the judge a party, if done in good faith, is not in any way contempt of court. No doubt but that if the judge was made a party by plaintiff, or by the advice of an attorney, for the sole purpose of disqualifying him, the parties so doing should be dealt with and punished in a proper proceeding and after notice. If an attorney of this court should so far forget the oath he has taken and the obligation he owes to his client and to society as to advise or be a party to preparing a sham pleading solely for the purpose of disqualifying the judge, he should be dealt with in a manner so as to prevent him from again casting odium upon the high profession [***5] of the law. But no punishment should be inflicted and no judgment passed without a hearing. So if the plaintiff has been a party to a sham attempt to disqualify the judge of the court having

jurisdiction, she should, after a hearing, be properly dealt with, but not [*685] by depriving her of her property or striking her complaint from the files of the court. We must presume that an attorney will not violate his oath, and that the complaint was filed in good faith. Certainly the judge has not the power to pass upon his own qualification without a hearing, and to determine that he has no interest in the case without giving any opportunity to any one to show that he has such interest. The provision of the Code of Civil Procedure (sec. 170), that a judge shall not sit or act in an action or proceeding to which he is a party or in which he is interested, is plain and mandatory. Yet the expression "to which he is a party" means to which he is a real party, and made so in good faith. It evidently was not intended that a plaintiff could make all the superior judges in the state save one parties, and thus select his own judge. The question as to whether or not the judge is a party, [***6] made so in good faith, or whether or not he is interested, should be determined upon notice and after a hearing, so that the record can be preserved and the matter passed upon in this court, in case it becomes necessary. And where the judge is made a party, upon proper allegation, he cannot arbitrarily determine that he is not a proper party, nor that he is not interested. In proceedings for contempt the court cannot deprive parties of all redress in the ordinary course of law, nor of the right to have the courts pass upon questions properly presented. It must proceed according to the law of the land, and not condemn without a hearing. It must proceed from inquiry, and render judgment only after trial.

The supreme court of the United States, in *Hovey v. Elliott*, 167 U.S. 409, in a very able and exhaustive opinion, and after reviewing the authorities both in England and in this country, held that a court had not the power to strike out defendant's demurrer and direct judgment against him by default as a punishment for contempt in refusing to obey the order of the court to pay alimony in a divorce case. In the opinion it is said: --

"Can it be doubted that due process [***7] of law signifies a right to be heard in one's defense? If the legislative department of the government were to enact a statute conferring the right to condemn the citizen without any opportunity whatever of being heard, could it be pretended that such an enactment [*686] would not be violative of the constitution? If this be true, as it undoubtedly is, how can it be said that the [**487] judicial department, the source and fountain of justice itself, has yet the authority to render lawful that which if done under the express legislative sanction would be violative of the constitution? If such power obtains, then the judicial department of the government, sitting to uphold and enforce the constitution, is the only one possessing power to disregard it. If such authority exists, then, in consequence of their establishment to compel obedience to law and enforce justice, courts possess the right to inflict the very wrongs which they were created to prevent. . . . Until notice is given, the court has no jurisdiction in any case to proceed to judgment, whatever its authority may be by the law of its organization over the subject-matter. But notice is only for the purpose of [***8] affording the party an opportunity of being heard upon the claim or the charges made; it is a summons to him to appear and speak, if he has anything to say, why the judgment sought should not be rendered. The denial to a party of the benefit of a notice would be in effect to deny that he is entitled to notice at all, and the sham and deceptive proceeding had better be omitted altogether. It would be like saying to the party, Appear and you shall be heard; and, when he has appeared, saying, Your appearance shall not be recognized, and you shall not be heard."

The above language was quoted and approved by this court in *McClatchy v. Superior Court*, 119 Cal. 419, and *Foley v. Foley*, 120 Cal. 40. n1

----- Footnotes ----- n1
65 Am. St. Rep. 147.

----- End Footnotes-----

In the latter case it was held that the court had no power to strike out defendant's demurrer as a punishment for contempt in refusing to pay alimony. In the opinion it is said: --

"While the general remedial power of a court of equity to take all proper measures to coerce respect [***9] and obedience to its lawful orders has always been recognized, to the extent that a party in default may justly be denied the right to have any affirmative action of the court sought by him until he shall have purged himself of his contempt, that power has never extended to a point that would authorize a denial to a party of the right to be heard in defense to any affirmative [*687] judgment proposed to be taken against him whereby he would be deprived of any substantive right of person or property."

The court in making the order exceeded its jurisdiction, and there is no other plain, speedy, and adequate remedy. No judgment was entered and there does not appear to be any right of appeal from the order. "Any departure from those recognized and established requirements of law, however close the apparent adherence to mere form in method of procedure, which has the effect to deprive one of a constitutional right is as much an excess of jurisdiction as where there is an inceptive lack of power." (McClatchy v. Superior Court, 119 Cal. 419; Schwarz v. Superior Court, 111 Cal. 112; Tomsy v. Superior Court, 131 Cal. 623.) And the petitioner is a party beneficially [***10] interested within the meaning of section 1069 of the Code of Civil Procedure. He has filed an answer in which he asks for a partition of the property. In such case all the parties are actors and interested in the proceeding. (Senter v. De Bernal, 38 Cal. 642; Grant v. Murphy, 116 Cal. 427.) n1

----- Footnotes ----- n1

58 Am. St. Rep. 188.

----- End Footnotes-----

We advise that the order be set aside and annulled.

For the reasons given in the foregoing opinion the order is set aside and annulled.

----- End of Transcriber's Insert -----

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Mr. AYDELOTT: That is the language of the Supreme Court in referring to the conduct of Judge Smith striking out the complaint in Younger against Superior Court.

Mr. BEARDSLEE: What page is that?

Mr. SULLIVAN: Page 684. If counsel in this case will follow up this case, he will see that Judge Smith had no interest whatever in any of the land in controversy. Of course all this record is admissible in evidence, but counsel does not contend there is any person present in this county over has contended that Judge Smith had any interest whatever in the land. It is universally known the Judge Smith was made a party to the suit simply for the purpose of disqualifying him.

Mr. AYDELOTT: We object to his argument.

THE CHAIRMAN: I would like to ask one question: Who was attorney for the plaintiff?

Mr. LEONARD: I represented the plaintiff at the time of the filing of the complaint or at the time of the trial; at the time the complaint was filed, I represented the plaintiff.

Mr. SULLIVAN: Mr. Leonard represented them.

Mr. AYDELOTT: I would respectfully suggest that Mr. Sullivan should have contained to read along here, the next line in the opinion which says no decision should be final and no judgment pass without a hearing.

Mr. SULLIVAN: Yes sir; that is right.

THE CHAIRMAN: Have you any other evidence?

Mr. AYDELOTT: I introduce in evidence the remittitur of the Supreme Court, number 2197, in the Supreme Court of California, Younger versus the Superior Court. And will the committee pardon one more digression? (Reading:) "The Court in making the order, exceeded its jurisdiction, and there is no other plain, speedy or adequate remedy if the judgment was entered, and there

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is and does not appear to be any right of appeal from the order."

If the Committee please, I will withdraw the objection I made a moment ago to the introduction of all the records in this case. I think I will stipulate that all the papers will apply.

I have looked into the matter and I showed the complaint and the order and the decision of the superior court, but I understand now that there is much testimony and much evidence in those

papers which gives strength to the issue, the qualifications and character of Judge Smith, in making that order, and therefore I introduce all the papers in evidence in the case numbered 3336, --all the papers.

Mr. SULLIVAN: They may be considered as read in evidence.

THE CHAIRMAN: Do I understand you attorneys are going to stipulate which of those papers are going into the record?

Mr. SULLIVAN: We will read certain portions; that is, the defense will read certain portions. We do not care what steps the prosecution takes.

Mr. AYDELOTT: What has occurred between other defendants has no bearing. What has occurred in reference to the Judge's conduct in dismissing this without a hearing, all that can go in evidence. When we brief it, we can call your attention to it.

Mr. BEARDSLEE: Do we understand from you that you wish to get into this record the demurrer, the order overruling the demurrer, and such things as that?

Mr. SULLIVAN: Do we understand from you that you wish to get into this record the demurrer, the order overruling the demurrer, and such things as that?

Mr. SULLIVAN: No; a great many portions of the record are not admissible at all. There is only a portion of it that is admissible. We can pick them out afterwards.

Mr. LEONARD: If your Honors please, I think it would be probably a little better for you not to consider this in evidence and take time to pick them out. There will be more of us up to-

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morrow, and we will have time to pick them out.

Mr. SULLIVAN: You have had a whole month to pick out those papers.

Mr. LEONARD: We have, of course, -- that is all nonsense about having a whole month. We have had a whole month. We had no subpoenas or process; we did not have any subpoenas, and we could not get our witnesses.

Mr. SULLIVAN: You did not require subpoenas to look at the records in this case.

THE CHAIRMAN: I suggest the attorneys designate some time to-morrow what parts of that record they want in this case, that they want to put in evidence.

Mr. AYDELOTT: That is satisfactory to our side.

Mr. SULLIVAN: When we come to our defense, we will have every paper before us that we wish to put in evidence, and marked.

Mr. AYDELOTT: If your Honors please will give me until to-morrow I will go over these papers, and for the present, I propose to pass the papers, so that we do not state what we will introduce.

THE CHAIRMAN: Yes.

Mr. AYDELOTT: May I ask the Chairman what disposition should be made of these papers during this trial? They ought to be left in the custody of the clerk.

THE CHAIRMAN: It is perfectly satisfactory to me.

Mr. SULLIVAN: Certainly; they ought to be in the custody of the clerk.

Mr. BEARDSLEE: He is the custodian.

Mr. AYDELOTT: Is Mr. C. B. Younger Jr. in the court room?

THE CHAIRMAN: Was he subpoenaed here as a witness?

Mr. AYDELOTT: No; he was not. Is Judge Skirm present in the court room? (No answer.)

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Mr. AYDELOTT: If your Honors please, that is all the record evidence.

Mr. SULLIVAN: I understand, then, that quite a large number of your prominent citizens referred to in your memorial are present in town here?

Mr. AYDELOTT: It specifies them as prominent citizens in the memorial and affidavits.

Mr. SULLIVAN: Your memorial does.

THE CHAIRMAN: Have you any more witnesses at this time? If you have not any more witnesses at this time, why of course we will adjourn until to-morrow.

Mr. SULLIVAN: Have not you any more witnesses?

Mr. AYDELOTT: We have one bit of record evidence. It is set up in the specifications word for word.

Mr. SULLIVAN: Is this all the evidence you intend to introduce in support of specification 5?

THE CHAIRMAN: That is not closed yet.

Mr. AYDELOTT: No; that is not closed yet.

THE CHAIRMAN: You have no other evidence here?

Mr. SULLIVAN: Have you exhausted your evidence in support of specification 5?

Mr. AYDELOTT: We have not.

THE CHAIRMAN: I understand that in this matter, all these papers are going to be designated to the Reporter by the prosecution.

Mr. SULLIVAN: What other testimony do you intend to introduce in support of specification 5?

Mr. AYDELOTT: Oral testimony, and partly taken out of these records.

Mr. SULLIVAN: We would like the Gentlemen, -- we would like to have them close their case as to specification 5. We would like to know whether we will have to get any evidence to contradict

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the evidence.

Mr. AYDELOTT: I much prefer it, as the witnesses are not here; I suppose I can only introduce a portion of the testimony. I would likewise want to introduce a portion of the evidence to-morrow. THE CHAIRMAN: We will insist that the prosecution have their witnesses here by nine o'clock to-morrow morning to go on as they are called upon these specifications. Of course when the defense is taken up, we will insist upon the same from them. For the reason that we want to wind this matter up and get it through just as quick as possible. Of course if you have not your witnesses here as we proceed, a reasonable time will be allowed. I will give you sufficient time to establish a defense. The meeting will stand adjourned until nine o'clock to-morrow morning.

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(An Adjournment was here taken until Friday, February 17th, 1905, at nine o'clock in the morning.)

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(Follows Pipher.) 1.

FRIDAY, FEBRUARY 17th, 1905.

At the meeting, pursuant to adjournment, all the members being present, the following additional proceedings were had.

Mr. Carl E. Lindsay: Mr. Chairman and Gentlemen of the Committee, I desire to state that at the request of a number of members of the Santa Cruz Bar, with much hesitancy and after much consideration, I have consented to appear in the matter of the investigation of the charges preferred against the Honorable Lucas F. Smith, Judge of the Superior Court of this County, and

I wish that my position may be understood as this; recalling the fact that these gentlemen, amongst whom are witnesses, cannot well appear in the capacity of attorney and witness, and also that it is important not only to the case but to the State at large, that a calm, careful, and impartial investigation of these charges may be had, I am here for the purpose of lending what aid I can to this Honorable Committee to that end. And we will, with the permission of you Mr. Chairman, at this time take up Specification No. 3.

The Chairman: I understand that we postponed the further consideration of this specification last evening until the attorneys could look over the leadings in that particular case and designate which papers they wished to be taken down by the shorthand reporter.

Mr. Adylotte: Yes but these papers have just now come into the Court.

Mr. Lindsay: With that I am not familiar.

Mr. Adylotte: I will state to the Committee that there is no further evidence under specification No. 5, I think that is the one we left off last evening, except the consideration of do-

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cumentary evidence, the evidence is closed with the exception of these papers.

The Chairman: You have no more oral evidence on that point? **Mr. Adylotte:** We will have no more on that point if the Committee will give me time to look over these papers.

Mr. Lindsay: We will proceed with Specification No. 6, instead of Specification No. 3 as the witness is not present.

Mr. Leonard, will you take the stand.

TESTIMONY
OF
J. H. LEONARD,

Recalled.

Mr. Lindsay: Q. Your name is J. H. Leonard I believe? **A.** Yes sir.

Q. You have been sworn I believe? **A.** Yes sir.

Q. You are now a practising [sic] attorney at the Bar of this community? **A.** Yes sir.

Q. How long have you been such? **A.** For mostly these six years.

Q. How long have you been a resident of Santa Cruz County?

A. Thirty five years.

Q. All your life then?

A. No sir, not quite; I came here when I was a year and a half old from Santa Clara.

Q. Were you practising at the Bar of this county on or about the thirteenth day of March, 1900?

A. Yes sir.

Q. Do you remember a case which was then being heard entitled “Nicholas Sambuck Vs. the Southern Pacific Co.”? **A. I do.**

Q. What Judge was presiding at the hearing of that case?

A. Judge Lucas F. Smith.

Q. Who was the Attorney representing the plaintiff?

A. I was.

Q. Was the case tried before the Court, or before the Court and Jury? **A. Before the Court and Jury.**

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Q. What was the nature of the action?

A. It was an action for damages for personal injury to the plaintiff sustained in a railroad wreck.

Q. During the course of the trial did you have any conversation with the presiding judge? **A. I did.**

Q. In reference to the case?

A. I did.

Q. Where did this take place?

A. In the Chambers of the Judge, this room right over here adjoining this Court Room.

Q. At what stage of the proceedings was it that this conversation ensued?

A. It was after the jury had been empanelled and one witness had been sworn and testified; I don't know whether entirely or in part-- the plaintiff had testified.

Q. Was it during the adjournment of the Court?

A. During the noon recess.

Q. How did you happen to enter into this conversation with the Judge?

A. The Judge called me into his Chambers.

Q. Where were you at the time?

A. Standing right over there in the Court Room about to the left of the Court Room.

Q. What was your business there at that time, Mr. Leonard?

A. I was representing the plaintiff.

Q. You say it was during the noon recess?

A. Well the Court had just adjourned for the recess.

Q. The Court had just adjourned for the recess?

A. Yes sir.

Q. Then it was before you left the Court Room?

A. It was before I left the Court Room.

Q. Upon adjournment? **A. Yes sir.**

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Q. State to the gentlemen of the Committee the conversation.

A. The Judge said “John” beckoning his hand to me, and I was standing over there, so I went in his chambers; when we got in there he closed the door and said “John, you have the best” (He used some adjectives here) “damage suit, but you have ruined it. Why didn't you let them examine that man?” With reference to the request of the defendant to have Doctors Knight and Lane examine the plaintiff on behalf of the defendant. And he said “Why didn't you let them examine that man; you have ruined your case; you had better let them examine him, and when they touch him, have the fellow bend and squeal.” He used some more adjectives--“That is the way to try those kind of cases”. I replied to the Judge “We all have our own way of trying cases” and with that the conversation closed.

Q. I understand that this conversation took place during the trial of the case? A. Yes sir.

CROSS-EXAMINATION.

Mr. Sullivan: Q. Mr. Leonard you were engaged in the practice of law before you came to Santa Cruz County? A. No sir.

Q. Before you came to Santa Cruz City? A. Yes sir.

Q. You were admitted to practice then about six years ago?

A. Yes sir.

Q. What was your occupation before you commenced the practice of the law? A. I was a farmer.

Q. You were a farmer? A. Yes sir.

Q. So you were admitted to the practice of the law when you were about 29 years of age?

A. No sir I was 32 I think.

Q. Thirty one? A. Along about thirty, I guess.

Q. You say you have been practising then about six years?

A. Yes sir, I am thirty seven now.

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Q. About 31 years of age when you were admitted to practice?

A. Yes sir.

Q. Up to and before your admission you were a farmer?

A. Oh no sir, not quite.

Q. Well, from boyhood up what were you?

A. I was a farmer, farming from boyhood up to the time I went to college.

Q. Until the time you went to college. How many cases have you tried in Judge Smith's Court before the trial of this case of Sambuck Vs. the Southern Pacific Company?

----- Transcriber's Insert -----

[Sambuck v. Southern Pac. Co., 7 Cal. Unrep. 104, [71 Pac. 174].]

----- End of Transcriber's Insert -----

A. I could not tell you exactly how many I tried.

Q. Well approximately.

A. I had been associated in--I could not tell you what in fact my cases were--however I have been associated in some cases. I think that is the first case that I tried alone.

Q. That was the first case you ever undertook to try alone was it not? A. I think so, yes sir.

Q. Who was opposed to you in that case?

A. Mr. Charles B. Younger on the trial of the case, and Mr. Younger and Mr. Howard [sic] on the motion for a new trial. Mr. Howard of San Francisco.

----- Transcriber's Insert -----

[Written in pencil above "Howard" is "Walker." The attorney's name is Foshay Walker.]

----- End of Transcriber's Insert -----

Q. Mr. Cassin had nothing whatever to do with that case?

A. No not that I know of.

Q. How far had you proceeded with the trial before this conversation between you and Judge Smith took place?

A. The first witness had been sworn and, as my recollection serves me had testified only in part, had not finished his testimony.

Q. Who was that please? A. Nicholas Sambuck the plaintiff.

Q. The plaintiff himself? A. Yes sir.

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Q. When was the demand made for the examination of the plaintiff?

A. It was made during his testimony.

Q. By the attorneys of the Railroad Company? A. Yes sir.

Q. And you objected to the examination by the Railroad Doctors did you? A. Yes sir, advised him not to submit to it.

Q. How long had he been examined before this conversation between you and the Judge took place?

A. To the best of my recollection it was all of that morning.

Q. Had he concluded his examination before this conversation took place? A. I think not.

Q. You think not. He was still under examination at the noon recess.

A. I think he was; I am not very positive about it although I think he was.

Q. Was Mr. Younger in the Court Room at the time the Judge beckoned to you to go to his Chambers?

A. He was there in the Court Room and had just passed out, we were all just leaving the Court Room at that time.

Q. Do you remember if he was close enough to hear the Judge call to you, call you "John" and ask you to come into the Chambers?

A. I don't know.

Q. That you don't know? A. No sir.

Q. As a matter of fact wasn't he in the Court Room before he left the Court Room to go to the Chambers?

A. I rather think he was there, either in there or just passing out. In fact I think everyone was in there up to the time the Judge--

Q. (Interrupting) Were the jurors all present when the Judge beckoned you to come to his chambers?

A. As my recollection serves me they were passing out, or rather I guess a few had gone out of the Court Room--I don't know.

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Q. Was the Judge sitting on the Bench when he beckoned you to come to his chambers? A. No sir.

Q. Where was he when he beckoned to you?

A. He was sitting between where we sit right over there and the doors of the Chambers, rather closer to me than the doors.

Q. You say the Court Room was rather filled with people at that time? A. No sir I did not.

Q. There was quite a number of people in the Court Room was there? A. As to how many spectators I don't know.

Q. How long did you remain in the Judge's Chambers during that conversation? A. I think

perhaps less than two minutes.

Q. You think perhaps less than two minutes? A. Yes sir.

Q. That was in the year 1900 was it? A. Yes sir.

Q. Did you express any indignation at the talk of the Judge when you had that conversation?

A. As to indignation I presume I says [sic] "Judge we all have our own way of trying cases".

Q. Did you express any indignation at the Judge in that conversation then?

A. If you call that-I had that conversation, if you call that--

Q. (Interrupting) That is the only statement you say you made to him "Every lawyer has his own way of trying a case"?

A. Yes sir. "We all have our own way of trying cases" I think is the remark I made.

Q. Did you finish the trial of the case that day or the day following?

A. No sir it continued for a couple of days I think.

Q. The man did not submit to examination did he?

A. No sir.

Q. You obtained for your client the verdict in the case? A. Yes sir.

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Q. A substantial verdict--\$7000.00?

A. \$6000.00. It amounted to \$6000.00 or \$7000.00 by the time it was paid.

Q. The Railroad Company moved as usual for a new trial? A. Yes sir.

Q. You contested it? A. Yes sir.

Q. Judge Smith denied the motion of the Railroad Company for a new trial? A. Yes sir.

Q. Did the Railroad Company on the motion for a new trial argue that the Court committed error in denying the Company to have the plaintiff examined? A. Yes sir that was the chief point.

Q. That was the chief point made on the motion for a new trial?

A. Yes sir.

Q. And of course the Judge decided the motion for a new trial and decided that point.

A. I don't know what he claimed. I know he denied the motion.

Q. He denied the motion? A. Yes sir.

Q. Now Mr. Leonard, is it not a fact that the relations between you and Judge Smith were not friendly in March 1900.

A. Yes sir they were friendly so far as I know; not only friendly but very friendly.

Q. You were in the case of Helen Younger Vs. Thomas Moore were you not? A. Yes sir.

Q. You acted as attorney for the plaintiff in that case? A. Yes sir.

Q. Did you prepare the complaint in that case? A. No sir.

Q. Who prepared the complaint in that case? A. I don't know.

Q. You don't know who prepared the complaint? A. No sir.

Q. Wasn't it prepared in the office of George B. Younger-- Charles B. Younger?

A. No sir, I don't know who prepared it, I don't know where it was prepared.

Q. You remember the fact that Judge Smith was made a party to the defendant in that action? A. Yes sir.

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Q. And don't you know that he was made a party to the defendant in that action for the purpose of disqualifying him for trying it?

A. No sir.

Mr. Lindsay: I submit that this is not cross-examination.

Mr. Sullivan: We submit we will follow this up by showing that subsequently on the filing of this complaint Mr. Leonard was ordered to show cause why he should not be punished for contempt. And by reason of this contempt a feeling of hostility arose against Judge Smith, and we beg to right to show in my mind, there was a feeling against the persons concerning whom he testifies.

Mr. Lindsay: You can do that however without going into all the details.

Mr. Sullivan: And further to show the probability of Judge Smith making a proposition of this kind to a man with whom he was not on friendly terms.

(Objection overruled.)

Mr. Sullivan: Q. Don't you know that at the time that complaint was filed, Judge Smith had no interest and claimed no interest in the land described in the complaint?

A. No sir, I understand that he did?

Q. You say he did? A. Yes sir.

Q. Don't you know as a matter of fact that he did not have any interest or claim any interest.

A. No sir I know that he did not get any interest exactly; I don't know what he claimed or what the plaintiff claimed.

Q. As a matter of fact wasn't the sole and only purpose in making Judge Smith a party to the defendant of that suit to disqualify him to prevent him from trying the case?

A. I don't know anything of the kind.

Q. Did you read the complaint before you filed it?

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A. I don't think I did-not altogether.

Q. You don't think you did? A. No sir.

Q. But you were the Attorney for the plaintiff? A. Yes sir.

Q. Acting as attorney for the plaintiff and filed the complaint without knowing what the complaint contained?

A. I don't think I read it all through.

Q. You don't think you read the complaint all through?

A. I might have but I don't know.

Q. Your best recollection is that you did not read it is it not so?

A. I knew in what manner it was.

Q. You knew what it referred to? A. I knew what the title was.

Q. You looked at the title of the complaint? A. Yes sir.

Q. That is all you know concerning the complaint yourself?

A. No sir I would not say that was all I knew; I had a pretty general idea what was in the complaint.

Q. How did you come to get the idea from the complaint if you did not read the complaint?

A. I say I don't know; I don't think I read it all.

Q. You don't think you read it all?

A. Because there was a number of repetitions, I don't know--

Q. (Interrupting) Was not that complaint obtained from the office of Mr. Younger?

A. No sir, no-at least I did not obtain it.

Q. Was it not written on a typewriter in Mr. Younger's office?

A. That I don't know.

Q. You did not prepare the complaint? A. No sir.

Q. Had nothing whatever to do with the preparation of the complaint?

A. No sir I don't know when it was prepared.

Q. Where was it that you obtained this complaint?

A. I obtained it from Mrs. Younger.

Q. From Mrs. Helen Younger?

A. I don't know whether- What her name is- Helen, I mean Mrs. Younger [sic].

----- Transcriber's Insert -----

[Transcriber's Note: Helen Younger was the daughter of Jeannie Waddell Younger and Charles B. Younger Sr., and the sister of Charles B. Younger Jr. She subsequently was known as Mrs. Helen Younger Chase. From later references, it appears that it was Mrs. Jeannie Waddell Younger who handed the complaint to John Leonard.]

----- End of Transcriber's Insert -----

[110]

Q. Charles B. Younger's wife?

A. Well the wife of one and mother of the other.

Q. Wife of one and mother of the other? A. Yes sir.

Q. You did not see the complaint at all did you?

A. No, not at that time.

Q. Is it not a fact that at the time that complaint was filed the plaintiff was in Europe?

A. I don't know.

Q. The wife of Mr. Charles B. Younger gave you this complaint?

A. Yes sir.

Q. And You consented to act as attorney for the plaintiff?

A. Not at that time no. I consented to act as her attorney before a long time before that time.

Q. Had you seen her at all before that? A. Yes sir. I think it was about the month before that she spoke to me upon the matter asked me if I could represent her in it.

Q. Did she tell you that her brother was giving you the complaint?

A. No sir.

Mr. Lindsay: I object to this as not cross-examination in calling for a privileged [sic] communication.

Mr. Sullivan: Question withdrawn. Q. Now in that suit when you acted as attorney for the plaintiff, you say you did not know by whom or where the complaint was prepared?

A. No sir.

Q. Don't you know as a matter of fact it was prepared in the office of Charles B. Younger?

A. I said I did not.

Q. As a matter of fact was not Charles B. Younger in that suit representing the defendants?

A. No sir; both of the Charles B. Younger[s] were representing someone I think in that suit.

Q. You had your office with Charles B. Younger at that time did you not? A. No sir.

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Q. On the same floor with Charles B. Younger?

A. If you want to call it on the same floor it was on the same story in the same building.

Q. And since you obtained the complaint from Charles B. Younger's wife you were attorney in that suit is not that so?

A. The wife of one and the mother of the other.

Q. and the two Youngers were the Attorneys for the defendant in that case were they not?

A. For different defendants.

Q. Were not you acting in collusion as attorney for the plaintiff with the attorney for the defendant in that suit? A. No sir.

- Q. Was not you acting in concert? A. No sir.**
- Q. As attorney for the plaintiff with the attorneys in that case for the defendant?**
- A. Please excuse me. What do you mean by "concert"?**
- Q. Acting together. Did you not, as attorney for the plaintiff consult with the attorneys for the defendants in that suit, in reference to the trial and disposition in that case?**
- A. In court I did.**
- Q. Did not before you came to Court? A. No sir.**
- Q. Consulted with Charles B. Younger Senior and Charles B. Younger Junior who represented the defendant at the time you represented the plaintiff? A. No sir.**
- Q. As to proper management and disposition of that suit?**
- A. No sir; I might have said something to them about the service of summons on some of the people- I don't know; that is about all.**
- Q. Did you not act in concert as attorney for the plaintiff with attorneys for the defendant in that suit when it was tried before Judge Dooling?**
- A. You will have to explain to me what you mean by the word concert.**
- Q. You have a college education have you not?**

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- A. I am supposed to have.**
- Q. Don't you understand the meaning of that word "concert"?**
- A. It has a meaning to "act together".**
- Q. Take the usual meaning of "concert", did you not, as attorney for the plaintiff act in concert with attorney for the defendant in that suit?**
- A. No sir; not in my meaning of the word concert I did not.**
- Q. When the wife of Charles B. Younger gave you the complaint did she not tell you that the complaint was prepared by her husband in his office? A. No sir.**
- Q. Did not she retain you as attorney for the plaintiff in that case, give you the paper and ask you to handle it for the plaintiff in the case?**
- A. No sir, she told me that her daughter- she told me that her daughter had given her these papers to give to me.**
- Q. She told you that? A. Yes sir.**
- Q. And--**
- A. (Interrupting) I did not ask her if I was to submit them to the other Youngers before filing them, or if they had anything to do with it. And she said for me to file them, and gave me the papers.**
- Q. Do you say now to this Committee that you obtained this complaint from the wife of one of the attorneys for the defense in that case, and did not show the complaint to the husband of that lady? A. Yes that is what I say.**
- Q. Did you consult with the husband of that lady at all concerning the subject of the action before you filed the complaint?**
- A. No sir I never mentioned it to her at all.**
- Q. You did not know what reference was made in the complaint about the claim of Judge Smith in the land?**
- A. I am not positive about that.**

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- Q. Will you state now what the recitals were as to the claims of Judge Smith to this land as**

admitted in your complaint?

A. No sir I would not state whether they are or not, because I cannot- my memory is not clear, whether I read that complaint or not. Of course if I read that complaint--

Q. (Interrupting) Are you accustomed, as attorney for parties, to file pleadings without knowing the contents of the pleadings?

A. Not when I prepare them.

Q. And when the pleadings were prepared by other attorneys you take the complaints and file them as they come to you without reading them?

A. I don't know as I ever did file any as were prepared by any other counsel before or since. I don't doubt but as I should do it on request.

Q. Now what claim did you understand at the time this complaint was filed, Judge Smith had set up against this land described in that complaint?

A. Well I don't know as I heard anything about it before the filing of the complaint at all, but I did afterwards.

Q. Before you filed this complaint making Judge Smith a party to this suit, he set up that he claimed an interest in the land. You did not know at the time it was filed that he claimed no interest in the land did you?

A. I don't know whether he did or not.

Q. You don't know at the time you made him a party to this suit, whether he claimed or did not own any interest in the land?

A. I did not make him a party in the suit.

Q. Was this complaint filed by you in this suit? A. Yes sir.

Q. Verified, sworn to? A. It was not verified--

Mr. Lindsay: I object; the complaint is the best evidence. The Chairman: Objection sustained.

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Mr. Sullivan: Q. Did you learn afterwards Judge Smith had no interest in the land described in the complaint?

A. Well I heard that he went out there frequently.

Q. Did you learn, I say after this paper was filed, that Judge Smith had no interest in the land?

A. I told you what I heard about the land.

Q. I don't want to know what you heard.

A. I don't know whether he did or not.

Q. Now Mr. Leonard, did you simply lend your name as attorney for the plaintiff in this case? A. No sir I was employed.

Q. Were you paid your fee as attorney for the plaintiff?

A. I was employed by her; if anything passed between us I will not tell you.

Q. You say employed by her? A. By Mrs. Younger.

Q. Do you say Mrs. Younger the wife of Charles B. Younger?

A. No sir I did not see her until after the filing of it.

Q. Now long before the complaint was filed did you receive it from Mrs. Charles B. Younger?

A. I think about 20 minutes or half an hour.

Q. Don't you know that she came direct from the office of her husband and gave you the complaint prepared by her husband in an action where her husband was going to represent the defendants in the suit? A. No sir I do not.

Q. So at the time she gave you this paper and asked you to act as attorney for the plaintiff, her husband and her son were representing the defendants in this very action. After you got this

complaint from Mrs. Charles B. Younger, when she requested you to act as attorney for the plaintiff with her husband and son, her husband represented the defendant of the suit?

A. I did not know it but I supposed they were.

Q. You did not know it but supposed they were?

A. Yes sir.

Q. You learned afterwards that they were attorneys for the

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defendants did you not?

A. Yes sir.

Q. You admitted service as attorney for the plaintiff upon the summons which these two lawyers served upon you did you not?

A. Yes sir I think I did.

Q. Did you ever receive any compensation for the services you rendered in that suit?

A. I refuse to tell you.

Q. Did not you receive compensation for the defendant in that suit for the services that you rendered representing the plaintiff in that action? A. No sir.

Q. Who prepared the filings in that case? A. I don't know.

Q. Did you prepare the filings in the case?

A. I might have assisted in it, I don't know whether I did or not.

Q. Did you prepare any pleadings at all from the inception of the suit until the termination of the suit in that action?

A. I don't remember whether I did or not- I don't remember of preparing any.

Q. Did you in that action, when you appeared as attorney for the plaintiff, up to the final judgment of the case, prepare a single paper? A. I don't know whether I did or not.

Q. Is it not a fact that all the pleadings and papers of bearing on the case whom you represented, were prepared in the office of Mr. Charles B. Younger, by Charles B. Younger?

A. I think not, no sir.

Q. You don't know do you?

A. There were some of them prepared here in Court.

Q. You personally did not prepare a single paper did you?

A. There is quite a proportion of same--

Q. Did you personally prepare a single paper in this case from the time the action was commenced up to the time of the final judgment? A. I don't remember, I told you.

Q. Did you go into the case when you represented the plaintiff

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against a great number of defendants, appear in court and argue any motion? A. Yes sir.

Q. What motion did you argue?

A. I argued a motion that Mr. Cassin have permission to file an answer; as I objected to it I argued against it.

Q. Mr. Cassin as attorney for one of the defendants asked leave to file an answer did he?

A. No sir a lot of them.

Q. As attorney for some of the defendants did he not ask leave to file an answer? A. Yes sir.

Q. You personally appeared in Court and objected to the filing of the answer? A. Yes sir.

Q. Before making the objection to filing an answer did you consult with Charles B. Younger for the purpose of making the objection to the motion of Mr. Cassin?

A. No sir, we were all in Court together and we had no time to do anything at all of the kind.

Q. Is it not a fact that when Mr. Cassin asked leave to file an answer Charles B. Younger filed a motion?

A. Yes sir he did.

Q. You did not yourself?

A. Yes sir I did.

Q. Now did you make any other argument in that case from beginning to end?

A. Yes sir, I did.

Q. What?

A. About a stipulation of the City of Santa Cruz as to what rights they should have; we all stipulated I believe, except Mr. Cassin and his wife.

Q. Did you make an argument in the case? A. Yes sir.

Q. Upon the trial of the case was the interest of Judge Smith proven at all? A. No sir.

Q. Did not a proof appear in the case where Judge Smith was made a party to the defendants - there was no evidence at all showing that Judge Smith had or claimed any interest in the land under controversy?

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A. The best of my recollection serves me, there was no one appearing for Judge Smith at all, nor did Judge Smith appear.

Q. Upon the trial of the case was there any evidence introduced tending to show that Judge Smith contended or had any interest whatever in the land under controversy?

A. No sir I don't think there was.

Q. You don't think there was?

I am quite positive he did not appear nor anyone for him at all.

Q. As a matter of fact at that time it was found and decided by the Court, Judge Dooling sitting, that Judge Smith had no interest in the land was it not?

A. I think so; the judgment is the best evidence.

Q. You know at the time of the trial that Judge Smith had no interest - claimed no interest - in the land did you not?

A. No sir, I did not.

Q. Well, was it not admitted and proved at the trial that Judge Smith had no interest or never claimed any interest in the land at all? A. It was admitted; I don't know whether it was proven; it was to our interests to admit it.

Q. After this complaint was filed making Judge Smith a party to the suit, were you not cited to show cause why you should not be punished for contempt of Court in filing this complaint against him?

Mr. Lindsay: Lets have the evidence.

Mr. Sullivan: I am simply asking for a fact. The Witness: A. Yes sir.

Mr. Sullivan: Q. That is a fact. I will show you this affidavit, show you one sworn to by W. C. Hoffmann on the 27th day of April and ask if you ever was [sic] that affidavit before.

A. Yes sir, I think I did.

Q. That is an affidavit for an order to show cause why you

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should not be punished for contempt? A. Yes sir.

Q. I show you the order to show cause and ask you if you ever saw that before?

A. Yes sir, I think I saw this before- I am quite sure I did, either that or a copy of it.

Mr. Adylotte: Here is a citation Mr. Sullivan.

Mr. Sullivan: Now this is an affidavit for the order to show cause.

Mr. Adylotte: It is one of the papers which we want to introduce.

Mr. Sullivan: It is sworn to the 23rd day of April 1900. Mr. Lindsay: What is it?

Mr. Sullivan: 23rd day of April 1900.

Mr. Lindsay: I desire to object to this affidavit being read in evidence on the grounds that it is not cross-examination.

Mr. Sullivan: It is already in evidence Mr. Lindsay.

Mr. Lindsay: It is in evidence as to another matter - the date of the conversation which the witness testified to was March 13th 1900, and the affidavit of the proceedings which were held subsequently could hardly tend to prove the claims of the witness.

The Chairman: I suggest we permit Mr. Sullivan to cross-examine Mr. Leonard on Specification No. 5. There is some question raised there, because that specification was gone over last night and it had not been closed up.

Mr. Lindsay: What specification is this?

Mr. Sullivan: This is numbered as Specification No. 5; it is in evidence, and being in evidence, we have the right to read it.

Mr. Lindsay: Of course it is in evidence; I understand it was addressed as Specification No. 5; or objection follows.

Mr. Adylotte: If I remember these papers were subsequently

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Mr. Sullivan: We stipulated last night what papers were to be in evidence.

Mr. Adylotte: That was withdrawn.

Mr. Sullivan: I don't know whether the stipulation of papers withdrawn - you state you withdraw these papers?

Mr. Lindsay: Let the matter go in; we don't want anything but the fullest investigation, so that the proceedings may be regular.

Mr. Chairman if you introduce these in evidence, what is your object in reading it?

Mr. Sullivan: I simply want the gentlemen to understand the nature of this action brought by Helen Younger against Moore.

Mr. Chairman: Very well, proceed.

Mr. Sullivan: It goes to our contention that this was a collusive suit.

(The affidavit in words and figures is as follows: -)

----- Transcriber's Insert -----

[Transcriber Note: The affidavit does not appear in this document.]

----- End of Transcriber's Insert -----

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Mr. Sullivan: Now is there an answer to this in among the papers?

Mr. Adylotte: There is a plea.

Mr. Sullivan: Is there no sworn statement controverting the averments of this affidavit?

Mr. Adylotte: It is a motion to quash.

Mr. Sullivan: There is no answer to this complaint in the case of Younger Vs. Moore?

Mr. Adylotte: There was a motion made to quash the order to show cause, but there was no answer filed to this.

Mr. Sullivan: The motion was granted?

Mr. Adylotte: Yes sir.

Mr. Sullivan: Upon that affidavit of the 27th day of April 1900, the plaintiff was ordered to show cause, the order to show cause was issued out of this Court; it is a Court Record requiring

Charles B. Younger Senior and Charles B. Younger Junior, and J. W. Leonard to appear and show cause to this Court why they should not be punished for contempt for abuse of the process of the Court. We also offer in evidence the order to show cause. Mr. Lindsay: May I see it? Are you going to read it?

Mr. Sullivan: No sir; the notice of the order to show cause based upon that affidavit; there was a citation also issued that required the witness and Charles B. Younger Sr. and Charles B. Younger Sr. to appear and show cause why they should not be punished for contempt for permitting the affidavit set forth, that affidavit of Mr. Hoffmann's; that citation we offer in evidence; you may introduce this motion to quash.

Mr. Adylotte: Considered in evidence also; also the plea that may be considered in evidence also; also the order of Judge Dooling which I would request, Mr. Sullivan, you read at this

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time.

Mr. Sullivan: This order of Judge Dooling may be considered in evidence at this time if you desire. You may read it, I am not anxious to read it myself.

Mr. Lindsay: I prefer it to be read.

(These papers in words and figures are as follows: -)

-----Transcriber's Insert -----
[Transcriber Note: The affidavit does not appear in this document.]
----- End of Transcriber's Insert -----

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Mr. Sullivan: Have you the summons and returns together with the proof of service?

Mr. Sullivan: Q. Do you remember the fact that a summons was issued in this case of Younger Vs. Moore?

The Witness: A. Yes sir.

Q. Now there was a return of service; someone prepared that return of service.

Mr. Lindsay: I object, the record speaks for itself.

Mr. Sullivan: No it does not. Did you prepare the return of the summons in this case? A. Well someone I could not tell you.

Q. I will show you the return of service. Did you prepare the interlocutory decree in this case? A. No sir.

Q. As attorney for the plaintiff? A. No sir, I did not.

Q. Did you make it? It is usual for the plaintiff in an action of a partition for the plaintiff to prepare the decree? A. It is.

Q. Did you prepare the final decree in the case?

A. No sir I did not.

Q. I will show you the summons in the case and the return. Is it not a fact that the attorney for the plaintiff has a summons served upon the various defendants in the action? A. Oh yes.

Q. Did you as attorney for the plaintiff, prepare the return of service, showing someone had been served and by whom?

A. Yes, from that it appears he served the summons himself.

Q. The summons was not the usual - was not on the usual printed form was it. I will show you the summons here. The summons was written on a typewriting machine? A. Yes sir.

Q. Now that sommons was prepare in the office of the attorney for the defendants was it not, Mr. Younger?

A. I don't know sir. I received that with the complaint.

Q. You received the complaint the same time as the complaint?

A. Yes sir.

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Q. You did not prepare the summons then? A. No sir.

Q. Don't you know that was prepared in the office of Mr. Younger, attorney for the defendants?

A. No sir, I don't know it.

Q. The affidavit of service was made by Walter Kelly. Who is Walter Kelly? A. He is a constable here. [Kelly apparently is an error, see Corey, Walter A. (Constable)]

Q. Who prepared this returns of service to which Walter Kelly made affidavit? A. I received that also.

Q. You received that also with the complaint? A. Yes sir.

Q. And the return of summons? A. Yes sir, it was prepared ready to serve.

Q. You received the complaint and summons, and affidavit of service of summons the same day before the summons was filed?

A. I am positive I received the summons and complaint, but I don't know about the affidavit- I am not positive about that.

Q. You just said you received this affidavit of service of summons the very day you got the complaint and summons.

A. I am not positive whether I received that at all at any time.

Q. You stated a moment ago you did; is not that correct?

A. I say I am not positive.

Q. Is your best recollection to the effect that you received the affidavit of service of summons the day you got the complaint?

A. No sir I have no recollection of it. I know I received the summons in typewritten form, and the complaint.

Q. The complaint was filed on 15th day of July 1899, the return of summons sworn to by Walter

A. Kelly was filed on the 9th day of November 1899. Now when you come to consider the dates it is impossible you should have received the affidavit of

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service the same day you got the complaint.

A. I don't know. I have no recollection of it.

Q. Have no recollection of it? A. No sir.

Q. Do you remember when you got this return of summons?

A. No sir, I do not.

Q. Don't remember when you got it? A. No sir, I don't.

Q. Do you remember who gave that to you?

A. No sir I don't remember whether I ever had it.

Q. Do you recollect where it was prepared? A. No sir.

Q. Do you know who prepared it?

A. I do not. I have no recollection of that returns of summons.

Q. You had nothing to do with that portion of the affidavit, the return of summons upon it?

A. I have no recollection.

Q. Who prepared the return of service?

A. There -that person- the constable, or sheriff, whoever served it.

Q. Did Mr. Kelly give you this return?

A. I told you I have no recollection of it.

Q. You did appear to show cause why you should not be punished for contempt, and interpose a plea?

A. No sir, I went out to Judge Smith's house-offered to go out--

Q. (Interrupting) Answer the question, yes or no.

Mr. Lindsay: The record shows whether he did or not.

Q. Who was your attorney in that contempt proceedings?

A. Mr. Skirm.

Q. Who was attorney for Charles B. Younger Senior and Charles B. Younger Jr.?

A. I don't think Mr. Charles B. Younger appeared at all; I am quite sure he did not.

Q. You are quite sure? A. Yes sir.

Q. Did either of the Youngers appear?

A. I think that Mr. Charles Younger Jr. did.

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Q. Who appeared for him as his attorney? A. Mr. Skirm.

Q. Mr. Skirm appeared as attorney for you and for Mr. Charles B. Younger? A. Yes sir.

Mr. Charles B. Younger Jr.

Q. Have you any information now as to who actually prepared the complaint in that partition suit? A. No sir, I have not.

Q. Have you any information as to who prepared the other papers on behalf of the plaintiff of that suit?

A. Well not as to the issuing of the summons; I don't recollect where that was prepared so I cannot answer that part of it intelligently.

Q. Did you from the year 1899, up to the time of the contempt proceedings, and from the time of the contempt proceedings to date, ever learn from Mr. Younger Sr. or Jr. who prepared the papers in that case? A. No sir.

Q. Or the return of service of summons in that action?

A. No sir, I did not.

Q. Never heard from any source? A. No sir; I have my opinion but I don't know.

Q. You say now, that you have your opinion? A. Yes sir.

Q. Well state your opinion.

(Objected to and question withdrawn.)

Q. This conversation you had took place in March 1900? A. Yes sir.

Q. In 1902 Judge Smith was a candidate for reelection was he not?

A. Yes sir.

Q. During the year of 1902, or during the heat of the campaign, did you make any speeches against Judge Smith--against his candidacy?

The Chairman: Mr. Sullivan, what specification are you proceeding under?

The Witness: A. I am perfectly willing to answer.

Mr. Sullivan: This comes in under the reply of Judge Smith, the

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reply filed by him.

Mr. Sullivan: Q. Did you go around among different people of this County and make a

statement against Judge Smith? A. Yes sir.

Q. You electioneered against Judge Smith?

A. I don't know whether you would call it electioneering; all those who spoke to me I told them I did not think he was fit for the office.

Q. Did you write articles in the "Surf" denouncing Judge Smith?

A. No sir.

Q. Did you read any article which denounced Judge Smith? A. No sir.

Q. Did you give the material to Mr. Geo. P. Burke to denounce Judge Smith in the streets of Santa Cruz?

A. Yes sir I think I did. Yes sir.

Q. Did you give material to others to denounce Judge Smith for the purpose of preventing his election?

A. I don't remember whether I did or not.

Q. Did you give information to these persons?

A. Oh yes I gave information to everyone I met who talked to me about it.

Q. You fought Judge Smith very bitterly did you not during the campaign?

A. No sir I did not fight him very bitterly; I did what I could casually against him.

Q. You did what you could casually against him?

A. Yes sir.

Q. You sought the nomination in the Democratic Convention against Judge Smith?

A. No sir I intended to seek that nomination but never went before the Convention.

Q. Before the Primary Election at which the Delegates were elected, you were soliciting votes for the nomination were you not?

A. Yes sir.

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Q. And sought by all possible means to have the Primary Election result in your favor? A. No sir, all possible honest means.

Q. How many delegates did you get out of the crowd?

(Objected to and question withdrawn.)

Mr. Sullivan: We want to show the animus towards Judge Smith. The Chairman: This is the main witness, who is the one who prepared the memorial, and he has signed each one of the twelve specifications, and has made many affidavits; he is the main factor in these proceedings, and on that account you ought to be allowed to cross-examine him with greater freedom than any other person.

Mr. Sullivan: Q. Now Mr. Leonard, during the campaign of 1902, was this charge amongst the other charges that were made against Judge Smith made public? A. What charge is that.

Q. This charge that you made that Judge Smith had a private conversation with you in which he sought an improper conduct on the part of the client? A. Yes sir as public as anything else on the subject.

Q. Was it published in the papers? A. I don't think so.

Q. Don't you know that the papers of Santa Cruz, a certain portion of the papers, published all these charges against him excepting that Sambuck charge? A. I don't know whether it did or not.

Q. During the campaign of 1902 there was no reference to this charge which you are now making against Judge Smith, that you had this conversation concerning the Sambuck case?

A. No sir there was no reference; I do not know of the papers.

Q. There was no reference to it in any of the papers? A. No sir.

Q. Did you hear Mr. Geo. P. Burke make his speeches against Judge Smith? A. No sir.

Mr. Lindsay: I submit that is immaterial.

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Mr. Sullivan: I want to show this charge; it is proper examination.

The Chairman: The objection is sustained as to Mr. Burke.

Mr. Sullivan: We are asking these questions in support of the petition filed by Judge Smith in the Legislature, also for the purpose of showing the hostility of the witness.

Q. You say you furnished the material for Geo. P. Burke, the material that Mr. Burke used?

A. I don't say so; I don't know whether he used it or not.

Q. You furnished some material to him? **A.** Yes sir, I did.

Q. Now did you hear Mr. Burke make his speeches against Judge Smith? **A.** No sir.

Mr. Lindsay: I object as immaterial.

The Chairman: Objection sustained. It is hearsay.

Mr. Sullivan: **Q.** While you were trying the Sambuck case, why did you not demand that the case be tried by any other Judge, if Judge Smith had made that improper proposition?

A. Well I did not think it was going to hurt me any.

Q. Did not think it was going to hurt you any? **A.** No sir.

Q. Just one question that has been suggested to me. Did you not receive the complaint in the case of Younger Vs. Moore, in the home of Mr. Younger, attorney for the defense? **A.** Yes sir.

Q. And did you receive a fee for filing the complaint in the case, in the house of Mr. Younger?

A. Well it might not have been in the house, but it was in his home, just where I don't know, whether outside the door or in.

Q. You got a fee from Mr. Younger didn't you?

Mr. Lindsay: He testified from Mrs. Younger.

Mr. Sullivan: Is it community property?

Mr. Lindsay: I don't know.

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The Witness: I understood it was Mrs. Younger's property.

Mr. Sullivan: **Q.** When did you learn the complaint was in the house?

Mr. Lindsay: Are we going over that again?

Mr. Sullivan: One or two questions suggested by counsel. **The Witness:** **A.** Now that I don't remember.

Q. Don't remember?

A. No sir. My best recollection now to the last question is that I did not know the complaint was in the house until it was delivered to me.

Q. Until when? **A.** Until the time it was given to me by Mrs. Younger.

Mr. Sullivan: I think that is enough on that specification.

Mr. Lindsay: You have covered two specifications in your own petition have you?

Mr. Sullivan: I have so far as he is concerned.

Mr. Lindsay: I would like to ask the witness a few questions.

Mr. Sullivan: Just wait.

Q. In the order to show cause why you should not be punished for contempt case, was there not a coolness between you and Judge Smith?

A. No sir, I went out to his house to see him about it.

Q. Is it not a fact that after that order to show cause was made and issued, that you and Judge Smith seldom or did not speak to one another, only to hardly recognize one another?

A. No sir, I spoke right along to Judge Smith; I think I shook hands with him every time I met him; he told me he was sorry the Youngers had done that.

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REDIRECT EXAMINATION.

Mr. Lindsay: Q. Mr. Leonard, did you make this charge against Judge Smith in reference to the Sambuck case because of any feeling of hostility you have towards him?

A. No sir no personal.

Mr. Sullivan: We object to counsel leading his own witness; I have a right to cross-examine, you have no right to lead him.

Mr. Lindsay: Q. I will ask you what motives have influenced you in the matter of giving your testimony?

Mr. Sullivan: We object on the ground as calling for the motives of the witness- he is calling for the opinion of the witness.

(Objection overruled.)

The witness: A. Because I thought it was my duty to show the unfitness of Judge Smith to sit as Superior Judge.

Q. In giving your testimony it was not any personal animus to Judge Smith himself except as an official. Has your testimony been biased or colored?--

Mr. Sullivan: We object to that.

Mr. Lindsay: Wait until you have seen the question--in any manner by reason of any of the matters to which Mr. Sullivan has referred to on cross-examination? A. Not at all.

Mr. Sullivan: I move to strike out the answer; I will object to it, because it is leading and it is improper.

The Chairman: It is getting at some of the facts the Committee would like to know.

(Objection overruled.)

Mr. Sullivan: It is calling for the opinion of the witness. The Witness: A. No sir, not at all.

Mr. Lindsay: Q. You stated in answer to a question asked by counsel that you aspired to the nomination at the hands of the

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Democratic party of this County for the office of Superior Judge in 1902? A. Yes sir.

Q. And that you did not go before the Convention. A. No sir I did not.

Q. At whose suggestion did you aspire for that nomination?

Mr. Sullivan: I suspect as immaterial, calling for hearsay.

The Chairman: We overrule the objection. I think you brought that out.

Mr. Sullivan: I did not ask him for any suggestion, what anybody said to him, I simply brought out the fact that he asked for the nomination. This is hear [sic] testimony.

The Chairman: Objection sustained.

Mr. Lindsay: I don't want to lead the witness. Q. I will ask you the direct question. Among others, if there were others, who suggest to you the advisability of your applying for the nomination for that office at that time; was Mr. Chas. M. Cassin one?

Mr. Sullivan: I object as immaterial.

Mr. Cassin: let him answer.

A. Yes sir.

Mr. Lindsay: Q. Why did you not go before the Convention Mr. Leonard to get the nomination?

Mr. Sullivan: I object as immaterial and irrelevant, going into politics that should not be considered here.

(Objection overruled.)

A. Because I learned that Mr. Cassin was supporting Mr. Smith, and Mr. Smith in all probability-- and I concluded he would get more votes, and I was going into the right- into the campaign- for the purpose of beating Judge Smith, if I should come out independently, more than for the purpose of being elected.

Q. When Mr. Cassin suggested to you that you should aspire for

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that nomination, did he give you any reasons why you should?

A. Yes sir. Q. What were they?

Mr. Sullivan: I object to that as calling for hearsay.

(Objection sustained.)

Mr. Lindsay: Q. Now Mr. Leonard, these contempt proceedings to which reference has been made, were dismissed by Judge Dooling were they not? A. Yes sir.

Q. The action which counsel referred to, Helen Younger Vs. Chas. Moore et Al, it was an action in partition, was it not? A. Yes sir. And for an accounting.

Q. Mr. Cassin represented some of the defendants?

A. Yes sir.

Q. And various attorneys represented other? A. Yes sir.

Mr. Lindsay: The complaint, Mr. Chairman, was filed July 15th 1899, and the return of service as read by counsel was dated some time in November 1891, I have not the exact date.

Mr. Sullivan: By-the-way that return of service is supposed to be in evidence.

Mr. Lindsay: Yes it is in evidence. I desire to call the attention of the Committee at this time to the fact that the order of Court striking this complaint from the files is dated August 17th, 1891 before any return of service, and if it has not been read, I wish to read it.

Mr. Adylotte: Yes it has been read and it is in evidence.

Mr. Lindsay: I also desire to call the attention of the Court to the fact that the Remittitur from the Supreme Court in the same matter-

Mr. Sullivan: (Interrupting) That is in evidence also. Mr. Lindsay: Was filed here on August 11th, 1902.

The Chairman: I think that is in evidence.

Mr. Lindsay: Yes all in evidence.

The Chairman: Mr. Leonard do we understand you signed your name

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to this complaint?

The Witness: A. No sir, the first of my signatures was on the summons itself.

The Chairman: You filed the complaint did you not?

A. Yes sir.

Q. For the plaintiff?

A. Yes sir.

Q. What were the reasons for your signing your name?

A. She appeared as proper person; she must appear in proper person--

Q. (Interrupting) She appeared for herself? A. Yes sir. That is she signed it in proper person; it could not be signed by anyone as her attorney.

Q. You were employed by her in good faith to file the complaint?

A. Yes sir.

Mr. Burke: You say you assisted at the preparations of some of the pleadings in this case. How many did you assist?

A. There were quite a number of attorneys here, Mr. Lane and Mr. Cassin. I did not assist Mr. Cassin as he went out of the case; there were Mr. Lane and Mr. Netherton, Mr. Jeter, and both of the Mr. Youngers and myself.

Q. As attorney for the plaintiff?

A. No some attorneys being for different parties, some of the attorneys for quite a number of defendants.

Mr. Lindsay: It was an action for petition in which all were interested. As I understand in a partition suit all parties are considered as plaintiffs, they are all actors.

Mr. Beardslee: You say there was a stipulation filed in this Court, a regular stipulation entered into with Judge Smith, that he had no claim to this property? **A.** No sir there was not.

Q. I understood so, that is why I asked you.

Mr. Sullivan: He said it was admitted at the trial.

The Witness: **A.** There was no admission: my recollection in regard to it that there was no attorney in that matter at all.

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Q. I understand you to say in answer to Mr. Sullivan's question that you admitted.

A. I cannot inferentially admit that there was any admission at all.

Mr. Lindsay: What you mean is that there is no evidence in support of that allegation at all.

A. No sir.

Mr. Beardslee: **Q.** It is set forth in the interlocutory decree that none of these defendants including Lucas F. Smith, or either of them had any interest in the property? **A.** Yes sir.

Q. And I was asking--I understood you to say it was admitted in Court by the attorneys that he did not have any interest.

A. No, sir, it was admitted inferentially that he did not have any interest in the matter--did not take it up--.

Mr. Burke: Did the Judge have attorneys? **A.** No sir he did not. **Mr. Burke:** It was a default?

A. Yes sir, I think so entered.

Mr. Sullivan: During the case, was there any evidence of facts which tended to prove the averments of the complaint?

A. No sir, all of the evidence--practically all of the evidence that was introduced in that case, was introduced by Mr. Younger Sr. as he knew the papers better than anyone.

Q. He did control the case, didn't he?

A. Well no sir, he did not have the control of the case; we all agreed on some little points, but he knowing the papers better than anyone else, and he set forth the evidence in just what we considered the proper order.

Q. Did you from the time the complaint was filed, up to the time of the trial, ever read the complaint through?

Mr. Lindsay: I think that was gone into.

The Chairman: I think that question has been asked and answered before.

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Mr. Sullivan: If that is the understanding I understand that he did not read it through from the time the complaint was filed.

The Witness: A. I cannot say whether I did nor not; most likely I did read it through.

Q. The signed answers and demurrers and pleadings that came in with the attorney for the plaintiff were signed by you? A. Yes sir.

Q. Admitted service? A. Yes sir.

Mr. Burke: Were there all these Youngers, brother and husband of the plaintiff in this case?

A. No sir, one was the brother and the other was the father.

Mr. Sullivan: Charles B. Younger was the father of the plaintiff and Charles B. Younger Jr. was the brother of the plaintiff.

The Witness: Mrs. Charles B. Younger and Helen B.[sic] Younger were plaintiffs and as I represented one they were joined so far as this matter was concerned, was tenets[sic] in common- it was a suit of tenets[sic] in common.

Q. The plaintiff brought this suit in her proper person?

A. Yes sir.

Mr. Sullivan: Q. Mr. Cassin did not come in the suit until a default was entered?

A. I understand he did prepare some papers for Judge Smith.

Mr. Sullivan: Is that all of that?

Mr. Lindsay: That is all of that specification.

The Chairman: That specification is closed.

Mr. Sullivan: So far as the prosecution is concerned?

The Chairman: You have no more evidence to offer on this specification?

Mr. Adylotte: Not on that Specification.

The Chairman: What is the status of your evidence on Specification No. 5.

Mr. Sullivan: That is closed also I understand.

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Mr. Adylotte: These papers have been introduced in the examination just closed and covers that point.

The Chairman: That concludes that.

Mr. Adylotte: Yes.

The Chairman: Specification #6 is closed.

Mr. Adylotte: I understand these papers are in evidence here now.

Mr. Sullivan: Satisfaction and sufficient.

The Chairman: We understand that evidence of two, four, five and six is closed.

Mr. Lindsay: That is my understanding Mr. Chairman.

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TESTIMONY of
HIRAM FANEUF,

Sworn.

Mr. LINDSAY: (Q) Where do you reside, Mr. Faneuf?

A. Santa Cruz.

Q. How long have you resided in this City?

A. About fourteen years off and on. I have been here the last time about ten years.

Q. During the last ten years have you been engaged in the farming ^plumbing^ business?

A. Well, with the exception of about three years that I farmed.

Q. Where is your place of business now?

A. 29, Pacific Avenue.

Q. Are you acquainted with the Honorable Lucas F. Smith, Judge of the Superior Court?

A. To speak of him, yes sir; I am not personally acquainted with him.

Q. You have no particular personal acquaintance with him?

A. No sir.

Q. Do you know one Thomas Dakin?

A. Well, I know Thomas to speak to him; I am not particularly personally acquainted with him.

Q. You know him, also, casually? A. Yes sir.

Q. I call your attention to the case that was tried in this Court on or about the nineteenth day of April, 1904, in which Thomas Dakin was defendant; do you remember that case?

A. Yes sir.

Q. Was it a jury case? A. Yes sir.

Q. Were you present? A. Yes sir; I was present.

Q. In what capacity? A. As a juror.

Q. You were a juror? A. Yes sir.

Q. Do you remember what attorneys were engaged in the trial of the case? A. I think that Mr. Cassin appeared for the plaintiff, -- Cassin and Knight, and Mr. Charles Younger Jr. for the

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defendant; I think that is right.

Q. Mr. Cassin and Mr. Knight appeared for the plaintiff?

A. Yes sir.

Q. And Mr. Charles B. Younger Jr. or the defendant?

A. Yes sir.

Q. You mean Mr. Charles M. Cassin? A. Yes sir.

Q. What Judge was presiding? A. Judge Smith.

Q. Judge Lucas F. Smith? A. Yes sir.

Q. Now, Mr. Faneuf, during the trial of the case, and while the case was in progress, did any altercation ensue between Mr. Dakin the defendant and Mr. Cassin, the attorney for the plaintiff?

A. Well, yes sir; they had a little altercation.

Q. What was the nature of the altercation?

A. Well, it was in the nature of a small-sized scrap.

Q. Well, that is rather indefinite. What do you mean by a small sized scrap? A. Well, I mean that there were several blows struck.

Q. In the courtroom? A. Yes sir.

Q. While the case was on trial? A. Yes sir.

Q. Where was Judge Smith at the time?

A. He was on the bench, at the bar.

Q. And the juror in the box? A. Yes sir.

Q. Who struck the first blow? A. Well, Mr. Cassin struck one or two and Mr. Dakin struck one or two, and I believe that Mr. Dakin's brother struck one blow.

Q. Now, whom did Mr. Cassin strike? A. He struck Thomas Dakin.

Q. What did he strike him with? A. With his fist.

Q. Whom did Mr. Thomas Dakin strike? A. He struck Mr. Cassin.

Q. What did he strike Mr. Cassin with? A. With his fist.

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Q. And you say there was another one who took part in the scrap?

A. Yes sir.

Q. Mr. William Dakin? A. Yes sir.

Q. At what stage of the proceedings did he come into it?

A. After Mr. Cassin and Mr. Thomas Dakin had come to blows, why Mr. William Dakin stepped in.

Q. Who struck the first blow?

A. Well, I think Mr. Cassin did.

Q. You were where you could see, Mr. Faneuf?

A. Yes sir; I was sitting right over there in the box.

Q. That is your recollection, is it?

A. That is to the best of my recollection; yes sir.

Q. Did anything precede the striking of the blow, --any words or any gestures or anything of that kind?

A. Well, none that I heard or saw.

Q. Was there any movement on the part of either of these people Mr. Cassin struck Mr. Dakin?

A. Well, the first movement I noticed was Mr. Cassin arise; that is the first I noticed.

Q. Where was Mr. Dakin at the time?

A. Mr. Dakin I think was sitting just about where he is at present.

Q. This is Mr. Dakin? A. Yes sir.

Q. Where was Mr. Cassin sitting? A. Just about where he is at present.

Q. Now then, you noticed Mr. Cassin arise. Where was Mr. Cassin when the blow was struck?

A. Well, he was pretty close to Mr. Dakin, I should judge, when the blow was struck.

Q. But I mean in reference to the position in the court room, where was he, about; where was he in the courtroom when he struck Mr. Dakin? A. Well, I think Mr. Cassin advanced to where Mr.

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Thomas Dakin is now.

Q. Then I understand your testimony to be that Mr. Cassin arose and then advanced towards Mr. Thomas Dakin and struck him?

A. Yes sir. Mr. Thomas Dakin had arisen, though, before Mr. Cassin struck him.

Q. But did Mr. Thomas Dakin arise before Mr. Cassin arose, or afterwards? A. Well, afterwards, Mr. Cassin arose quite frequently.

Q. Mr. Cassin proceeded towards Mr. Dakin and Mr. Dakin arose and then Mr. Cassin struck Mr. Dakin?

A. Yes sir.

Q. Did Mr. Dakin strike back? A. I think he did.

Q. Two or three blows struck, you say?

A. Yes, to the best of my recollection, yes; I did not count them.

Q. Well, what was his Honor, the presiding Judge, doing at this time? A. Well, I was not looking at him very close. I was watching the rest of it.

Q. Did he inflict or impose any punishment on penalty for this affray? A. He imposed a penalty on Mr. William Dakin and one on Mr. Thomas Dakin.

Q. What was that penalty, do you remember?

A. A fine of fifty dollars.

Q. Each of them? A. Each of them.

Q. What about Mr. Cassin? A. What is that?

Q. What about Mr. Cassin; did he impose a penalty upon him?

A. I did not hear any fine imposed at all.

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Cross Examination:

Mr. SULLIVAN: (Q) Mr. Faneuf, where were you sitting in the Jury Box, -- how close to the wall? A. I think I was about in

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the third chair from the end.

Q. Where, in the back or rear, -- were you in the back row or the front row? A. No; I was in the front row.

Q. The third chair? A. Yes, inside the wall, being the third chair over from this end there.

Q. At the time this altercation took place, there was a witness on the stand for examination, was there not?

A. Yes sir; I think there was.

Q. And Mr. Dakin was on the right hand side of Mr. Younger, or the left hand, -- which was he? A. Yes sir.

Q. And Mr. Cassin was immediately on the left hand side of Mr. Younger? A. Yes sir.

Q. That is, Mr. Younger was between Mr. Cassin and Mr. Dakin?

A. Certainly.

Q. Who was examining the witness at the time, Mr. Faneuf?

A. Well, now I could not answer to be positive of that, Mr. Sullivan.

Q. Was not Mr. Younger examining Governor Jeter at the time?

A. Well, I think, now that you speak of it, he was, but I would not be positive he was.

Q. And you saw Mr. Cassin suddenly arise as though something had happened? A. Yes sir.

Q. And approach Mr. Dakin? A. Yes sir.

Q. Before that, -- just two or three minutes before the altercation actually took place, did you hear Mr. Cassin say to Mr. Dakin: "Don't you speak to me."

A. Yes sir; I heard that; yes sir.

Q. He said: "I don't want you to speak to me?"

A. Yes sir.

Q. And a few minutes after that, you saw Mr. Cassin arise suddenly as if something had happened? A. Yes sir.

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Q. To anger him? A. Yes sir.

Q. And he showed anger in his countenance, didn't he?

A. Yes sir.

Q. And approached hurriedly in the direction of Mr. Dakin?

A. Yes sir.

Q. And administered the blow?

A. Yes sir.

Q. Immediately after the storm had subsided, Judge Smith inquired into the cause of the altercation, didn't he? A. Well, yes sir.

Q. And right then and there in the presence of Mr. Dakin, did not Mr. Cassin accuse Mr. Dakin, -- excuse himself in justification and say that Mr. Dakin had called him, Cassin, a son of a bitch?

A. Not in those words; no sir.

Q. Not in those words?

A. No sir.

Q. In what words?

A. Well, Mr. Cassin had a gentlemanly way of getting around it.

He did not come out with those words, but it was assumed that was it. It was not those special words.

Q. That was the justification which Mr. Cassin offered for making this sudden attack upon Mr. Dakin; is not that so? A. Yes sir.

Q. At any rate, when you saw him arise from his chair, he showed anger in his countenance, didn't he?

A. Yes sir; certainly.

Q. And he quickly went in the direction of Mr. Dakin?

A. Yes sir.

Q. As one would rush upon another who had called him a name; is that so? Is that it? A. Yes sir.

Q. And did not the Judge reprimand all of the parties to the altercation? A. Well, to the best of my recollection, the Judge said that he was ashamed to witness such a disgraceful

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scene; I think those were all I remember of the Judge saying at the time.

Q. Didn't the Judge, if you remember now, reprimand all the parties to the trouble?

A. Well, I took that in the nature of a reprimand for all parties concerned.

Q. And did not the Judge on the same day, after the trouble had cooled off, remit the fine which he had imposed upon the Dakins?

A. He remitted the fine upon one. He remitted the fine upon Mr. Thomas Dakin; I don't know about the other one.

Q. Now, as a matter of fact, is not it true that the only person fined was Mr. Thomas Dakin, the person Mr. Cassin had struck?

A. No sir; the best of my recollection was that Mr. Thomas Dakin was fined fifty dollars, and then William Dakin was fined fifty dollars; that is the best of my recollection.

Mr. SULLIVAN: Well, we will look at the record. I think the record will show.

A. I may be wrong; that is the best of my recollection.

Q. The two Dakins pounced upon Mr. Cassin, didn't they?

A. Well, the way I understood it, one of them came to the rescue of the other; it was not a pounce, as I took it.

Q. Did not one of the Dakins hit Mr. Cassin from behind?

A. Yes sir.

Q. Did all of the parties apologize to the Court after it was all over? A. Yes sir, I think so, in a way.

Q. Mr. Cassin made a profuse apology to the Court, did he not?

A. Well, yes sir; I stated that before.

Q. And to the Jury also?

A. To the Jury also; yes sir.

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Redirect Examination:

Mr. LINDSAY: (Q) Mr. Dakin apologized also, didn't he? A. Yes sir.

Q. Do you remember whether he apologized before or after the fine was imposed?

A. Well, I think that Mr. Dakin got up and explained how it was before the fine was put on him; I think that was the way it was. I would not be exactly positive, -- it has been quite a while ago.

Q. He did the best he could to apologize also? A. Yes sir.

Q. I understand you to testify that Mr. Cassin explained to the Court that Mr. Dakin had called him a name? A. Yes sir.

Q. And that was the reason for the blow? A. Yes sir.

Q. Well, did the Court pass any opinion as to whether or not that was a justification for a blow, or authority for it, out of Court?

A. No sir; not to the best of my recollection.

Mr. SULLIVAN: It was not necessary.

Mr. LINDSAY: I think that is all, Mr. Faneuf.

Mr. SULLIVAN: That is all.

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**TESTIMONY
Of
THOMAS B. DAKIN, Sworn.
Direct Examination:**

Mr. LINDSAY: (Q) Thomas Dakin is your name? A. Yes sir.

Q. Where do you live, Mr. Dakin? A. Santa Cruz.

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Q. How long have you lived here? A. Forty years.

Q. You have not lived any other, -- have not lived anywhere else for the length of time? A. No sir; all my life.

Q. Born here? A. Born here; yes sir.

Q. What is your business?

A. Well, I am ranching at the present time.

Q. Were you a party litigant to an action which was tried in this court on or about the nineteenth day of April of this year?

A. Of last year, I was.

Q. I beg your pardon: Of last year? A. Yes sir.

Q. Were you the Thomas Dakin who had an altercation in court with Charles M. Cassin, on that occasion? A. I was.

Q. Please state to the Honorable Committee the way the matter happened, -- how it occurred.

A. Mr. Cassin was cross questioning me, and he threw out such remarks as "Wasn't you sued for your mother's funeral expenses."

Mr. SULLIVAN: We object to the witness going into what preceded the altercation, that is during the cross examination of the witness. It appears by the testimony the witness was not under examination.

THE CHAIRMAN: We want to hear it. Objection overruled.

A. And he cross questioned me and he made the remark that: "Wasn't I sued to pay my mother's funeral expenses?"; I was only one out of six of the family, and I did not think I ought to pay any more than some of the rest of them. On, however, towards the last, he says it was not worth his time to impeach Dakin's evidence in Santa Cruz county, throwing out all kinds of things like

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that, I walked back to this side of Younger to the corner alongside of Charles B. Younger, Jr. and looked at him. I never spoke to him; I just looked at him. He arose and came after me. I retreated back to here some place, and he made a strike at me, and I went in and clinched him and my brother jumped over the post, went through the gate; he got around the gate; he got in there; and he hit me on one side; I was by the witness stand; I had just got off the witness stand. Then the Judge called me up and fined me fifty dollars; then he says William Dakin was in it, -- my brother was out; with that he called my brother in and fined him fifty dollars.

Q. What did he say to Mr. Cassin?

A. Never said nothing to Mr. Cassin. He said he was sorry such a performance occurred in the courtroom, -- didn't want it to occur again.

Q. What did the Judge say or do when Cassin asked you the question: "Were not you sued to pay your mother's funeral expenses?"

A. He allowed it to go in before the Jury.

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Cross Examination:

Mr. SULLIVAN: (Q) Some one sued you for your mother's funeral expenses?

Mr. AYDELOTTE: I submit that such a question is improper at any time and at any place, and I object to it.

(Objection sustained.)

Mr. BEARDSLEE: What was this case being tried for?

Mr. LINDSAY: Well, it had nothing to do with the funeral. It was a suit for possession of real property.

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(Objection sustained.)

Mr. SULLIVAN: (Q) You became very angry at the method of Mr. Cassin's cross examination, didn't you?

A. Yes sir; I did get quite angry.

Q. How long were you under examination by Mr. Cassin?

A. Well, this might be along until, -- about noon, I suppose I was in from may be ten o'clock in the morning.

Q. From ten o'clock until about twelve?

A. Ugh huh.

Q. During that entire period, were you under cross examination by Mr. Cassin? A. I think it was unkind of him to cross examine me after he had been my attorney for several years.

Q. You became very angry during that cross examination?

A. Yes sir.

Q. You stepped down from the witness stand and took a seat behind or by the side of your attorney?

- A. Yes sir, I think I was, I sat between Charles Younger, -- I was on the far corner.
Q. After you took your seat next to your attorney, did you look in the direction of Mr. Cassin?
A. I did, Sir; yes sir.
Q. And did not you say something to Mr. Cassin?
A. I did not, Sir.
Q. Did not Mr. Cassin say to you, in the presence of the jurors, in the hearing of Mr. Faneuf:
"Don't speak to me"?
A. Well, I do not know what he said. I do not remember.
Q. Did not Mr. Cassin say to you: "Don't speak to me", after you had left the witness stand and
took your seat beside your counsel?
A. I don't remember of his saying that.
Q. And did not you say to Mr. Cassin: "Can't I look at you?"
A. I may have said something of that kind.

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- Q. Did not you as a matter of fact say to Mr. Cassin: "Can't I look at you?" A. I do not
remember.
Q. You do not remember? A. No sir.
Q. Did not you say something to Mr. Cassin after you left the witness stand? A. I did not,
Sir.
Q. You did not say: "Can't I look at you?"
A. I might have said that. I didn't make any assertion to Mr. Cassin.
Q. Will you say Mr. Cassin did not say to you: "Don't speak to me."? A. I do not say he did not
say that.
Q. Will you admit he did say it to you?
A. No, I won't; I don't remember of his saying it to me.
Q. How long after you left the witness stand did Mr. Cassin approach you and strike you?
A. Oh, it was inside of five minutes.
Q. And he jumped up quickly from his seat, did he?
A. Yes sir.
Q. And you were looking in his direction at the time, were you?
A. I was watching him, sure.
Q. You were watching him, sure? A. Yes sir.
Q. And he was flushed with anger, wasn't he?
A. Sure; I guess he was. He talked to me that way on the stand, and he was abusing me all the
time.
Q. As he approached, were you sitting down or standing up?
A. As he came towards me where I say, over here, about to there.
Q. Were you standing up when he struck you?
A. I was trying to get away from him as he hit me.
Q. After he had struck you, -- A. I could not get any further.
Q. You had all cooled down and apologized to the Court, didn't you? A. I was suffering
considerable pain from the lick I

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got. I don't remember. It was all an uproar here. I don't remember; he arose before the Court
and said something, but what it was I don't remember.

Q. Didn't he announce to the court then and there that you had called him a name, that was the reason why he jumped suddenly from his seat and approached and struck you? A. I never remember of anything about him saying anything to the Court. But he spoke and addressed the Jury; he said his mother was dead.

Q. Now, I am asking you about was said at that time, -- not when the case was submitted to the Court, -- after Mr. Cassin struck you the blow about noon time, didn't he apologize to the Court, and didn't he explain to the Court that the reason why he attacked you, you called him the vile name?

A. Well, I don't remember. I was crying at the time, and I was in a good deal of pain. I don't remember him telling the Court, except to arise before the Court.

Q. Didn't he say to the Judge you had called him a name? Didn't he in your presence and in the presence of the court and jury that day say, as a justification for his attack upon you, you had called him a name that reflected upon the chastity of his dead mother?

A. No sir; he did not.

Q. He did not? A. He did not.

Q. You say that positive? A. I say it positive. The only time he mentioned that was when he was arguing to the Jury.

Q. You never paid the fine of fifty dollars, did you?

A. No sir.

Q. Your brother William never paid the fine, did he?

A. He did not have any money to pay the fifty dollars with.

Q. There was no imprisonment imposed upon any of the parties?

A. Not that I know of.

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Q. Your fine was remitted, was it not?

A. I never paid it.

Q. You never did. Don't you know as a matter of fact, upon that occasion, after the apologies had been made to the Court and jury by all parties present, the court remitted the fine imposed upon you and your brother, the same day?

A. No sir; he never remitted the fine on my brother.

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Redirect Examination:

Mr. LINDSAY: (Q) Just one work, Mr. Dakin: Do I understand you to testify that Mr. Cassin referred to this matter during the argument of the case to the Jury?

A. Yes sir; that is the only time I ever knew that he claimed that I called him such a name as that.

Mr. BEARDSLEE: What matter is that?

Mr. LINDSAY: The matter in relation to Mr. Dakin calling him a son of a bitch.

Q. Did the Judge stop him in making such an argument?

A. No sir; he went right on an argued the case before the jury, when he was arguing.

Q. Did you win the case? A. No sir; I lost it.

Q. What is your height, Mr. Dakin? A. Five foot eight.

Q. How much do you weigh? A. I weigh about a hundred and seventy five pounds

now; I think I weighed about a hundred and sixty five last year.

Q. What is Mr. Cassin's height? A. He is six foot one or two, I guess.

Q. I do not supposed you know how much he weighs?

A. Two hundred and twenty five or thirty pounds.

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Mr. LINDSAY: That is all.

Mr. SULLIVAN: (Q) How much does Brother Bill weigh?

A. I should judge Bill weighs a hundred and twenty or thirty pounds.

Q. How tall is he? A. My height.

Mr. LINDSAY: He is a very husky lad.

Mr. SULLIVAN: I know it.

Mr. BURKE: Did you call Mr. Cassin a vile name?

A. No sir; I never called Mr. Cassin -- I did not speak to Mr. Cassin, I don't suppose, for six or eight months previous to the trial; I just simply looked over at him.

Mr. SULLIVAN: Who was your attorney in the case?

A. In the case? Younger.

Q. Younger Jr., wasn't it? A. What case?

Q. In the case, -- in your litigation?

A. Yes sir; Charles Younger Jr.

Q. When Mr. Cassin made that statement to the Jury concerning the name which he claims you called him, your attorney made no objection, did he? A. I think not.

Mr. SULLIVAN: That is all.

THE WITNESS: I don't remember, though.

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Mr. LINDSAY: If your Honors please, we desire to offer the evidence which we have in support of those specifications and number 3; also in support of specifications 1 and 7; specification 1 refers to the favoritism and partiality of Judge Smith to Mr. Cassin. The specification states, generally, that Judge Smith is guilty of great oppression, tyranny, maladministration and unfairness in the conduct of his office.

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TESTIMONY
Of
CHARLES B. YOUNGER, JR., Sworn.

Mr. LINDSAY: I desire to call your attention to these specifications 1, 7 and 3.

Direct Examination:

Mr. LINDSAY: (Q) Your name is Charles B. Younger, Jr.?

A. Yes sir.

Mr. LINDSAY: Specification 3, and also in support of specifications 1 and 7.

Mr. SULLIVAN: The testimony I suppose, you intend to offer now, is in reference to this litigation?

Mr. LINDSAY: Yes sir.

Mr. SULLIVAN: No objection.

Mr. LINDSAY: (Q) Where do you reside, Mr. Younger?

A. I reside in the City of Santa Cruz, Santa Cruz county.

Q. Where were you born?

A. I was born in this City, Sir.

Q. What is your age?

A. I am thirty one years of age.

Q. Have you lived here all your life?

A. I have lived here, -- my residence had been here all my life. I have been away to college, and during the period I was in school, four years, -- during the term of school.

Q. You were away for four years at school, were you?

A. Yes sir; during the normal session of the school of 1897.

Q. You are a graduate of what University?

A. I am a graduate of Stanford University.

Q. What is your profession? **A.** My profession is that of the law. I am an attorney and counselor of the supreme court of this state and also of the supreme court of the United States, circuit and district courts of the Northern District of California.

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Q. Have you practiced law at the bar of this court, Mr. Younger?

A. Yes sir, Mr. Lindsay.

Q. Do you know Mr. Thomas Dakin?

----- Transcriber's Insert -----

[Transcriber's Note: throughout the transcript, the surname "Dakan" is misspelled "Dakin" - with an "i"]

----- End of Transcriber's Insert -----

A. Yes sir; I know Mr. Thomas Dakin very well.

Q. I will call your attention, Mr. Younger to an action which was tried in this Court on or about the nineteenth day of April, 1904, -- I am not acquainted with the title of the case at the present time; do you remember the case to which I refer?

A. I was in here during the latter part of Mr. Dakin's testimony. The action I think was the action of J. W. Fourges [i.e., James Whitesides Forgeus] against Thomas Dakin.

Q. What was the nature of the action?

A. Well, the nature of the action, -- I assume the papers in the case will bear me out, -- was an action that was brought by Mr. Fourges as assignee of--

M. SULLIVAN: I suppose that is immaterial what the nature of the action was.

THE WITNESS: Of two sisters.

Mr. LINDSAY: I do not think it is.

WITNESS: Of two sisters of Thomas Dakin, on a certain agreement which was alleged by the complaint to have been executed by Thomas Dakin, that his sisters had drawn up; now, whether the boys of the Dakin family were also parties to that agreement or not, -- but it was an agreement to pay, I think, the sum of one thousand dollars to each of these women upon the happening, I think, of a certain contingency.

Q. In reference to real property, was it not? **A.** Yes sir.

Q. Was the case tried before a jury? **A.** Yes sir; the case was tried before a jury, we having

demanded a jury. I had asked

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Mr. Cassin, as I knew the trial of the case would engender considerable feeling, and I asked Mr. Cassin -- asked him to consent to have the case tried before some other judge.

Mr. SULLIVAN: I object to anything of this kind of immaterial.

A. He declined to do so.

THE CHAIRMAN: Just answer the questions. Mr. LINDSAY:

(Q) Go on, Mr. Younger.

A. I had asked Mr. Cassin to try the case before some other judge of the superior court of this state, because I knew that the trial as it would be conducted would engender --

Mr. SULLIVAN: I object as calling for the opinion of the witness.

Mr. LINDSAY: If he knows it.

A. I will confine myself to the fact that Mr. Cassin declined to try the case before any other judge. He said I had to try this case before Judge Smith, and before nobody else; consequently our only alternative was to demand a jury, and we demanded a jury.

And finally Mr. Dakin lost the case.

Q. Did you, during the trial of the case, see any altercation ensue between Thomas Dakin and Mr. Cassin? A. Yes sir.

Q. Do you remember the facts in reference to that matter?

A. Well, I remember the facts, -- perhaps my impression, -- but what I remember, I remember.

Q. State them to the Committee. A. During, -- I think that during the trial of the action, Mr. Dakin had been led through a labyrinth, as I thought at the time, a very abusive cross examination by Mr. Cassin, and I think his cross examination was concluded at the end of the session; that was possibly the second day of the trial, or it might have been at the conclusion of the testimony in the morning; at all events, there was an adjournment,

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and I think Mr. Dakin was through his cross examination; well, then Mr. Cassin recalled Mr. Dakin and put to him a question, -- I presume the reporter's notes taken at the trial will show, -- something in effect like this: "Mr. Dakin", --

Mr. SULLIVAN: We object. If there is a record of it, the record is the best evidence of the question.

(Objection sustained.)

Mr. SULLIVAN: We are satisfied to let the cross examination of this witness go on before this Committee, and let them hear whether this cross examination is abusive.

Mr. Lindsay: I have no possible objection to it. Go on and state the facts as you witnessed them.

A. The objection was withdrawn, Mr. Chairman? THE CHAIRMAN:

No sir.

Mr. LINDSAY: Mr. Sullivan suggests that the record in the case be introduced, and I consent to that.

Mr. SULLIVAN: Yes sir.

THE WITNESS: After those one or two questions had been put to Mr. Dakin by Mr. Cassin and had probably been objected to, then Mr. Dakin resumed his seat.

Mr. LINDSAY: (Q) Where was his seat?

A. Mr. Dakin, -- I should assume my position is about the same as Mr. Leonard's now; Mr. Cassin sat upon my right, and --

Q. Your right or your left? A. Well, Mr. Cassin sat on my right, just where you are seated, and Mr. Dakin sat upon my left, about the same position Mr. Cassin is.

Q. Wasn't it just the reverse? Did not Mr. Dakin sit at your right and Mr. Cassin at your left? A. Well, now --

Q. Tell it as you remember. A. My impression is to the contrary. At all events, I sat between them, is what I am trying

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to get all. I heard Mr. Cassin, -- Mr. Dakin, -- if he said anything, I did not hear it, and my hearing, I think, is normally acute, and then Mr. Cassin made some remark to Mr. Dakin the nature of which I do not remember now. At all events, it resulted in Mr. Cassin coming towards Mr. Dakin, and he was apparently going to strike him; I guess Mr. Cassin must have been in the position you are now; because Mr. Dakin retreated around here where you are and almost to the wall, when Mr. Cassin struck him; and then there was a clinch between the two. Mr. Cassin was in the attitude of striking at Mr. Dakin until Mr. Dakin had retreated to the wall, almost, when he stopped there, and Mr. Cassin assaulted Mr. Dakin.

Q. And what followed? A. Well, I think then, -- you mean as to the assault?

Q. Yes sir; as to the assault? A. Yes sir; I think then that all of those who were assembled in the court room, perhaps, got up, or nearly all of them, and Mr. Dakin's brother came forward from the rear end of the court room and he saw that others were taking a hand against his brother, beside one man, and I think he made some remark or some statement that he was not going to allow anybody to hurt his brother, and the matter, -- then I don't remember; in the meantime, I don't remember whether the sheriff or his deputy, -- the under sheriff or the deputy sheriff, interfered, and the peace was restored. The Court announced that there would be, -- Mr. Dakin would be fined; Tom Dakin would be fined, and I do not remember how much, -- what the amount of the fine was. Then on the statement of Mr. Knight that there was another Dakin engaged in the matter, the Court, I think, imposed a fine on Mr. Bill Dakin. I do not remember whether the Court did or not, but I think the court did. Nothing was said by the court as to Mr. Cassin in the matter. I think that Mr. Cassin made no remark about his conduct in the matter right at that time; so far as I

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know, none was made; it might have been made on the argument of the case, as Mr. Dakin said.

Q. Where was Judge Smith at that time?

A. Judge Smith presided at the trial of this case; occupied his position on the bench.

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Cross Examination:

Mr. SULLIVAN: (Q) Mr. Younger, now upon reflection, do you remember Mr. Cassin was sitting upon your left?

A. I am inclined to think that Mr. Cassin was on my left; although I do not state he was on my left, I think he was sitting on my left; the fact I was trying to get at was that I was between Mr. Dakin and Mr. Cassin.

Q. Governor Jeter was on the stand at the time under examination, was he not? A. I don't remember; that may be the case.

Q. Were not you in the act of examining Governor Jeter at the time?

A. Well, I know it was a few moments after the time that Dakin left the stand, this altercation occurred. I do not think Mr. Dakin could have been on the stand; I could not have been examining him, I think, because he was not our witness.

Q. Well, he was engaged in the examination of Governor Jeter at the time? A. I am not prepared to say that. The record, may be, will bear you out. At least there was some witness called afterwards.

Q. You are not sure you were not examining Governor Jeter at the time? A. No sir; I think it was unlikely because I think Governor Jeter was not our witness.

Q. At any rate, your attention was concentrated on the trial of the case, between counsel and the witness on the stand? You won't say anything was not said by Mr. Dakin, will you? Answer the question, please. A. You mean to say there was not a word?

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Q. Will you say Mr. Dakin did not say anything to Mr. Cassin?

A. I did not hear him.

Q. You did not hear him? A. No sir; my hearing is normally acute.

Q. Did not you hear Mr. Dakin, your client, say to Mr. Cassin, in a low tone of voice: "Can't I look at you?"

A. No sir; I do not remember of hearing that.

Q. Did not you hear Cassin say to him, some time before that altercation took place: "Don't you speak to me?"

A. Mr. Cassin said something; made a remark to Dakin, before I heard Mr. Dakin say anything to Mr. Cassin; yes.

Q. Will you say Mr. Dakin did not say, before Mr. Cassin said anything: "Can't I look at you?" Will you say Dakin did not say that? A. Before Mr. Cassin said anything to him?

Q. Yes sir? A. Well, if he did say it, I did not hear it.

Q. Did not you hear it? Did you hear Mr. Cassin say: "Don't you speak to me, Sir?"

A. I think Mr. Cassin said something of that kind.

Q. Did not Mr. Dakin respond and say: "Can't I look at you?"

A. That may have been the case, but I think that occurred after Mr. Cassin, -- I will swear I did not hear Mr. Dakin say anything.

Q. That was about about [sic] two or three minutes after the assault too place?

A. Yes sir; quite promptly.

Q. As Mr. Cassin was pursuing Mr. Thomas Dakin, did not his brother William get up behind Mr. Cassin?

A. His brother William did not get up behind Cassin until after Cassin and Mr. Dakin had clinched together, and Mr. Cassin had struck Tom Dakin; then there was a clinch, and then some body else took part in it.

Q. The Court remitted the fines that day, did he not?

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A. Well, as to the remission of the fines, I know nothing. I have been told it did remit the fine, but I know nothing. I know nothing but what was done in open court toward the remission of the fine.

Q. Did Mr. Cassin immediately after the trouble had subsided, apologize to the court and explain the reasons why he had attacked Mr. Thomas Dakin?

A. I do not remember as to him doing so. He said something during the argument. I do not

remember of him getting up and saying it during that time.

Q. Before the argument, just after the altercation, and after the parties had cooled off, did not he apologize to the court and explain the reason why he made the attack upon Thomas Dakin?

A. No sir; I remember nothing of the kind.

Q. Do not remember about anything of the kind? **A.** No sir.

Q. It did not occur. Did not the Judge reprimand all the parties to the trouble, -- Thomas Dakin and Mr. Cassin and William Dakin

A. Well, I do not remember if the Court reprimanded anybody except the Dakin boys.

Q. How long ago did this take place?

A. Well, I guess it must have been upwards of rather more than a year ago. I think it was possibly a year ago last fall. Of course the minutes of the Court will show the date. I will not be certain as to the exact date. I think it was about a year ago last fall.

Q. You have not read the record at all to refresh your memory as to the occurrence?

A. Well, I having prepared the bill of exceptions of the case, it was prepared as soon after as I could

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obtain the reporter's transcript.

MR. SULLIVAN. Well, I think that is all, Mr. Younger, at the present time.

THE WITNESS. Mr. Sullivan, as I say, a year ago last fall; it might have been in the fore part of last year, because it must have been before the bill of exceptions was prepared, perhaps just before Judge Smith--

MR. SULLIVAN. There is no dispute about the time; it was in April, 1904 last, a year ago.

A. Yes sir.

MR. LINDSAY. (Q) Did Judge Smith impose the fine in the presence and hearing of the jury?

A. Yes sir, Mr. Lindsay.

Q. Did I understand you to say that if there was any remission of a fine, that it was not in the presence of the Jury?

A. None that I heard of, and I was here during all the time the jury were here.

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MR. LINDSAY. Mr. Sullivan, if you are going to read that record, we had better do it now.

MR. SULLIVAN. Is the record made up?

MR. CASSIN. I have the notes in my office. I do not know whether I can find them.

MR. SULLIVAN. We have not them now. We will have them written up as soon as possible. Have you got the bill of exceptions?

MR. LINDSAY. I do not know whether it is in question and answer. Was Mr. Williamson present?

MR. LINDSAY. Well, we will rely on these specifications. I think they ought to be included.

THE CHAIRMAN. We feel the same way.

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MR. SULLIVAN. Where is the Reporter?

MR. LINDSAY. I have sent for him.

-0-

TESTIMONY

of
W. H. WILLIAMSON, Sworn.

MR. SULLIVAN. You will admit that is the correct transcript of the testimony?

MR. LINDSAY. Oh, certainly.

Direct Examination:

MR. SULLIVAN. (Q) Your name is William H. Williamson?

A. Yes sir; W. H. Williamson.

Q. You are the official stenographer of this Court? **A.** I am, Sir.

Q. And have occupied such position for several years? **A.** Yes sir.

Q. Did you report the case of Fourges[sic] against Dakin[sic], tried in this Court last April, before a Jury? **A.** I did.

Q. Did you transcribe your shorthand notes? **A.** I did.

Q. Have you that transcript with you? **A.** I have.

Q. I wish you would turn to the cross examination of Thomas Dakin, and let us know how many pages there are in it, and if that is correct. Now, Mr. Lindsay, can we agree upon certain parts to save the time of the Committee?

MR. LINDSAY. You had better read it all.

THE CHAIRMAN. I do not think it is material. Here, what we want to know is the facts connected with the assault. I do not think anything that leads up to it is material.

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MR. SULLIVAN. That is what we thought. But you allowed the testimony of these witnesses to go in to show what led up to it, and we want to show Mr. Cassin's cross examination was perfectly proper.

THE CHAIRMAN. We sustained the objection you raised.

MR. SULLIVAN. No; I objected to the testimony on the ground that it was irrelevant, immaterial and incompetent about the funeral expenses. You allowed that to go in, and of course we will ask to strike it out, and then we will not object to it.

MR. LINDSAY. I object to that being stricken out. It is certainly relevant; I suggest to the Committee that the details are relevant. It is satisfactory to us.

THE CHAIRMAN. You will be satisfied to have it in the record?

MR. SULLIVAN. I think so.

THE WITNESS: I will just state all this transcript is not here. It has been delivered to the parties, and it is only the copy of the cross examination.

Q. That belongs to Mr. Cassin? **A.** That belongs to Mr. Cassin.

MR. SULLIVAN. Well, Mr. Cassin will lend you that. The cross examination of Mr. Dakin referred to as given on the nineteenth of April 1904, is as follows:

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1.

Q. What was done with this instrument after you took it up to San Francisco?

A. After I took it to San Francisco the last time, I think it was in September 1900, I visited my sister up there and she refused to sign it or have anything further to do with the agreement and deed, then I put the deed with the rest of my administration papers in the care of my attorney Jeter, in the Santa Cruz County Bank.

Q. You never instructed him to do anything with it? **A.** No sir.

Q. That deed has never been delivered to you? A. No sir.

Q. After your sister had refused to sign or execute this agreement did you ever demand the return of these papers or not? A. Yes sir.

Q. When?

A. On several occasions, I think I went there with Mr. Younger's father and asked for them.

Q. Were they returned? A. No sir.

Cross examination.

Q. Mr. Dakan don't you remember as a matter of fact that you frequently consulted me while I was associated with Mr. Jeter in acting as your attorney as administrator of your father's estate, that you frequently consulted me about getting your mother to execute a deed to you for the land which your father had deeded to her in his lifetime, that I told you repeatedly not to do it, that it was not right in the first place and in the second place it was not policy that no court and jury would allow one son to get 200 or 300 acres of land and the other sons and daughters get nothing?

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2.

Mr. Younger: Irrelevant, immaterial and incompetent, not within the issue, not proper cross examination, within the inhibition of the provision of section 1881, subdivision 2.

Court: Objection overruled. Exception.

Q. Is not that a fact Mr. Dakan, don't you know it?

A. That is not a fact, I never consulted you Mr. Cassin about it, the only thing I consulted you about was the validity of the deed I put on record by Mr. Jeter's advice.

Q. Then it is not a fact I was advising you repeatedly, that you were after me repeatedly to get your mother to make this deed and I told you at the time not to do it, it would not do any good?

A. No sir, you never did.

Q. You seem to be a good deal put out because that deed signed by Pastoria Nichols and Sarah Dakan was not delivered to you, I understand it has been left with the bank and also left with Mr. Netherton to be delivered to you, I suppose you are willing to accept it now and you pay the \$1000. and costs?

Mr. Younger: Irrelevant, immaterial and incompetent, not proper cross examination.

A. No sir.

Court: Very well, he has answered the question.

Mr. Younger: Exception.

Q. You stated Mr. Dakan that you had a will in your possession that your mother made?

Mr. Younger: There is no testimony on that point, that all went out.

Mr. Cassin: How do I know anything about it if there was no testimony on that point.

Q. You are administrator of the estate of Elmer Dakan, deceased,

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at the present time?

A. I am sir and you are my attorney.

Q. Don't you know that you sent Mr. Younger to me repeatedly, Mr. Younger's father, to act with him as your attorney, after you had refused to settle up the estate and refused to carry out this agreement, he came to me repeatedly, and the last time I told him I would not act as your attorney if you gave me the whole thing?

Mr. Younger: Irrelevant, immaterial and incompetent, Mr. Cassin is interpolating into this record certain condition and affairs, certain things into the mouth of the witness that he said, for the purpose of letting the inference go to the jury that he, Mr. Cassin, did actually say or make these statements, whereas if he did not make them and they are true they are not admissible as evidence, because Mr. Cassin was Tom Dakan's attorney, we can have no evidence of what occurred between attorney and client without the consent of the client.

Court: Objection overruled.

Exception.

Mr. Younger: Also upon the ground that it is not proper cross examination.

A. I advanced \$1750. For the purpose of paying the debts of my father, Cassin and Jeter promised me they would repay me, Jeter told me if I would he could see I was repaid, he told me he wanted me to make a final account, I went before your honor here and he made a second annual account instead of a final account and wanted me to make a final account, I went before your honor here and he made a second annual account instead of a final account and wanted me to waive all the right to the money I advanced.

Q. Let us see what right you had to this advance: I will show that he advanced the money belonging to his brothers and sisters.

Mr. Younger: The same objection, Mr. Cassin cannot take advantage of a position he once held in this matter.

Q. You advanced \$1750 to the estate of Elmer Dakan?

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4.

A. I don't know as I have to answer the question.

Q. I want you to answer it. I want to show why you did not produce this will Mr. Dakan.

Court: If you know where you go the money state, if not you can state.

Mr. Younger: If Mr. Cassin is cross examining Mr. Dakan relative to his account he cannot do so, that account was offer in evidence by Mr. Cassin's side, as I say Mr. Cassin cannot take advantage of having the confidence of one side to defeat the other side in this matter, he cannot go into the matter of the details of the Dakan estate.

Court: Let me tell you I know Mr. Cassin as an honorable practitioner at this bar, there is testimony that would reflect upon Mr. Cassin and Mr. Jeter in this matter I would not pretend to sit here and claim to administer justice and not give Mr. Cassin and Mr. Jeter a full and ample opportunity to explain everything in regard to this matter, you have gotten your objection and exception there is no use repeating it any more. I am going to allow Mr. Cassin to ask this question and I am going to require the witness to answer it.

Mr. Younger: I will except to the ruling of the Court and to the remarks of the Court, of course this is not proper cross examination.

Mr. Cassin: Of course this matter is rather embarrassing in a way, I notified Mr. Younger after the first question before this Court and jury that I did not propose for him to come here and put me in a false position.

Mr. Younger: If Mr. Cassin had any delicacy he would ask Mr. Knight to conduct the examination, Mr. Cassin is not afflicted with that virtue.

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Mr. Cassin: Mr. Cassin will take care of himself.

Court: Go ahead.

Mr. Younger: We object to that, it is not the best evidence, the account speaks for itself.

Q. Where did you get this \$1750?

A. I got it from my mother.

Q. You got it from your mother?

A. Yes sir.

Q. Your father's life was insured for \$2000, was it not?

A. Yes sir.

Q. Your mother got that \$2000?

A. Yes sir, she did.

Q. There were several fires out there on the Dakan ranch for which insurance money came in while you were living there with your mother?

Mr. Younger: My objection runs to that, it is not cross examination.

Court: Yes sir. Exception.

A. Yes sir.

Q. How much money did you get from your mother?

A. I think \$1300 or 1400.

Q. How much money altogether did you get from your mother?

A. That is all I got from here.[sic]

Q. How much of the insurance money did you get?

A. I got I think about \$700.

Q. You think you got about \$700 insurance money?

A. Yes sir.

Q. How much money did your mother get?

A. What kind of insurance have you reference to, she got life insurance.

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Q. You got how much fire insurance?

A. I think I got \$700.

Q. Mr. Younger: That is insurance on your own property?

A. Yes sir, on my own property.

Q. How much fire insurance did you get altogether during the time you were acting as administrator?

Mr. Younger: Draw a distinction between the property you own and the other.

Mr. Cassin: This gentleman came here, Mr. Younger wants me to examine him, I am cross examining him and I want him to answer without reservation.

A. How much fire insurance.

Mr. Younger: We offer the same objection.

Mr. Cassin: I don't care how many objections you have, you have an objection to all this testimony on every objection you can think of, it does seem that would cover the case.

Question repeated.

A. Well I have been acting as administrator of the estate of Elmer Dakan ever since my father died.

Question repeated.

A. What I applied to the estate or is it to me.

Q. Question repeated.

A. I got fire insurance on some hay and on two barns, the exact amount I could not tell right now

Mr. Cassin, I can refresh my memory and tell you correctly, there were three different fires out there, one I think I applied to the estate and the other two I took individually, that is I used them there with mother.

Q. There were three fires out there altogether?

A. Yes sir.

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Q. There were two barns burnt?

A. Yes sir.

Q. One barn?

A. Yes sir.

Q. Any building besides the barn?

A. Yes sir.

Q. What building?

A. Slaughter house.

Q. Was the slaughter house insured?

A. Yes sir.

Q. How much was it insured for?

A. I think something like \$1500. I got half of that.

Q. You got \$750. out of that?

A. Yes sir.

Q. What became of the other \$750?

A. Well, there were two insurance companies carrying insurance on the slaughter house, it ran it up to \$1500 or \$1700, then each one took half of that, one company failed and I only got half of the insurance.

Q. Did the company fail or did they refuse to pay it?

A. I left that to you, I gave that to you.

Q. That was one fire, that was the slaughter house, there was a barn burnt down was there?

A. Yes sir.

Q. How much insurance was there on the barn?

A. \$1035. Mr. Jeter after two years trying, you and Mr. Jeter got me \$700.

Q. For some reason the insurance company did not like to pay the full amount of this insurance for these fires?

A. I don't know whether they did or not, I only got \$700 out of

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that, I did not get it, it was left in the Bank.

Q. You got \$700?

A. I know there was quite a lot of talk about it.

Q. What was the insurance you got from the other fire?

A. I think \$700 or \$800 on that one and the hay.

Q. What would you say was the total amount of insurance that was collected down there on the Dakan ranch altogether?

A. Something over \$3000 life insurance, fire insurance about \$1500.

Q. There was \$700, \$750 and \$800 on the hay, that would be \$2250.

Q. \$200 life insurance? A. That would be \$4000.

Now Mr. Dakan what part of the insurance, the fire insurance, was on that part of the property of the estate which you claimed under a deed from your father?

A. On the two buildings.

Q. How much did that amount to? A. \$1500.

Q. Now as a matter of fact, is it not a fact that you were not to have any title to this property

under the deed from your father until after your mother's death?

Mr. Younger: Irrelevant, immaterial and incompetent, heresay [sic], not the best evidence, not cross examination. It is irrelevant, immaterial and incompetent, it is the worst kind of violation of subdivision two of section 1881 of the Code of Civil Procedure, contrary to almost every known rule of evidence.

Court: Objection overruled.

Exception.

Mr. Cassin: I have got down that he got from fire and life insurance \$4235.

This \$4200 that you received really belongs to the estate of Margaret Dakan, is not that true?

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A. I am not able to answer that.

Q. You heard Mr. Jeter testify here did you not that the agreement sued upon here was signed very shortly after it was executed, it was executed very shortly after it was dated, it was signed by the boys in the office there shortly after that?

A. He did not know that it was signed, no sir, I did not hear that, he thought it was signed.

Q. Did you tell Mr. Wyman on many and various occasions after the signing of this agreement, oh, for years after that that you would not pay your sisters, you would see them in Hell first, something of that kind?

A. I think Mr. Wyman is mistaken.

Mr. Younger: Same objection.

Court: Objection overruled.

Exception.

Q. Question repeated.

A. I told Mr. Wyman at the time ***

Court: Answer the question first, then you can explain.

A. No sir. It will take two answers, one I told him yes, and the other I did not, the first part of the question I can answer yes, the latter part I will have to deny, I did tell him, when I consented to sign the agreement he was appraiser of the estate, when we could not get to an agreement maybe after my mother's death I may have made some off hand remark not at the time because I was anxious to have the matter settled up.

Q. Did you tell Mr. Wyman that you would see your sisters in Hell first before you would pay them any money?

A. No sir, I did not.

Q. Why did you say a moment ago you might have done it, but if you did it was after your mother's death?

A. If you will give me a show to explain, I might have told him I was not willing after my mother died, I certainly did not say

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anything like that to Mr. Wyman, I might have made some off had remark.

Q. Mr. Wyman would necessarily be mistaken about that?

A. Oh, certainly I do not use that kind of language Mr. Cassin.

Q. What is that?

A. I don't use that kind of language.

Q. Do you remember the occasion, talking about using language, when your sister Sarah Dakan went after you down there on Cooper Street and demanded you to pay her that \$1000, and told you she had already signed that deed,, that you and your sister both used language that was not very edifying?

A. You are mistaken, I did not.

Mr. Younger: We object to that upon the same grounds.

Court: Objection overruled.

Exception.

Q. Do you remember the time when she demanded of you to pay that money in quite strenuous terms and notified you that she had already made and executed that deed?

A. I thought Sarah was quite angry that day, she grabbed me by the coat tail and I broke off and went through the Court house to get off the public street, Mr. Besse came out and I walked away, that is all I remember of the conversation.

Q. You have been ready and willing as I understand you to state to carry out this agreement upon your part Mr. Dakan?

Mr. Younger: There was no such statement as that made by the witness.

Q. Have you always been ready and willing to carry out the agreement on you part?

Mr. Younger: The witness said that he was willing and ready at the time the agreement was signed and drafted and for a reasonable time thereafter.

Court: Objection overruled.

Exception.

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Witness: I was at the time of the signing of the agreement.

Q. The signing of what agreement?

A. By the boys.

Q. When did you get your change of heart?

A. When Mr. Jeter advised my mother to make out a deed to me of the balance of the estate.

Q. Then you thought it was time for you not to give the \$1000, but to get all the rest of the estate, is that so?

A. What I didn't give the attorneys.

Q. Were you present at the time Mr. Jeter advised your mother to do that?

A. Yes sir.

Q. Where was it?

A. In the Board of Directors' room,, in the Santa Cruz County Bank.

Q. Was I present?

A. No sir, you were not.

Q. Who else was present?

A. No sir, just mother and I and Mr. Jeter.

Q. He advised her::: [sic]

A. That the agreement would never be executed, the best thing she could do to protect her son Tom was to make out a deed to the balance of the ranch which was done.

Q. He told her the best thing would be to deed you the rest of the property, that you only had half the ranch that the other children did not have any, that the best thing she could do was to make out a deed to you for the rest of it?

A. Yes sir and instructed his associate counsel to make it out.

Mr. Younger: I understand that any objection I see fit to make hereafter runs to all this improper cross examination by Mr. Cassin.

Court: Yes sir.

Exception.

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Q. Did you at that time object to your mother making it out to you, did you say mother, that would not do, I have already 126 acres of land down there and I have taken \$4200 that really

belonged to the other children as much as to me, the other children have not any- thing at all, you better make that out to the other children, did you tell your mother at the time?

A. I did not, I supposed I was doing right when Mr. Jeter advised me to do it, he advised the thing, he was the attorney getting paid for it.

Q. You say at the time you took this agreement up to Sarah Dakan in San Francisco shortly after the 6th of March, whatever time it was, that Sarah said she did not think it was fair she should get \$1000 and her sister \$1000 and the boys get all the rest of the ranch, did she?

A. Yes sir.

Q. Did you tell her it didn't seem hardly fair to you, but you thought that was the best she could do under the circumstances?

A. I told her that was the advice of my counsel.

Q. That that was the best that could be done?

A. Yes sir, the best they advised me, I was up there as a deputy from them.

Q. If your counsel had advised you to give her more than \$1000, you would have done so?

A. I suppose at that time I would.

Q. Don't you remember that at that time there was a contention about giving \$125 extra besides this \$1000, to pay some expenses that your brothers and sisters had incurred in litigating with you, opposing your appointment, that we had a hard time for three or four days to get you to consent to it?

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A. I did not think it was right for me to pay my brothers' attorneys' fees.

Q. I call your attention to this part of your answer Mr. Dakan.

A. Answer in what case.

Q. In this case, in this action, referring to the agreement::[sic]

“Said defendant admits as follows, to-wit: That said defendant signed March 6th, A. D. 1900, a typewritten document in form pur- porting to be such an agreement as that copied in said complaint with the exception as follows, to-wit: (1) It did not contain the following, to-wit: It is hereby mutually understood and agreed that the administrator of said estate shall on or before the 15th day of May, 1900, pay to said parties of the first part, out of the funds of said estate, the sum of \$125.” Now is it not a fact that when you swore to that answer you knew different, that you know that matter had been discussed for two or three days, you objected to signing the agreement on that account, that afterwards you did sign it under protest?

Mr. Younger: The same objection runs to all this.

Court: Yes sir.

Exception.

A. My impression was when I signed this agreement that that \$125 was to be paid to Carl E. Lindsay, not to read as it does, it says here parties of the first part.

Q. That is your brothers and sisters?

A. I don't know whether they are or not.

Q. If it was payable to Carl E. Lindsay instead of to your brothers and sisters you would not have had so much objection?

A. I know Mr. Jeter took out \$125. out of the money in the Bank and put a check in, that Carl E. Lindsay got it.

Q. Carl E. Lindsay was attorney for your brothers and sisters?

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Mr. Younger: We object to that as not being the best evidence.

Court: Objection overruled. Exception.

A. I was under the impression that when you wrote that in you had it typewritten on something, it was not agreeable to me and I had you change it, I thought that you had the words written there to Carl E. Lindsay.

Q. You are mistaken?

A. That is what my impression was at the time.

[That ends the cross-examination of THOMAS B. DAKIN]

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1.

Friday morning, November 18th, 1904.

**Court: In the case of the People of the State of California
– versus – Louis Buelna, Defendant.**

District Attorney Knight: A Notice of Substitution of Attorneys was served upon me the other day, substituting Wm. M. Aydelotte in place of the gentlemen who represented the defendant here during the course of the trial. After the Notice was served Mr. Aydelotte could not be here to-day, and I consented that the sentence of the defendant might go over until next Monday. Since then I have received a communication indirectly from the defendant, from a source which I know to be reliable, that the defendant does not wish to make a motion for a new trial, that he does not desire to appeal his case, that at the time the Substitution was signed by him that he did not realize that was what the Substitution was for, he is in Court this morning, and while Mr. Aydelotte is not here, I think it would be perfectly right and proper, especially as it is the wish of the defendant to be sentenced this morning, to have him state in open Court that such is his wish, if so the Court could appoint or re-appoint the two gentlemen who represented him at the trial in order that they may thoroughly advise the defendant of the step he is taking in order that he may not afterwards say he waived any of his rights under any mis-apprehension. The defendant is in Court at this time.

C. C. Houck: (Attorney for Defendant).

If the Court please, I desire before the defendant is asked any questions to make a statement, not as attorney, although I am willing to appear for him as he has requested us to do. Mr.

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2.

Aydelotte, if I am correct, informed me that one of the relatives of the defendant had been to see him and requested him to take

Steps looking to an appeal of the case, to make a motion for a new trial and take the necessary steps. Mr. McPherson and myself had decided that we would not take any further steps in the matter we considered it absolutely useless, for that reason we had informed the defendant and his mother we should not make any motion for a new trial, that if they desired to have it done, we would step out and allow any counsel defendant might choose to come in and make a motion for a new trial, since the Substitution I have been formed by the defendant and by Mr. Alzina this morning that he does not desire to have Mr. Aydelotte represent him, there is a misunderstanding in regard to the matter, that he still desires to have Mr. McPherson and myself represent him, and that he does not desire any motion for a new trial made, he is willing at this time to take his sentence, I will ask him at this time if that is correct.

Is that correct, Mr. Buelna?

Defendant Buelna: Yes sir.

Q. You desire to waive time and have sentence, you are willing you should be sentenced at the present time?

Defendant Buelna: Yes sir.

Q. You don't desire any motion made for a new trial, or any further proceedings taken in the matter?

Defendant Buelna: No sir.

Q. You are willing that Mr. McPherson and I shall appear at the present time and make a request of the Court?

Defendant Buelna: Yes sir.

District Attorney Knight: I would like to ask if he realizes by waiving his right to make a notice for a new trial, no appeal can be taken hereafter in this matter; that this is the final step

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3.

in the matter, do you realize that?

Defendant Buelna: Yes sir.

District Attorney Knight: That this ends the case absolutely, nothing further can be done?

Defendant Buelna: Yes sir.

C. C. Houck: I think he realizes that, if the Court please, then we are ready for sentence at this time.

District Attorney Knight: We are ready.

Court: Has Mr. Aydelotte really been employed by the defendant?

C. C. Houck: As I have already stated Mr. Aydelotte stated to Mr. McPherson and myself that the brothers, I believe, of the defendant, half brothers

----- Transcriber's Insert -----

[Transcriber's Notes: In both occurrences in the above sentence, the "s" in "brothers" is struck out with a diagonal line = "/"]

----- End of Transcriber's Insert -----

I believe, consulted with him in regard to the substitution of attorneys was signed, Mr. Aydelotte requested me and we agreed to give him a substitution in order that he might do so. The defendant signed it at that time, I don't believe if your Honor please, the defendant really understood the situation, really knew what he intended to do at that time, if he did, he has since changed his mind, anyway I think he has a right to request that his case be terminated. No further steps taken in the matter. He has absolute control of the case, no question about that.

District Attorney Knight: You and Mr. McPherson are willing to continue your services and represent his under the appointment of the Court?

C. C. Houck: We are.

District Attorney Knight: I would like to ask the defendant another question.

Court: Very well.

Q. Mr. Buelna, you object to an appeal being taken do you?

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4.

Defendant Buelna: Yes sir.

Q. You don't want any appeal?

A. I don't want any appeal.

Q. You don't want any appeal?

Defendant Buelna: No sir.

Q. You don't want any motion made for a new trial in your behalf?

Defendant Buelna: No sir.

Q. You realize by so doing, by not having a motion made for a new trial an appeal will be cut off, you cannot appeal?

A. No sir.

Q. Fully realizing all this, knowing all this, you want the Court to sentence you at this time?

Defendant Buelna: Yes sir.

Q. You don't wish Mr. Aydelotte to represent you here?

Defendant Buelna: No sir.

Court: Very well. Do you wish to confer with him, you and Mr. McPherson?

C. C. Houck: We have already conferred with him.

Court: I will re-appoint Mr. Houck and Mr. McPherson to represent the defendant, at this time.

District Attorney Knight: I wish the record to show that the defendant is over the age of 21.

Court: Yes sir.

C. C. Houck: Yes sir, he is 21.

Court: Just stand up Mr. Buelna: The District Attorney of this County has filed an information;;;;; [sic]

----- Transcriber's Insert -----

[Transcriber's Notes: The record of the Sentencing of Louis Buelna ended here; the next pages in the transcript take-up other aspects of the Buelna case.]

----- End of Transcriber's Insert -----

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THE CHAIRMAN: That closes this specification?

Mr. LINDSAY: Yes sir. It is understood also that the testimony goes to specifications 1 and 7.

THE CHAIRMAN: Yes sir.

Mr. LINDSAY: We will continue now with specification 7. I wish to state I do not know how many witnesses have been subpoenaed, but I shall take the liberty of calling any person, whether subpoenaed or not.

THE CHAIRMAN: That is understood.

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**TESTIMONY
of
DUNCAN McPHERSON, Jr., Sworn.**

Direct Examination:

Mr. LINDSAY: (Q) Your name is Duncan McPherson, Junior?

A. Yes sir.

Q. Where do you reside, Mr. McPherson?

A. In the city of Santa Cruz.

Q. How long has this city been your place of residence?

A. All my life; about twenty four years.

Q. What is your profession, Mr. McPherson?

A. Attorney at law.

Q. How long have you practiced law? A. I think about a year and a half.

Q. A year and a half? A. Yes sir; or three quarters.

Q. You are acquainted with the Honorable Lucas F. Smith, Judge of the superior court of this county? A. I am.

Q. And are friendly with him, are you, Mr. McPherson?

A. I am.

Q. I will call your attention to the case of the People against

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Buelna, -- the People of the State of California versus Louis Buelna, defendant, tried in this court on a charge of rape. Do you remember the case? A. I do.

Q. When was that tried, Mr. McPherson?

A. Several months ago; just how many I could not say.

Q. Last November, wasn't it?

A. Yes sir; I believe so.

Q. Do you remember the day that the case was called for trial?

A. I do.

Q. Were you present in the Court room at the time the case was called? A. I was not.

Q. You were not? A. No sir.

Q. Were you at the time representing the defendant as attorney or counsel? A. I was not.

Q. Were you called to the court room subsequently to the hour that the case was called for trial?

A. I was called over here about two o'clock. I am not sure, -- I think be [sic] telephone. I believe some one telephoned me.

Mr. SULLIVAN: We object to any testimony concerning the case of the People against Buelna on the ground that no reference is made to that in specification 7. The specification reads as follows: "That said Smith has been guilty of great oppression and tyranny and mal-administration in the affairs of the conduct of his office."

THE CHAIRMAN: That is specification 9.

Mr. SULLIVAN: Now, I was questioning this witness in the case of the People against Bulena. Perhaps counsel is mistaken in the number of the specification. There is another specification which deal exclusively with the Buelna case, if I remember rightly.

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Mr. LINDSAY: No; this evidence is not offered in support of specification 9; it is offered in support of the general allegation, -- specification 7, -- that said Smith has been guilty of great oppression, tyranny and maladministration in the affairs of the conduct of his office.

THE CHAIRMAN: Mr. Sullivan, this is the testimony in that Buelna case.

Mr. SULLIVAN: We are perfectly satisfied to have the testimony in the Buelna case come in under specification 9. Of course Judge Smith is entitled to the same right to which any party to an action would be entitled; he is entitled to know the specific charges against him. He is charge with tyranny and maladministration; we are perfectly satisfied to go in the Buelna case under specification 9, and have the particular matter referred to in specification 9 testified to by the witness if he can so testify. But we submit that they should not be allowed to bring in new matters under this specification 7, in matters we are not prepared to meet at all.

Mr. LINDSAY: Your attention was directed to it, and you are prepared to meet the general

allegation, which is the ultimate fact to be proven, -- specification 7: That the Judge of this court has been guilty of oppression, tyranny and maladministration in the affairs of the conduct of his office. And if you have any objections to urge as to the form of that allegation, not being specific, in any manner, it should have been urged before.

THE CHAIRMAN: In it your object in introducing the witness at this time, -- would you be satisfied to call him again as to specification 9?

Mr. LINDSAY: His testimony has nothing to do with specification 9, at all.

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THE CHAIRMAN: We will hear the testimony.

Mr. SULLIVAN: Just before you make that ruling, I will ask Mr. Lindsay this: (Mr. Sullivan here argued.)

THE CHAIRMAN: Of course we are not attempting to pass upon the sufficiency of this specification 7.

Mr. SULLIVAN: But when important matters are contained in the charges here, of course we have got to be prepared to meet all the charges against Judge Smith.

THE CHAIRMAN: Probably you will have to rebut the evidence of this witness, anyhow.

Mr. SULLIVAN: I do not know whether I will or not. We will get along and save time.

Mr. LINDSAY: When you arrived at the Court room, was the court in session?

A. It was.

Q. Who was presiding? **A.** Judge Smith.

Q. Were you addressed by the Court?

A. I believe the first statement made in court, I believe, was made by the Judge to us, myself and Mr. C. Houck.

Q. Mr. Houck is also an attorney practicing here, is he not?

A. Yes sir.

Q. What was the substance of the Judge's remarks to you, or his direction, -- whatever it may have been? **A.** He told us that this case had been called that morning, and that the attorneys had failed to appear, and that Mrs. Buelna and the prisoner were not represented by any person, and he thereupon appointed Mr. Houck and myself to represent her defense in the case.

Q. Was it a woman? **A.** Represent Mr. Buelna.

Q. Represent the defendant? **A.** Yes sir.

Q. Of what crime was the defendant accused?

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A. Charged with the crime of rape.

Q. The crime of rape? **A.** Yes sir.

Q. Where was it alleged that this act occurred?

A. Here in the county of Santa Cruz.

Q. And to be more specific, out on the bay, was it not?

A. Yes sir.

Q. Had you had any connection with the case before that time?

A. Absolutely none; knew nothing about it, -- none of the particulars.

Q. Had Mr. Houck had any connection with it so far as you know?

A. None that I know of.

Q. You were appointed to defend the defendant?

A. Yes sir.

Q. On account of the absence of his attorneys?

A. Yes sir.

Q. There was a jury in attendance?

A. There was a Jury, I believe it had been summoned that morning. Of course it had not been empaneled.

Q. Empaneled. How much time, if any, did the Judge give you to prepare for your defense?

A. Mr. Houck, -- I made no request whatever for further time, -- and Mr. Houck, I believe, did. I said at the time that I did not think it would be of any great advantage to give us further time, but Mr. Houck did make the request for further time.

Q. What did he say? Go on. A. Well, Mr. Houck, I believe, asked, -- at least to have it continued until the next day, and the Judge stated at the time that he did not see it would be of any benefit to the case, and he asked us to go on with the trial.

Q. And when did you go on with the trial?

A. We went on, -- Let's see, -- we had a consultation; there was a

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recess taken for probably fifteen or twenty minutes; we had a consultation with Mrs. Buelna.

Q. And then you went on to trial?

A. Then we went on to trial.

Q. And I understand, Mr. McPherson, that with your brief experience at the bar, solely on account of your age, you were required by the Honorable Lucas F. Smith to proceed with the trial of a criminal case where the defendant was accused of the crime of rape, without any knowledge of the facts of the case, then, within twenty minutes after your appointment?

Mr. SULLIVAN: I object as leading and assuming a fact not proven.

(Objection sustained.)

Mr. LINDSAY: Cross examine.

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Cross Examination:

Mr. SULLIVAN: (Q) Mr. McPherson, you did, you and Mr. Houck, after your appointment as attorneys, have a consultation with Mrs. Buelna? A. We did.

Mr. LINDSAY: Pardon me just one question?

Mr. SULLIVAN: Yes sir.

Mr. LINDSAY: (Q) What was the result of the trial?

A. Conviction.

Q. And what was the sentence? A. Ninety years.

Mr. SULLIVAN: (Q) Now, Mr. McPherson, you say the announcement was made that the attorneys had been employed to defend the defendant and had abandoned the defendant?

A. They had; at least so we were informed.

Q. You were so informed? A. Yes sir.

Q. In open court? A. In open court; yes sir.

Q. By the mother of the defendant? A. Yes sir; just be-

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fore we were connected with the trial. His Honor first informed us, I believe.

Q. And the jury had been summoned to appear to try that particular case? A. Yes sir.

Q. And had been drawn from all over the county?

A. Yes sir.

Q. Now, the day that you and Mr. Houck were summoned to the court, you simply empaneled the jury, didn't you?

A. Yes sir; that is all we accomplished that day.

Q. You did not introduce any evidence at all?

A. No sir; none whatever.

Q. Didn't the Judge make the announcement to you and Mr. Houck if a continuance was necessary to secure the attendance of witnesses, he would grant the continuance or postpone the case?

A. Well, I really could not say.

Q. Could not say? A. No sir.

Q. After the testimony was in, -- after the testimony of the witnesses had been produced?

A. I believe he stated at the time that we might request to have a continuance if it was necessary in order to secure any witnesses,
-- that he would give us the continuance.

Q. He did? A. I believe he did, -- I think; I believe I am positive of that now. But we should proceed then to empanel the jury.

Q. But if it was necessary to postpone the case and secure the attendance of witnesses, he would postpone the case?

A. Yes; I believe I remember; I recollect now.

Q. And then when the witnesses on the behalf of the defendant that had been produced, had testified, did he announce again, if you had any further testimony and required further continuance,

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he would postpone the case in order to enable you to produce the witnesses?

A. I do not remember just at that time the remarks. If I remember now, he said at the time if we requested a continuance of the case, that he would give us ample time to secure any necessary witnesses.

Q. And did you examine the witnesses that had been subpoenaed to

testify? A. Let me see, -- yes; we examined, not all of them; we did not subpoena all of them.

Q. The witnesses had been summoned and subpoenaed through the counsel that had represented the defendant before?

A. Mr. Houck made out the subpoenas [sic], but I do not remember, just.

Q. This was a case where the rape was committed in a boat in the waters of the bay? A. Yes sir.

Q. At the night time? A. Yes sir.

Q. And necessarily there were no witnesses outside of the woman and the men and other witnesses to testify to circumstances; is not that so?

A. Yes sir.

Q. How many witnesses were there produced on behalf of the defendant? A. We produced three, -- I couldn't say.

Q. Did you produce all the witnesses named by the mother of the defendant and by the defendant? A. We subpoenaed one or two they did not produce.

Q. Did they answer the subpoena? A. They did.

Q. You had a conference with the defendant and with the defendant's mother concerning the testimony that could be produced in the case? A. Yes sir.

As I understand? A. Yes sir.

Q. And you received from them the names of all the witnesses

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who could or might testify on behalf of the defendant?

A. We did; that was after the first day, before the witnesses were called.

Q. And you had ample time to prepare the trial of the case between the first day and the second day, did you not?

Mr. LINDSAY: That calls for a conclusion.

Mr. SULLIVAN: Did you prepare for the trial between the first day and the second day? A. We prepared what we could get in that time.

Q. As I understand you, you did not examine any witnesses at all the first day? A. None whatever.

Q. When did you adjourn that day? A. For the day?

Q. When did the case adjourn for the day?

A. I think probably at four o'clock; somewhere like that.

Q. That is the time the jury had been completely empaneled?

A. Yes sir.

Q. You had all the witnesses produced who were mentioned to you by the defendant and the defendant's mother, did you?

A. We did. We did not subpoena those witnesses until, -- the subpoenas were served late that afternoon, partly, and partly the next morning.

Q. But before the witnesses were produced, not before they testified, you knew the testimony which they intended to give, did you? A. Not entirely; we did not fully question them.

Q. Well, Mrs. Buelna and her son told you the testimony they would give? A. Yes sir.

Q. You had the same number of witnesses you would have had if the case had been continued for a week?

A. So far as I know now.

Q. And you produced the same testimony that you could have pro-

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duced if the case had been continued for a week or a month?

A. Yes sir; so far as I know.

Q. And so far as you know, did the rights of the defendant suffer by reason of your going on that trial in the second day?

Mr. LINDSAY: I do not object to his answering the question. I simply want to call his attention to the facts that it is the opinion of a young professional man.

Mr. SULLIVAN: (Q) Did you leave anything undone or that ought to have been done, by reason of the continuance of the trial?

A. Not that we knew of; if we had more time, we might have done more; we did not know of anything.

Q. After the trial, did you learn of any witness in the case or any facts which would have brought the defendant a different result?

A. Yes; I have been told.

Q. Now what you have been told; I am not asking what you have been told. Did you learn of your own knowledge?

A. No sir; I did not. I never had any information we could get the evidence that would in any way aid the defendant.

Q. So far as you observed, did he have a fair and impartial trial?

A. So far as I observed; yes sir.

Q. And you did produce all the testimony, other than possibly any objections that might be as to there not being a continuance. Upon the conclusion of the trial, did you and your associate ask for any continuance on behalf of the defendant?

A. We did not.

Q. Upon the conclusion of the testimony?

A. No sir; none whatever.

Q. And you had in mind, of course, the statement made by the Judge, that if you required witnesses on behalf of the defendant, he would grant it? A. Yes sir; there was no witnesses that we

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desired to secure, that we did not secure at that time.

Q. And you did not consider a continuance necessary to protect the rights of the defendant?

A. I, myself, did not.

Q. After the testimony was all in?

A. No sir.

Q. How old a man was your associate, -- is you associate, Mr. Houck?

A. I will say he is probably, -- he is over thirty.

Q. He has been practicing about nine or ten years, has he?

A. Yes sir.

Mr. SULLIVAN: That is all.

Mr. LINDSAY: Just one moment.

Q. You did the best you could under the circumstances, didn't you?

A. I always do, Mr. Lindsay.

Q. Well, I am satisfied of that. Now, just this question: You say that after the trial was over, you did learn of something that might have been used in the defense of the defendant?

A. I was told.

Mr. SULLIVAN: I object to anything you were told as being hearsay.

Mr. LINDSAY: (Q) Did you learn anything?

A. I never saw any man --

THE CHAIRMAN: Answer the question, did you learn of anything?

A. Yes sir. I did. Do you want an explanation made of what they meant.

Q. Just say yes or no, did you learn of anything?

A. What do you mean by "learn"?

Q. Hear about it in any manner?

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Mr. SULLIVAN: We object as being hearsay.

Mr. LINDSAY: I am not going to argue the question. I just wanted to ask him if he learned of anything by which he could have investigated the question, -- see the witnesses, -- something of that sort?

Mr. SULLIVAN: We object to anything he heard. Some one might have gone to this young man and told him what might have been done and what could be done; it is purely hearsay.

THE CHAIRMAN: He can answer the question of whether he learned anything or not.

Mr. SULLIVAN: He simply said he learned nothing of his own knowledge. Now, Mr. Lindsay is endeavoring to ask him, what do you mean by the term “Learn”, -- did he say anything? That is calling for purely hearsay testimony.

THE CHAIRMAN: Can you answer the question yes or no, whether you learned of anything?

A. No; I do not consider that I learn anything, unless I know it of my own knowledge.

Mr. LINDSAY: (Q) What you mean is, you received some hearsay information? **A.** I did, in this way; it was hearsay information but not confirmed by me in any particular.

Q. You did not try to confirm it?

A. I did not.

Q. It was not necessary at that time, was it?

A. No sir.

Mr. SULLIVAN: (Q) How long after the trial was it?

A. It was probably two weeks after its conclusion.

Mr. SULLIVAN. That is all.

Mr. BURKE: (Q) Mr. McPherson, do you know the names of the attorneys who deserted this defendant at the time?

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A. Yes sir.

Q. What were their names?

A. I do not know their initials, -- Wyatt & Zabala.

Q. Did Judge Smith take any steps to demand their presence to show why they did not conduct the trial?

A. He did; he had citations issued commanding them to appear in court on the following morning. They did appear, and were here at that time, and he asked them why they did not appear, and they asked that the matter-- they wished that matter here to be gone into immediately at that sitting. He said it would be gone into at the conclusion of that day's session, and then he said: “I will appoint you gentlemen to assist Mr. Houck and Mr. McPherson in the defendant of Mr. Buelna, and they both absolutely refused to do so, and he then fined them.

Mr. SULLIVAN: (Q) Did they admit they had received their fees or part of their fees?

A. Not at that time; that same day, they did.

Q. The same day they did? **A.** Yes sir.

Q. And the Judge then committed them to jail for contempt of court in refusing to act with you in the case?

A. I believe he did; yes sir.

Mr. BURKE: (Q) Did you appeal the case to the supreme court?

A. No sir.

Mr. LINDSAY: (Q) Did you make a motion for a new trial?

A. We did not.

Mr. SULLIVAN: (Q) The facts showed a very aggravated case, did they not? **A.** Yes sir.

Q. Of where a man had raped an innocent woman in a boat in the waters of the bay?

A. Yes sir. The defendant requested us

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not to make a motion for a new trial.

Mr. LINDSAY: (Q) The defendant requested you not to make a motion for a

new trial?

A. He did.

Q. And in deference to his request, you did not do so?

A. We explained to him fully, just exactly what it meant to him if a motion for a new trial was not made; that he would waive all his rights for a new trial, and he positively and emphatically said he did not want a new trial, and I believe he was also asked at the same time the same question by the District Attorney and he was informed fully as to his rights and he positively declined to have a motion for a new trial made.

Mr. SULLIVAN: (Q) Did he waive the right of appeal?

A. By so doing, he did waive the right.

Mr. LINDSAY: I would like to have the latter part of the witness' testimony considered in connection with specification 9.

Mr. BEARDSLEE: (Q) What did you say the sentence was?

A. Ninety years.

Q. Nine? A. Ninety, -- a very aggravated case.

Mr. BEARDSLEE: An aggravated case, was it?

A. Yes sir.

Q. The prosecuting witness, -- what was her age?

A. I believe twenty six.

Q. Was she a woman of high standing in the community?

A. Well, I could not say; she was a waitress in a hotel.

Q. That is not necessarily anything against her standing?

A. No sir.

Mr. SULLIVAN: (Q) Her reputation was good?

A. So far as I know.

Q. Her reputation for virtue was good, and proven to be good?

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A. So far as I know.

Mr. LINDSAY: (Q) At the time the defendant Buelna was sentenced, who was his attorney?

A. Mr. Houck and myself.

Q. Had not there been a substitution prior to that time?

A. There had, but I believe Mr. Buelna in open court said that he did not wish the party who had been substituted to represent him any further.

Q. Well, did you represent him at the sentence, -- at the time of the pronouncing of judgment?

A. We did.

Q. As attorneys? A. As Attorneys.

Q. Was anything said on his behalf?

A. We did.

Q. That is what I am trying to get at: Whether you represented him at that time. I want to ask one more question, then I will finish with this: This case attracted a great deal of attention, did it not?

A. It did.

Q. The injured woman was a young woman of good reputation, so far as was known; that was true, was it not?

A. So far as I know, except as brought out in the trial itself.

Q. She was called upon to testify, was she not?

A. She was.

Q. In reference to the particulars of this crime, by the District Attorney? A. Yes sir.

Q. Did you make any request at that time, -- either you or Mr. Houck, your associate, -- Mr. SULLIVAN: (Interrupting:) Are you introducing testimony in support of 9 or 7?

Mr. LINDSAY: I guess this is not 7. Yes; it is in support of 7.

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It may be in support of something else.

Q. -- that the case should be tried with closed doors?

A. Yes sir.

Q. And what was the ruling of the Court on your request?

A. At that time, I believe the ruling of the Court was what it would not be necessary in regard to any other witness than Mrs. Whimple, -- Miss Whimple, the prosecutrix, and I understood then that it would probably be behind closed doors when she was brought on, but not with other witnesses.

----- Transcriber's Insert -----

[Transcriber's Notes: The rape victim was Miss Lillie Whimple.]

----- End of Transcriber's Insert -----

Q. Well, was it tried with closed doors when she testified?

A. She testified later, and at that time I do not just remember whether another request was made for closed doors or not, but she testified with open doors.

Q. And the court room was crowded, I suppose?

A. It was just as it is to-day.

Mr. SULLIVAN: Well, whole[i. e., while] she testified, he[r] back was turned to the audience, was it not?

A. It was, always.

Q. In a low tone of voice, so that none but the shorthand reporter could hear her?

A. Yes sir.

Q. And the Judge and jurors?

A. Yes sir; the tables were moved up very close to her here; she was about over here.

Q. So that none of the spectators could hear what the witness said?

A. They could hear the questions, but not her answers.

Q. Mr. Knight represented the State in the proceeding, and you and Mr. Houck represented the defendants, and you used as polite language as you possibly could under the circumstances, didn't

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you? A. Yes sir.

Q. And so did Mr. Knight? A. Yes sir.

Q. And did Judge Smith cite a case decided in the 103d California where the supreme court had held that the lower court committed error in excluding the public from the court room during the trial of a rape case? Do you remember that case, 103 California?

A. There was some mention made of that; I do not really remember it was made then.

Q. A case cited in the 103rd, page 142, where a judgment of conviction was reversed because the lower court excluded the public from the court room during the trial of the case, -- a rape case?

Mr. LINDSAY: At the request of the defendant?

A. If I recollect correctly, that case was referred to some time, but I do not remember whether it

was then or not.

Q. Did not he say under the constitution, every defendant was entitled to have a public trial?

A. I believe he did state that.

Q. And that the trial would not be a public trial if the court excluded people from the court room during the trial?

A. He so stated.

Q. That was in a criminal case?

Mr. SULLIVAN: The case I refer to is the case of the People against Hartman, 103 California, page 242.

Mr. LINDSAY: (Q) Do I understand you to say, Mr. McPherson, that Judge Smith cited that case in support of his actions?

A. The principles involved in that case were cited. I do not recollect that time, of his referring to that particular case.

Q. Mr. Sullivan has asked you, and I understand you to say, he

[198] [Mr. Aydelotte's name is misspelled throughout.]

did refer to this case.

A. He referred and announced the principles that are involved in that case.

Mr. BURKE: (Q) Mr. McPherson, did Mr. Aydelott at any time represent this defendant?

A. He did.

Q. When? A. After his conviction and before the sentence. Do you wish the facts, the whole facts, -- just how he came into that?

Q. You said a little while ago you represented him, I understood?

A. Yes sir. Mr. Aydelott was to be at the court this day; he stated he did not wish Mr. Aydelott to represent him. I believe the District Attorney asked him the question right out in open court, if he wished Mr. Aydelott to represent him, and he said not, and the court, seeing there were no attorneys to

represent him, asked us if we were willing to represent him for the purpose of the sentence, and the defendant asked us, too. He seemed about to be sentenced, so far as we could see, and we concluded to represent him for that purpose.

Mr. LINDSAY: (Q) Mr. Aydelott was his attorney of record at that time?

A. He was the attorney of record at the time.

Q. That was afterward? A. But before we concluded to be his attorneys for that purpose, he said unequivocally he did not wish Mr. Aydelott to represent him, and that he wished

—

Mr. LINDSAY: I understand you; no doubt about that.

Mr. SULLIVAN: (Q) Did not the District Attorney insist upon a public trial of this defendant, claiming that if the public were excluded, possible error would be committed?

A. Yes sir; he did.

Q. The District Attorney represented that the people insisted

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upon a public trial.

A. I don't know how strong, but that is the ruling the Judge made; I believe he consented too; we understood, then, Miss Whimple's testimony would be heard behind closed doors, although that question was not absolutely decided.

Q. The testimony was the same as if it was behind closed doors; they could look at her while she

was testifying? They could see her back? A. They could see her as she walked in.

Q. They could see her on the witness stand?

A. Yes sir.

Q. They could hear the questions of the District Attorney?

A. Yes sir.

Q. But not her answers? A. No sir.

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Mr. BURKE: Do you intend to recall Mr. McPherson and Mr. Houck for specification 9 again?

Mr. LINDSAY: I am not positive of that. I do not think we will recall them.

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TESTIMONY
of
CHARLES C. HOUCK, Sworn.

Direct Examination:

Mr. LINDSAY: (Q) Your name?

Mr. CHARLES C. HOUCK.

Q. Where do you live, Mr. Houck? A. Santa Cruz.

Q. How long have you lived here? A. Something over twenty years, -- about twenty three.

Q. What is your profession? A. Attorney.

Q. You have practiced at the bar of this Court for how long?

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A. Eight or nine years, I think.

Q. Were you one of the of the attorneys appointed by Judge Lucas F. Smith to defend Louis Buelna, who was tried for rape in this court, some few months ago?

A. I was.

Q. State the circumstances of your employment as briefly as you can.

A. As near as I recall, I think it was early in the afternoon, half past one or two o'clock, somewhere along there, some one-- I do not know whether it was the sheriff or who, informed me I would be wanted in court at two o'clock on the Buelna case. At two o'clock I went, -- came up here and found Mr. McPherson pre- sent; at that time the court, as near as I remember, informed us that the attorneys who had been employed or had been retained to represent the defendant, refused to go on with the case; that the Jury had been summoned; it was in attendance; and that he appointed us to represent the defendant at the trial of that case.

Q. You of course acquiesced? A. I did.

Q. Did you make any request for a continuance?

A. I did.

Q. What request did you make?

A. I made a motion, -- a regular motion for a continuance.

Q. What was the ruling on the motion?

A. The motion was denied.

Q. Before the ruling on the motion, did you ask for time to prepare an affidavit? A. I don't believe that I did; I was sworn and testified; I may have asked for time to prepare an affidavit; I am not

sure.

Q. Can you refresh your memory? Did not you ask for time to prepare an affidavit, which was denied, and then you were sworn?

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A. I do not remember that, Mr. Lindsay. It possibly occurred that way. Not to the best of my recollection, although I am not positive about that.

Q. How long after your appointment to defend this man was it that you entered upon the trial of the case?

A. The same afternoon.

Q. Well, how long afterwards?

A. I couldn't say; half an hour or so.

Q. Half an hour or so; you would not be positive, though. Before your appointment to defend the defendant, had you made any study of the case?

A. No particular study; no sir.

Q. Had you made any study of it at all?

A. I made no study of it; I was somewhat familiar with the case.

Q. That is, from public rumor?

A. It attracted a great deal of attention.

Q. Did you ever before defend a man accused of rape?

A. Not alone; I assisted.

Q. You made no examination of the case at all, with a view of trying it?

A. Oh, certainly not. I did not expect to.

Q. How long did it take to try the case?

A. I think it was four days.

Q. Continued day after day, did it? A. Continued day after day.

Q. The result was as has already been stated?

A. The result was conviction.

Q. Now, subsequent to the conversation, was there a substitution of attorneys? A. There was; yes sir; there was.

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Q. At whose request? A. Well, I think the first I heard of it was from Mr. McPherson. It was a regular substitution, signed by the defendant and by his attorney and by the substituted attorney.

Q. Who was he?

A. Mr. Aydelott; the substitution is of record, I presume, at the present time.

Q. Was it on the request of the defendant?

A. It was; it was signed by him.

Q. Did you have any conversation with the defendant in reference to the matter?

A. We did.

Q. This was after the conviction?

A. Yes sir; it was after the conviction.

Q. And before the sentence? A. Before the sentence.

Q. Well, what reasons did he give for desiring the substitution?

A. I do not remember the reasons in particular; Mr. McPherson and I did not desire to continue in the case. We considered we had done all our duty required of us to do.

Mr. LINDSAY: It was after a conviction, and before judgment?

A. Yes sir.

Q. No motion for a new trial had been made then?

A. It had not.

Q. Were you present in court when the defendant was brought in for judgment?

A. Not when he was first brought in; I came in afterwards.

Q. Was Mr. Aydelott, his attorney, present? **A.** He was not; at

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least I did not see him.

Q. As a matter of fact, he was not?

A. As a matter of fact, I understand he was not.

Q. What occurred at that time?

Q. I don't remember exactly what occurred; it was in substance as stated by Mr. McPherson: That the defendant stated he did not desire Mr. Aydelott to represent him and wanted to know if we would represent him at the sentence, during these proceedings, and I think we told him, -- we told him we would; and Mr. Knight asked him a number of questions.

Q. What were they? **A.** In regard to his not making any motion for a new trial; if he knew what he was doing; if he knew the consequences.

Q. But before you get to that, did Mr. Knight, when he knew he was not going to make a motion for a new trial, -- did he explain it?

A. I think Mr. Knight explained that to the Court, that he had received information from which source he said was reliable, that the defendant did not desire to make a motion for a new trial, that he desired to be sentenced; that is the best of my recollection. I do not remember any statement that Mr. Knight made.

Q. Were you at that time appointed by the Court again to represent the defendant? **A.** We were.

Q. Well, what steps did you take to protect his interests?

A. I did not take any steps.

Q. Why not? **A.** Because he did not desire to take any.

Q. Did you consult with him? **A.** We did.

Q. What did you say? **A.** Well, Sir, I consulted with him after we were appointed by the Court to represent him; I am per-

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fectly willing --

Mr. SULLIVAN: We object on the ground it is a privileged communication.

A. I am perfectly willing to tell.

Mr. SULLIVAN: We object to the witness testifying to any privileged communication.

Mr. LINDSAY: At any rate, you made no motion for a new trial?

A. We did not.

Q. And the Court proceed[sic] to pronounce judgment on the defendant, whatever it was?

A. Yes sir.

Q. And what was the judgment?

A. A sentence of ninety years.

Q. A sentence of ninety years?

A. To San Quentin.

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Cross Examination:

Mr. SULLIVAN: (Q) When you and Mr. McPherson appeared in Court and you asked for a continuance, did the Judge announce if you found it necessary to have a continuance, he would grant one?

A. That is, if it was necessary to get our witnesses, he would give us time to do so.

Q. He told you and Mr. McPherson that?

A. Yes sir.

Q. It took you the afternoon of that day when you first came in the court, to empanel the Jury?

A. To empanel the Jury.

Q. What time did Court adjourn that day? **A.** Early in the after-noon; I suppose about four o'clock.

Q. You and Mr. McPherson immediately interviewed all the wit-

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nesses that you knew of, didn't you?

A. We did, what we could; yes sir.

Q. And proceeded to try the cause?

A. And proceeded to try the cause.

Q. The next day did you make any motion for a continuance?

A. No sir.

Q. Were you fully prepared the next day to go on with the trial?

A. As well as we could be.

Q. Did you at any time make a motion for continuance, from the time you commenced the trial of the case, up to the conclusion of the taking of testimony?

A. I did not; after the first motion, -- that was denied, and we quit.

Q. When was it Judge Smith announced to you and Mr. McPherson, if you found it necessary to have a continuance, he would grant it; what stage of the proceeding?

A. I don't remember whether he stated that at the time we made our motion for a continuance, or whether it was the next morning; either one or the other.

Q. And you and Mr. McPherson expressed satisfaction with the ruling of the court?

A. I don't know whether I did or not. I think I took an exception.

Mr. LINDSAY: (Q) You took an exception?

A. I don't remember that.

Q. Took an exception to that ruling of the Court that he would grant the continuance if you found it necessary?

A. No sir; to his refusing to grant a continuance.

Q. You took it simply to keep the record straight?

A. I was trying to; yes sir.

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Q. When he made the announcement that he would grant you a continuance if you found it necessary, what did you do?

A. I sat still, I suppose; I can't remember; I did not say anything.

Q. How many witnesses testified on behalf of the defendant in the case?

A. I do not know; three or four, I think. The defendant was one of them; I don't remember how

many more. Some of our people around the wharves around there were subpoenaed.

Q. How long did it take to put in the defendant's case?

A. I couldn't say.

Q. How long did it take for the people to put in the people's case?

A. I couldn't say.

Q. Did the People take more than two days?

A. I don't believe that we did.

Q. During the time from the time the People first put in their testimony, up to the time you commenced putting in testimony for the defendant, you examined witnesses and examined the facts and law in regard to the case?

A. Examined all the witnesses I knew of.

Q. From whom did you obtain the information as to the witnesses?

A. From the defendant and his mother and from other-- I obtained some information from some other sources which proved not to be reliable.

Q. You availed yourself of all the information you obtained from the defendant and the defendant's mother for the purposes of that trial? A. We did.

Q. And all the witnesses named by the defendant's mother were produced? A. Yes sir.

Q. And all testified? A. All but one.

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Q. And that witnesses[sic] was produced and excused?

A. And excused; yes sir.

Q. And during the trial of the case, the lady's back was turned to the audience, was it not?

A. Yes sir.

Q. She stood close up to the Jury box?

A. She stood right at the end of the table.

Q. Talked in a low tone of voice? A. She did.

Q. So the Reporter could hear her?

A. Yes sir.

Q. And the counsel in the case could hear her?

A. Just barely heard her, and that is all.

Q. Did she talk in a tone of voice loud enough for the spectators to hear?

A. I should judge she did not. I was sitting here, and had some difficulty to hear her.

Q. Now, the defendant, after you and Mr. McPherson were called here by the court and appointed to represent the defendant, -- the Judge issued a subpoena directing the former attorneys to appear and show cause why they should not be punished for contempt? A. Yes sir.

Q. They appeared next morning? A. Yes sir.

Q. Mr. Zabala and Mr. Wyatt? A. Yes sir.

Q. Did the Judge the next morning direct these attorneys who had formerly been the attorneys, to proceed with the trial?

A. He did.

Q. Did they ask for a continuance? A. No sir; they did not, so far as I know.

Q. Did they state their reasons for refusing to proceed with the trial? A. I don't know whether they did or not. I think there was something mentioned.

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Q. Upon their refusal to proceed with the trial, the Court punished them for contempt; is not

that so?

A. Yes sir.

Q. Before putting the witness on the stand, did you have a sufficient time to examine these witnesses for the defense?

A. I examined every witness for the defense; that is the reason I refused to put one on the stand.

Mr. LINDSAY: (Q) What is your last answer?

A. I examined every witness for the defense that I knew of, and that is the reason I declined to put one on the stand, because I did not want his testimony.

Q. Because you had not time to examine him?

A. I had examined him.

Mr. SULLIVAN: (Q) You did examine him?

A. I did.

Q. You in fact examined all the witness[sic]?

A. All that I knew of.

Q. In your opinion, did the defendant have a fair and impartial trial?

A. As far as the trial itself was concerned, we tried to give him a fair trial.

Q. I mean as far as the Court was concerned? Did the Judge act fairly and impartially during the trial of the case?

A. So far as I know, he did; he made[sic] have made some errors; I do not know that. That can be determined hereafter.

Mr. LINDSAY: (Q) It resulted that something happened to him?

A. I think something did.

Q. I understand you to say the witness, the prosecuting witness, had her back to the audience?

A. She did.

Q. Where was she sitting?

A. This table was moved over here

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and she was sitting right there.

Q. And in about that position?

A. Yes sir.

Q. Is that the usual place for a witness to sit?

A. No sir.

Q. Why was she sitting there?

A. So that the audience could not see her, -- that is, see her face.

Q. So that the audience could not see her face?

A. To save her any unnecessary humiliation; we tried to be easy with her.

Q. You tried to be easy with her under the circumstances?

A. We did; we tried to; I don't know whether we did or not; we tried it.

Mr. BURKE: (Q) About how old was this defendant?

A. I don't know; I think he was just about twenty one.

Q. Did you regard him as a man of ordinary intellect and intelligence from your talk and conversation with him?

A. I think so. I have been acquainted with him for a number of years.

Mr. SULLIVAN: (Q) And he was a man of ordinary intelligence, was he? A. Fairly.

Q. What was his occupation?

A. The character of a man he was. He was a fisherman.

Q. A fisherman? A. Yes sir.

Q. What was he, -- a Mexican? A. Mexican or Spanish, I do not know which.

THE CHAIRMAN: Is that all the witnesses you have on that subject?

Mr. LINDSAY: Not on specification 7. That is all on this subject.

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THE CHAIRMAN: The Committee stands adjourned until two o'clock.
I wish to notify the witnesses that have been subpoenaed that they will be here at two o'clock.

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AFTERNOON SESSION:

THE CHAIRMAN: Do we understand that the prosecution has closed the evidence on specification 9?

Mr. AYDELOTT: We have not done it yet.

THE CHAIRMAN: We are now under 7.

Mr. SULLIVAN: No; the announcement was 9, this morning.

Mr. LINDSAY: Now, we are now on specification 9. There is certain evidence which we will also ask to be considered on specification 9.

Mr. BURKE: Of McPherson and Houck?

Mr. LINDSAY: Yes sir.

Mr. SULLIVAN: No; all the Houck testimony was introduced in support of 7.

Mr. LINDSAY: Not in support of 7, -- some of it in support of 9.

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TESTIMONY
of
W. M. GARDNER, Sworn.

Mr. SULLIVAN: What is the specification?

Mr. LINDSAY: Specification 7.

Direct Examination:

Mr. LINDSAY: (Q) What is your name, please?

A. W. M. GARDNER. [His full name is Wilber M. Gardner]

Q. Where do you reside, Mr. Gardner?

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A. Santa Cruz.

Q. How long have you resided at Santa Cruz?

A. Twenty three years.

Q. What is your profession? **A.** Attorney at law.

Q. How long have you practiced at this Court?

A. Seven years.

Q. Are you acquainted with the Honorable Lucas F. Smith, Judge of this Court? **A.** I am.

Q. You have practiced before him?

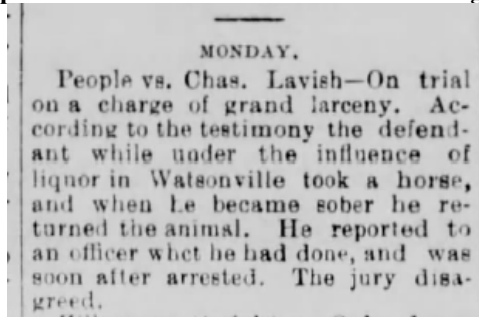
A. Yes sir.

Q. Do you remember a case entitled the People of the State of California against Otto

Lavish[sic], defendant?

----- Transcriber's Insert -----

People vs. Lavish: People vs. Lavish Santa Cruz Sentinel Aug., 7, 1894 p. 3,, coll. 3



MONDAY,
People vs. Chas. Lavish—On trial on a charge of grand larceny. According to the testimony the defendant while under the influence of liquor in Watsonville took a horse, and when he became sober he returned the animal. He reported to an officer what he had done, and was soon after arrested. The jury disagreed.

----- End of Transcriber's Insert -----

Mr. SULLIVAN: We object to any testimony concerning that case. We know nothing at all about it. There is nothing contained in any of the affidavits referring to the case, and we submit under the charges made and the answer of Judge Smith, we should not now be confronted with testimony concerning a case not referred to in the specification at all.

Mr. LINDSAY: This is testimony as to specification 7.

THE CHAIRMAN: Mr. Lindsay, will this testimony go to show any tyranny and maladministration on the part of Judge Smith?

Mr. LINDSAY: It is offered for that purpose alone.

Mr. SULLIVAN: It is an elementary rule, where a person is charged with tyranny, the facts and circumstances must be set forth. Under this specification 3, they refer to only three cases, to none of which they now refer, or have referred yet. Now, they confront us with testimony on another case.

Mr. LINDSAY: "That the Judge of this Court has been guilty

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of oppression, and tyranny and maladministration in the affairs of the conduct of his office". Now, it is not possible that any conclusion can be reached other than that all matters connected with that charge must be pertinent to the Judge of this Court, more than to any other person. We wish to prove the ultimate fact which we have alleged.

Mr. SULLIVAN: Now, it is an elementary rule of law that where a charge is based upon malice and tyranny, all the facts and circumstances showing the malice and tyranny must be set forth, and in this specification 7, they refer to certain instances of oppression, tyranny and maladministration. The instances are in the case of Hartman versus Smith, and Trafton against Quinn, and Marquis versus Gardner; to none of these cases, up to the present time, has the prosecution referred. Now, they produce a witness here to testify to facts and circumstances concerning a case which has never been referred to at all, and they take us by surprise. He are entitled to know what we are charged with. Any person charged with a crime, fraud or oppression, is entitled to know the facts and circumstances constituting the alleged fraud, oppression and tyranny. Now for the first time they bring in another outside case altogether, and we are entitled to a reasonable length of time within which to meet the testimony of these witnesses. Counsel knows himself in any case, -- a civil action, if a remedy is claimed on

the ground of oppression or fraud or undue influence, the facts and circumstances showing the fraud and undue influence must be shown, -- in ordinary civil actions; and the rule is stricter in criminal proceedings, and this is a quasi-criminal proceeding; and I submit to the Gentle- men and counsel that we are taken by surprise by producing this witness to testify to acts when nothing is known of them by us

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at the present time.

Mr. LINDSAY: The answer to that is, they will know all about it when they hear the testimony.

Mr. SULLIVAN: Well, we are entitled to know about it in our pleadings.

Mr. LINDSAY: Not at all. This Committee is not here for the purpose of investigation as an inquisitorial body. We submit the matter to the Committee.

Mr. SULLIVAN: If they bring this testimony forth, we of course will insist upon a reasonable length of time to produce the testimony in rebuttal. We do not know where the witnesses may be at the present time that may be required to rebut the testimony of this witness. We are not disposed technically to oppose a presentation of charges against Judge Smith, provided we have time, reasonable time, within which to produce the witnesses and to meet the testimony that may be brought forth here; and we submit right now, if they propose to go into facts and circum- stances relating to any other case, that we will insist upon a reasonable time to meet the testimony.

THE CHAIRMAN: Mr. Lindsay, have you other witnesses and other evidence to introduce to this specification?

Mr. LINDSAY: Other witnesses to be introduced.

THE CHAIRMAN: Referring to other matters not mentioned here in these specifications?

Mr. LINDSAY: Yes sir; and for the illustration, -- of course, if your Honor's please, the mere word "illustration" itself is suggestive of the meaning of the word.

THE CHAIRMAN: Mr. Sullivan, the Committee has been sent here by the Legislature in a representative capacity, and as I under- stand, the Committee is to receive evidence on these different

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charges and this specification 7 is very broad, and I heartily, -- the Committee heartily feels that it is their duty to not decide as your suggestion would require.

Mr. SULLIVAN: But you are bound by the rules that prevail in courts of justice in the trial of cases and the rules of practice and the rules of evidence, -- particularly the rules of evidence.

THE CHAIRMAN: We will overrule the objection for the present, and hear this.

Mr. SULLIVAN: If the objection is overruled, we will insist upon a reasonable length of time within which to produce witnesses, if there be any, to testify in rebuttal of the testimony of this witness.

THE CHAIRMAN: We have no disposition on our part to curtail the defendant in a fair trial.

Mr. LINDSAY: I do not think, Gentlemen, --I will not say positively, -- but there will be very little evidence on any matter that is not of record of this court, -- very little evidence.

There may be some.

(The Reporter read the last question.)

Mr. LINDSAY: A criminal case which was tried in this Court, before the Honorable Lucas F. Smith, Judge of the Court, and a Jury, on the thirty first day of July and the second, third and

fourth days of August, in the year 1900?

A. I do.

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Q. Were you an attorney in the case? A. One of them, yes.

Q. How did you become an attorney in the case?

A. Judge Smith sent for Mr. Martin and myself, Martin is a partner, a member of the firm of Martin and Gardiner[sic], and we appeared here in the courtroom the morning of the setting of the trial, how we came.

Q. Proceed. A. And the court appointed us, in connection with Mr. Sandholp [i.e., Sandholdt], an attorney of Watsonville[sic], to defend the case.

Q. You say that this was on the morning when the case was set for trial? A. Yes sir.

Q. Was the jury in attendance? A. The jury was in attendance, present in the court room and so were all the witnesses so far as I know, at least a portion of them were.

Q. Did the court state the reason and necessity of your appointment?

A. He did.

Q. What was it? A. That the attorney for the defendant who had been handling this case previously had withdrawn at the last moment from the case.

Q. Were those attorneys present in the courtroom?

A. They were.

Q. Who were they? A. Mr. Burke and Mr. Sands[sic], I believe, Burke and Sands[sic] of Watsonville, if I remember correctly, Mr. Burke at any rate was one of them.

Q. You of course accepted, as it was your duty, this appointment?

A. We did.

Q. State what occurred. A. As soon as we were appointed we stated to the court that we knew absolutely nothing whatever of the facts of the case, having herd of it casually, and asked the court for a continuance of twenty four hours that we might prepare a defense.

He refused our request, stated we might retire to his chambers and be ready for trial in the course of five or ten minutes, that the at- attorneys who had been handling the case previously would retire with

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us and give us the facts they had in their possession. We objected to that proceeding and took our exception to the ruling, retired to the chambers and obtained such information as were able to at that

time and proceeded to trial.

Q. How long after your appointment was it you proceeded to trial?

A. Within ten or fifteen minutes.

Q. What was the nature of the charge? A. A case of an assault with a deadly weapon, with intent to commit murder.

Q. Assault with a deadly weapon with intent to commit murder?

A. Yes sir.

Q. Well, what occurred during the trial if anything?

A. I think we succeeded in getting a jury the first day and that same day I interviewed the witnesses such as we had and received from them such evidence as they would produce at the trial, familiarized myself more or less with the case and I think we introduced some testimony the first day. The next morning before the trial I came to my office on a bicycle and was taken seriously ill at the door, from what Dr. Morgan told me at that time--Mr. Li

MR. SULLIVAN. I object to what Mr. Morgan told you. We do not want what he told you but what had happened.

THE WITNESS. I was taken seriously ill and met Dr. Morgan on the sidewalk; he told me after an examination that I could not go into the trial of the case that day.

MR. SULLIVAN. I object to what Morgan said. (Objection sustained.)

MR. LINDSAY. What did you do?

A. I was sent home in a hack or went home and went to bed, and could not appear at the trial of the case and did not that day.

Q. Of course you do not know what happened that day of your own knowledge?

A. Not except what was told me.

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MR. SULLIVAN. We object to that.

MR. LINDSAY. Never mind that. What happened the next day.

A. The next day I was able to appear [in] court and did so and we concluded the trial. It lasted, I think for four or five days.

Q. Did you submit instructions to be given the jury?

A. At the close of the trial, which I think was at twelve o'clock on the last day of the trial, the evidence was all in, we were informed by the court to prepare our instructions and to have them ready to hand to him for the purpose of giving before we commenced giving our argument; at two o'clock I immediately went over to the office and Mr. Martin, my partner and myself, concluded that we could not, within the limited time, prepare our instructions, such as we desired to give and knowing that there had been the case of the people of the State of California against George Pyler in which the same defense was offered that we were offering.

Q. What defense was that?

A. That of insanity. We took the transcript of the case on appeal in the case of Pyler and I checked such ones of instructions as was applicable in my opinion to the case at bar and gave them to our stenographer, Mr. Ben Martin, to copy during the noon hour; I intended to check such instructions only we had been given by the Judge in the former trial, and endeavor to check the ones he had refused to give; after I had checked however I ran a lead pencil mark through it.

Q. You discovered your mistake did you?

A. Yes sir, before it was copied, but Ben Martin did not, and copied it, and we did not have time to look them over carefully before the instructions were returned and we had to come back to court and they were handed to the Judge. I informed him where we had received them, where we had got them, that they were the instructions he had given in a former case, he gave the instructions including the erroneous ones.

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Q. To the jury?

A. To the jury? The jury retired after receiving the instructions and after deliberating some length of time returned in the courtroom and asked for further instructions. The Court again upon a request, gave them the same instructions; they asked him if that was the law; he said it was. They again retired and were out I think all night, returning the verdict next morning of simple assault. Before the jury had been discharged, but after the verdict had been received and read, the Court stated to the jury that he had been grossly imposed upon by one of the attorneys for the defense, Mr. Gardiner[sic]; I was very much surprised, but he then went on to say why he had been imposed upon and stated the circumstances as I have given them.

Q. What did he say to the jury at that time?

A. He told the jury at that time that he had been requested to give instructions which were not the law, that the instructions he had given to them were not the law, that I had stated to him the instructions which I had requested to be given had been give in a former trial, which was a fact, I stated so. During the remarks the court tiraded me considerably before the jury and used such language that made me much ashamed and embarrassed me, such as an attorney should not receive at the hands of the court.

Q. What was the language? A. He said he would cite me to appear for contempt of court, or cite me to appear to show cause why I should not be fined for contempt of court or punished. I asked for the privilege of explaining my position in the matter--he ordered me to sit down. I insisted as a member of the bar and practicing before this court upon my right to explain my position--he again ordered me to sit down. After the matter had been discussed somewhat from the bench I again asked for the privilege to explain to the jury and to the persons assembled--of which there were many--my position, then the

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to me and I explained the circumstances.

Q. He first refused your request? A. He did.

Q. What did he state in reference to your persistence in making explanations, if anything? A. He ordered me again to sit down and refused to grant my request until sometime afterwards.

Q. And finally he allowed you to explain? A. Yes sir.

Q. I understand you to say he said in the presence of the jury-- MR. SULLIVAN. I object to your understanding.

MR. LINDSAY. I don't blame you. (Question withdrawn)

THE CHAIRMAN. What case was that?

A. The people of the State of California against Otto Lavish, he is commonly called Mike Lavish. CROSS EXAMINATION.

MR. SULLIVAN. Where does Mr. Lavish live at the present time?

A. I could not say, I think Watsonville--where he lived at that time.

Q. Did Mr. Lavish make any complaint to the court on account of the treatment he received when the case was first called to trial?

A. He did to his attorneys, yes.

Q. Did he personally at any time? A. No sir, I think not.

Q. This occurred in July 1900? A. Yes sir.

Q. This occurred in July 1900, nearly four years ago?

A. Yes sir, 4 years this summer.

Q. When you called to appear here, to represent the defendants the judge informed you that the attorneys who had formerly represented the defendant refused to go with case? A. Yes sir.

Q. Those attorneys were here? A. Yes sir, they were.

Q. Were the witnesses for the defense present?

A. Yes sir, some of them.

Q. Had the witnesses, all the witnesses for the defense been all subpoenaed? A. I could not say as to that.

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Q. Well, so far as you recollect? A. I think not; I think there were subpoenaes[sic] issued after the case began.

Q. You think not? A. In fact I am quite certain of that, I would not say positive but that is my recollection that we had sub- poenaes[sic] issued afterwards for other witnesses in Watsonville.

Q. This was before the re-election of the judge was it not?

A. Yes sir.

Q. Of course, it didn't occur to you before or since--all these facts occurred before the election of the judge to his office. How many witnesses were there in court the morning you were called upon to represent the defendant? A. I do not know.

Q. Did you have a conference with the attorneys for the defense as requested by the court?

A. Yes sir.

Q. In the judge's chambers? A. Yes sir.

Q. With both Mr. Burke and Mr. Sands[sic]?A. Yes sir.

Q. They explained to you the theory of the defense did they?

A. Very briefly, they simply said their defense was insanity.

Q. That is all? A. Yes sir.

Q. Didn't they explain to you the facts and circumstances attending the alleged assault?

A. I think they did.

Q. You think they did. Was the defendant present at the time.

A. Yes sir.

Q. And after their statement to you, did you conclude to go on with the trial of the case?

A. We were ordered to do so, of course we concluded when we were ordered to do so, we did, we could not do otherwise.

Q. After the attorneys had stated the facts and circumstances of the case and you had examined the witnesses, weren't you satisfied then to proceed with the trial of the case? A. No sir we were not.

Q. Did you examine any of the witnesses on the first day of the

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trial? A. I think we did; I am not certain as to that, I think we did.

Q. Didn't the court on that occasion tell you to spend the first day in impanelling the jury and that he would grant you a continuance until the next day?

A. I could not say whether he did.

Q. For the purpose of enabling you to interview the witnesses and prepare for trial?

A. I could not say whether he did or not.

Q. Could not say whether he did or not? A. No sir; possibly he did.

Q. Are you one of the affiants who made affidavits affecting the charges against Judge Smith?

A. I am.

Q. Do you remember the charges you have sworn to?

A. I think I do.

Q. Which ones are they. A. I think I swore to the fact that Charles M. Cassin was one of the favorites of this bar.

Q. How is it you did not make this other charge against the judge?

A. Because I did not care to, did not want to.

Q. Did you ever make an affidavit setting forth the facts connected with your employment in the case of the People against Lavish.

A. No sir.

Q. Did you ever make any statement to Mr. Aydelotte or Mr. Leonard, or any person connected with the prosecution concerning the case of the people against Lavish? A. Not until the last three

or four days, if at all.

Q. Have you practiced in this Court to any extent?

A. Yes sir.

Q. Have you tried any of those cases lately? A. Yes sir.

Q. How many trials, three or four? A. Probably 15 or 20 may be more.

Q. What kind of cases, criminal cases or civil cases or both?

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A. Civil cases; we never have any criminal cases to any extent.

Q. And when these charges were being formulated against Judge Smith, did you attend any conference of any persons who were preparing those charges? A. No sir.

Q. In getting up the charges? A. No sir, I did not.

Q. Did you ever appear at the office of Mr. Leonard in connection with these charges?

A. No sir I never did.

Q. Mr. Leonard ever appear at your office in connection with these charges? A. Yes sir.

Q. Did he request you to make an affidavit upon those charges against Judge Smith?

A. I think not.

Q. Did you voluntarily make the affidavit against Judge Smith?

A. No sir.

Q. As contained in those charges. At whose request did you make the affidavit containing those charges? A. Mr. Aydelott.

Q. Did he tell you when he had this conversation with you, that he had an anti-election agreement with Mr. Cleveland by which impeachment charges were to be presented to the Legislature against Judge Smith?

MR. LINDSAY. I object as hearsay and not cross examination.

(Objection sustained.)

MR. SULLIVAN. Don't you know as a matter of fact before you made this affidavit and before the election of Mr. Cleveland, Mr. Cleveland had entered into an agreement with Mr. Leonard by which these charges were to be formulated and presented to the Legislature?

A. No sir.

Q. You know Mr. Aydelott and you know Mr. Cleveland?

A. Yes sir.

Q. Don't you know that these persons engaged in the prosecution of this case stipulated with Mr. Cleveland, under a compact with Mr.

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Cleveland by which Mr. Cleveland was to present these charges to the Legislature of the State of California? A. No sir, I do not, nothing of the kind; never heard of it until this morning.

Q. You did not know about that until this morning?

A. I did not; if I had at the time Mr. Cleveland ran I should have voted for him which I did not do at the last election.

Q. You voted for Peter Paul Hartman at this last election?

A. I most assuredly did; I am a socialist myself.

Q. When you made this affidavit to Mr. Aydelott how long had he been in your office?

A. Probably about 3 minutes.

Q. Did he come to your office with the affidavit already prepared?

A. Yes sir.

Q. Had you talked to him before he came into your office with the affidavit before it was prepared?

A. I could not say whether I did or not.

Q. Could not say?

A. I think not.

Q. Have you ever had any conference with Mr. Aydelott concerning the contents of the affidavit which you signed, the day before you signed it? A. Yes sir, I think so.

Q. You think so. You swear positively you did?

A. No, I would not want to swear positive.

Q. Now is it not a fact that Mr. Adyelott on one occasion called at your office, without having seen you before, and presented the affidavit and told you to sign it?

A. He certainly did--

Q. Isn't that a fact?

A. No sir, I don't think it is a fact.

Q. But you won't tell this committee you had a talk with Mr. Adylott before that day?

A. No sir I would not.

Q. He presented a prepared affidavit which you had never seen before, and submitted it to you and asked you to sign that, never have seen it, is that so? A. Yes sir.

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Q. You swore to that affidavit before himself, is that so?

A. Yes sir.

Q. Is that how those charges were prepared originally?

A. I could not say whether it is or not.

Q. Isn't that the way all those affidavits were prepared?

A. I could not say.

Q. Didn't Mr. Adyelott prepare all those charges in the same way and have them signed in the same way?

A. I do not know.

Q. Didn't he prepare those charges in pursuance of the compact which he had with Cleveland, which Mr. Leonard had made with Mr. Cleveland.

Mr. LINDSAY: I object.

Mr. SULLIVAN: We will show the conspiracy between all these parties, Mr. Leonard, Mr. Cleveland and Mr. Adyelott and other parties, a conspiracy to ruin this man, Judge Smith. I submit we have a right in this case to show that this prosecution is the result of a damnable conspiracy to injure an honest judge. We submit we have a right to do that.

Mr. LINDSAY: I feel called upon to object to the last question of counsel, first, that it is not cross examination; on the ground second it is hearsay; and third on the ground that it is an attempt to impeach and try before this committee a member of the Legislature of the State of California, and this is not the proper tribunal to hear such charges at this time.

(Objection sustained.)

Mr. SULLIVAN: We intend to put Mr. Cleveland on the stand and put

Mr. Adyelott on the stand. We intend to prove this conspiracy; it is not a mere bluff.

MR. CHAIRMAN: We will receive the evidence in the proper way.

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Mr. SULLIVAN: Did you at any time, before Mr. Adylott presented to you this written affidavit, consult with any other person regarding the contents of that affidavit? A. No sir.

Q. Did Mr. Adyelott engage in conversation with you at the time he presented this affidavit to you? A. I think he asked me whether or not I could make such an affidavit.

Q. You told him forthwith you could? A. I did.

Q. You signed it? A. Yes sir.

Q. Gave it to him? A. Yes sir, certainly I gave it to him.

Q. He carried it away with him? A. Yes sir.

Q. Did he tell you he intended to use that affidavit for the purpose of presenting it to the Legislature or for impeaching Judge Smith?

A. I think he did.

Q. You think he did? A. Yes sir.

Q. Then you were still in favor of impeachment proceedings?

A. I most assuredly say I am.

Q. You have a bitter prejudice against Judge Smith?

A. Yes sir. I have got good reasons, I have not had fair treatment.

Q. You have bitter prejudice against Judge Smith? A. I have for this reason--

Q. You have? A. I have.

Q. Did you ever go to other persons after signing your affidavit and request them to sign a similar affidavit?

A. I never did.

Q. Did you ever call upon other persons to sign an affidavit impeaching Judge Smith?

A. I never did.

Q. Did you ever have a case within the last 6 years of practice before this court in which Mr. Cassin was retained against you?

A. I think we were in one case.

Q. Only one case? How long ago? A. I should say it is in the neighborhood of 2 or 3 years.

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Q. Two or three years. So during the entire time you and Mr. Cassin lived in this community you appeared in one case only against Mr. Cassin?

A. That is the only one I recall at the present time.

Q. Now, were you present in court at any time when Mr. Cassin was engaged in the trial of any case? A. Yes a good many times.

Q. Did you administer the oath to any other these other affiants who presented these charges against Judge Smith? A. Yes.

Q. Do you remember to whom you administered the oath?

A. Yes sir, to one only.

Q. Who is that person? A. Mr. Hartman, I think.

Q. That is a socialist, Peter Paul Hartman? A. Yes sir.

Q. Was that affidavit written out by you?

A. I could not say whether it was or not; I think not.

Q. You think not. Who was present in your office at the time it was sworn to?

A. I think no one but he and I.

Q. Was not Mr. Leonard there? A. I think not.

Q. You think not? A. I am quite certain he was not.

Q. You are quite certain? A. Yes sir.

Q. Can you recall the contents of the affidavit which you signed when it was presented to you by Mr. Adyelott[sic]? A. No, I cannot.

- Q. You cannot? A. No sir.
- Q. Don't you know what you said in the affidavit?
A. Practically, yes.
- Q. Do you remember the point upon which your case was decided,
the case in which Mr. Cassin was retained against you? A. Yes sir.
- Q. On what point? A. What point? I think we dismissed the case.
- Q. What is that? A. I think I dismissed the case.
- Q. You attempted to take an appeal from the Justice Court to the Superior Court?
A. I did not, no.
- Q. I mean from the Superior Court to the Supreme Court?

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- A. I was just telling you, I simply told you we dismissed the action, the action was never prosecuted in this Court.
- Q. Wasn't that the case in which you and Mr. Cassin were employed
you appearing on the other side in this Court? A. Yes sir, there were other cases with him, that
was a case of Silvera against Silvera.
- Q. That was not tried? A. No sir.
- Q. The case was dismissed? A. Yes sir.
- Q. Were you in any other case where Mr. Cassin was retained on the other side? A. Yes sir.
- Q. What case was that? A. That is the case of Stuart Hills against Fife.
- Q. Didn't Judge Smith render a just decision in that case?
A. No sir, if he had I should not have attempted to appeal.
- Q. Will you say the decision rendered by Judge Smith was not a legal decision?
A. I did not think it was, I do not think so now.
- Q. Wasn't the case decided on a simple question of law in that case? A. Yes sir.
- Q. In that case the question of the delivery of a deed was involved.
A. It was not a case of escrow at all; it was simply the case of a deed; the court held that the
grantee put her own deed in escrow.
- Q. Now, so that is the only time, you have been in only two cases with Mr. Cassin?
A. The one I recall.
- Q. One case and a case you dismissed? A. Yes sir.
- Q. No other case which was actually tried? A. No sir.
- Q. Yet you say that Judge Smith unduly favors Mr. Cassin, is that so?
A. That is my opinion, yes.
- Q. That is your opinion? A. Yes sir.
- Q. Do you remember the other cases in which you saw Mr. Cassin engaged?
A. Oh, many cases, Mr. Cassin--
- Q. In this court? A. Mr. Cassin, as I think, has the majority

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- of cases tried in this Court.
- Q. Isn't Mr. Cassin considered the best jury lawyer in this Court?
A. People consider he can win more cases.
- Q. Isn't he the best jury lawyer in this Court; isn't he considered
the ablest man before a jury in this court? A. I never heard that case discussed pro and con.
- Q. He has tried more jury cases than court cases?

A. I could not tell you.

Q. Don't you know that he is, in nearly all the cases, successful before a jury?

A. I know that he has won a great many cases, yes.

Q. Now Mr. Gardiner[sic], in this Lavish case, after you introduced the testimony on behalf of the defendant, did you ask for a continuance to enable you to introduce other testimony?

A. I could not say whether I did or not.

Q. Did you upon the conclusion of the testimony know of any other witness that could testify on behalf of the defendant?

A. I do not think so.

Q. Didn't you, upon the conclusion of the testimony in that case, realize that you had made an able presentation of the defendant's case to the Court? A. I presume we did.

Q. You believed upon the conclusion of your case that you had done full justice to your client and that the Court had acted justly to your client, and that you had done all that any lawyer however brilliant he could be could do in presenting the case to the jury?

A. I will answer one by yes and the other by no.

Mr. SULLIVAN: That is a complex question. Question withdrawn.

Q. In the case of People against Lavish the Court treated you fairly during the trial of the case did he not? A. No sir.

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Q. Well upon the conclusion of the trial of the case, or upon the conclusion of the taking of the testimony, did you know of any testimony that could be produced that would in any way beneficially affect your client's interest? A. I think not.

Q. You think not? A. No sir.

Q. Now in the matter of these instructions. At what time of day did you receive directions to prepare your instructions?

A. 12 o'clock.

Q. Was there a rule of court in regard to the preparation of instructions to be submitted to the jury? A. Yes sir.

Q. Do you remember what the rules provided as to the time within which instructions should be submitted? A. The rules I believe provided, I believe for before the argument commenced.

Q. The rules provided for before the argument commenced?

A. Yes sir.

Q. Had you during the 4 days of the trial devoted any part of your time to the preparation of those instructions?

A. No sir; one of those days I was sick in bed with heart trouble.

Q. But you were associated with another gentleman, Mr. Martin, I understood you? A. Yes sir.

Q. He was in court during the entire 4 or 5 days was he not?

A. Yes sir.

Mr. LINDSAY: Is Mr. Martin in the courtroom?

A. I think not.

Mr. SULLIVAN: You think not.

Q. The next day after this sudden attack of illness you appeared in court apparently as well [as] ever didn't you?

A. No sir, not as well as ever.

Q. You appeared apparently as well as ever?

A. No sir I was not as well as ever.

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Q. Did your partner, Mr. Martin, devote any time during the 4 days to the preparation of these instructions-- did you spend any night in the preparation of these instructions? A. No sir.

Q. Did Mr. Martin? A. No sir, I think not.

Q. So up to 12 o'clock of the day the case was to be submitted to the jury, you never made an effort and your partner, to devote any time to the preparation of instructions? A. No sir, we did not attempt to do so.

Q. To whom did you go to get the instructions to be delivered in the case?

A. We had them in our office.

Q. Where did you get them? A. Got them out of the transcript on appeal in that case.

Q. Didn't you get the transcript on appeal from Mr. Cassin?

A. No sir.

Q. From whom did you get it? A. I had it in my office, have several copies there now.

Q. Did you read over the instruction in the Plyler[sic] case before you gave directions to your stenographer to copy them?

A. Yes sir.

Q. You were governed by the evidence--

A. I do not know whether I did or not, I think I did; I checked them as I found one applicable to our case.

Q. In the matter of offering those instructions given by Judge Smith in the Plyer[sic] case. You had certian instructions also which the Court did not give, didn't you? A. Yes sir.

Q. You checked off opposite certain of those instructions not give, at least you made a check mark opposite a certain instruction not given by Judge Smith, didn't you? A. Yes sir.

Q. Did you? A. Yes sir.

Q. And that is the instruction which Judge Smith refused to give

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on the trial of the Plyer [sic] case? A. Yes sir.

----- Transcriber's Insert -----

[George F. Plyler's surname is incorrectly spelled by the Court Reporter; A summary of this case will give some context:

THE PEOPLE, Respondent, v. GEORGE F. PLYLER, Appellant; Crim. No. 359, Supreme Court of California, Department Two, 121 Cal. 160; 53 P. 553; 1898 Cal. LEXIS 868

June 6, 1898. PRIOR HISTORY: APPEAL from a judgment of the Superior Court of Santa Cruz County and from an order denying a new trial. Lucas F. Smith, Judge.

DISPOSITION: The judgment and order are reversed, and the cause remanded for a new trial.

CASE SUMMARY: PROCEDURAL POSTURE: Defendant challenged a judgment from the Superior Court of Santa Cruz County (California) reflecting his conviction by a jury of mayhem. Defendant contested the superior court's order denying his motion for a new trial.

OVERVIEW: The People filed a complaint jointly charging defendant and others with mayhem. The court decided that, although defendant and another were held over for trial together, the People correctly filed separate informations against them. The trial court correctly allowed a witness to not testify for the People to avoid self- incrimination because he was also charged with the same offense and had not been tried. The court decided that the complaining witness's person and names involved an absolute identity.

The court determined that the fact that the witness's true name was different from an identity-protecting name was not a variance, and could not have caused him harm. The superior court should have given defendant's proposed jury instruction because the one delivered omitted the element that the willful false testimony was on a material matter. The court held that defendant was entitled to a new trial because the superior court erred by refusing to grant his motion for a one-month continuance of the trial. The court found that defendant's wife, whom he called as a witness to prove his lack of participation in the offense, suffered from a miscarriage immediately prior to the trial date.

OUTCOME: The court reversed the judgment and order and remanded the case to the superior court for a new trial.

For Newspaper accounts, see: *Santa Cruz Daily Surf*

1897 Jul 27 1:5 Mayhem trial;

1897 Aug 25 1:2 Verdict;

1897 Sep 8 2:2 Editorial re sentence;

1897 Sep 8 4:4 sentenced;

1898 Feb 12 1:1 Mrs. George F. Plyler indicted;

1898 Apr 13 4:2 Mrs. Geo. F. Plyler witness a no show;

1898 Apr 23 4:1 see Minnie Plyler;

1898 Jun 6 4:2 George F. Plyler granted a new trial;

1898 Oct 1 4:3 Geo. F. Plyler guilty again;

1899 Oct 23 4:3 New trial granted;

1900 Feb 28 4:4 trial;

1900 Mar 2 4:4 acquitted.

For Census records: the 1900 Census shows George F. Plyler and his wife Minnie Plyler living in San Jose, CA, with her mother, and their two sons, Rolph and George A.

For Directory citations: ATTORNEYS & BANKERS DIRECTORY OF CALIFORNIA 1908-09:
SAN JOSE MERCANTILE AND COLLECTION AGENCY (Incorporated) George F. Plyer [sic], Mgr.]

----- End of Transcriber's Insert -----

Q. You checked it off that Judge Smith had actually given it did not you? A. Yes sir.

Q. Then you came into court with this instruction without looking over the instructions, didn't you?

A. No sir, I did not.

Q. You looked them over again? A. I did not look over them all, I checked them up.

Q. You say Judge Smith gave a certain instruction to the jury and refused certain other instructions is that so?

A. Yes sir.

Q. You marked opposite, on the opposite side, made a check to show that the instructions were given, didn't you?

A. I checked that for the purpose of having them copied.

Q. But you say you also put a check mark opposite one erroneous instruction, an instruction which the Judge did not give?

A. Yes sir.

Q. And you came into court with this instruction and told Judge Smith, here Judge, here are the instructions which you gave in the Plyer[sic] case, didn't you? A. I did.

Q. You did? A. Yes sir.

Q. You gave Judge Smith to believe? A. Yes, I gave him--

Q. That they were correct? A. I want to correct the last answer, I insist on doing it now; those are not the exact facts; I will simply explain the answer.

Q. Make your answer and then you can explain it?

A. I will explain the way that occurred. I came into court at 2 o'clock and I took the instructions to the court. I says "here are the instructions, as we have had a very short time to prepare instructions in this case; here are

the instructions that were given by you

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in the Plyer case, we have checked such ones as we think are applica- ble to this case. “Well” he says “they are probably just as good as any that you could possibly get, because those instructions were prepared carefully by the attorneys for the defendant on that trial;” and he says “those probably will answer your purpose just as well as any you could prepare yourself.”

Q. And that case had gone to the Supreme Court, the Plyer[sic] case?

A. Yes.

Q. That case had gone to the Supreme Court?

A. Yes sir; as I explained a moment ago, the instruction had been checked and afterwards I drew my attention to them and after marking it through I had the stenographer copy it; he copied it in inadver- tently and erroneously and I did not have time to correct that part because he did not finish it until we got ready to go at 2 o’clock.

Q. When you checked off the instruction there were certain in- structions marked as given and certain instructions marked as refused?

A. Yes sir.

Q. You checked opposite those which were marked given, a check mark, did you? A. Certainly.

Q. And then you checked opposite a certain one of those instructions which were written in the transcript or refused and you checked another check mark opposite that and led the court to believe that instruction was given, didn’t you? A. No sir, that was not the fact. I explained the circumstances of this case. Those were written instructions.

Q. Then you came to one instruction, another instruction, another instruction that was refused and put that check mark opposite that instruction?

A. The stenographer copied the original instruction with the one that had been previously given, I erroneously checked the one he had refused at a former trial, as I told you, I did not have time to look them over during the noon hour after they were

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copied until I presented them to Judge Smith. They were copied in typewriting, all those instructions. If you take the instructions as given in this case, I would like to have instructions brought in by the clerk, you will see the status. Judge Smith held it had no right there so it shows plainly I did not have time to look them over.

Q. As I understand, these check marks you made were made upon the printed transcript?

A. Yes sir.

Q. They were not made upon the typewritten transcript at all?

A. No sir, they were made upon the printed transcript from which they were copied by our stenographer.

Q. You personally made the check marks yourself?

A. Yes sir, I did.

Q. You personally saw before you that that instruction which was marked refused was in fact refused?

A. Why certainly.

Q. Yet notwithstanding that you put that check mark opposite the refused instruction to indicate it was given, didn’t you?

A. Afterwards I struck it out or attempted to do it--the stenographer did not.

THE CHAIRMAN. I think the witness' evidence is sufficient on that point.

MR. SULLIVAN. The result of the trial was that Lavish was convicted on simple assault?

A. Yes sir.

Q. What was the penalty inflicted upon him?

A. 3 months in the county jail.

Q. And did Mr. Lavish express himself as dissatisfied with the result of the trial?

A. No sir, he did not. He said he should never have been convicted at all.

Q. And when Judge Smith found that he had given an erroneous instruction of course he showed considerable temper didn't he?

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A. He did.

Q. Did he refer to the fact that you had represented to him that those instructions that were handed to him had in fact never been given in the Plyer[sic] case? **A.** He did.

Q. He claimed that you had imposed upon and deceived him?

A. Yes sir.

Q. Well, whether intentional or not, in fact you did deceive the Judge?

A. It is the court's business to look over instructions to see whether it is the law or not. It was not my business to tell him what instruction had been given or not.

Q. Don't you believe the court has a right to rely upon the honor of a practitioner?

A. That is so; it is his business to know whether the court instructions--

Q. You in fact, whether intentionally or not deceived the court?

A. I presume I did; he should have asked me in a more gentlemanly way how I came to do it, and not accuse me before this jury in the manner he did.

Q. Your animus against the Judge is based mainly upon that occurrence is it not? **A.** Yes sir, principally.

REDIRECT-EXAMINATION.

MR. LINDSAY. Counsel has referred to an affidavit which you made and signed at the request of Mr. Adyelott[sic]. Did you read the affidavit before you signed it? **A.** O, yes.

Q. Did you know its contents? **A.** I did.

Q. You thoroughly understood them? **A.** I did.

Q. Why did you swear to that affidavit? **A.** Because I believed them to be true.

Q. Counsel has also referred to Mr. Cassin's success as a jury

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lawyer, and by the way that is fact. **MR. SULLIVAN:** You concede that.

Mr. LINDSAY: I concede he is a good jury lawyer.

Mr. LINDSAY[sic]: **Q.** You say he won a good many cases?

A. Yes sir, Mr. Cassin wins a good many cases, I think a majority of them he tries he wins.

Q. He sometimes loses a case does he not? **A.** I presume he does yes sir.

Q. You remember the case of Evans against Duke which was tried sometime ago before a jury in this court, I think when 99 specialties were submitted to the jury, Judge Smith presiding, and the jury found in favor of Mr. Cassin on every one of the 99 issues?

A. I do not know what the issues were that were found upon.

Q. 96 issues. You remember finally that the case was reversed by the Supreme Court, first

affirmed in department and then —

Mr. SULLIVAN: Reversed, yes. Upon a petition for rehearing it was heard in banc and reversed; then it was tried again before a jury in this court and Judge Buck of San Mateo county, do you remember that.

A. Yes sir.

Mr. LINDSAY: What was the result at that time, did Mr. Cassin win or lose?

Mr. SULLIVAN: He won as usual.

THE WITNESS: Mr. Sullivan asked me a question just the last one before that, I would like to reply to the question.

Mr. SULLIVAN: I said intentionally or unintentionally that you deceived the court?

A. You asked me whether or not if that was not the principal reason why I had animus toward Judge Smith.

Q. You said yes? **A.** I want to say there is another reason.

Mr. SULLIVAN: I don't want the other reason, I want the principal reason.

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A. You don't want the other reason, the other is a greater one than this.

Mr. LINDSAY: What is that? **A.** He asked me whether or not that was the principal reason for the animus I had against Judge Smith. **Mr. LINDSAY:** What is it.

Mr. SULLIVAN: It is a voluntary statement, I simply asked him if that was the principal reason?

A. That is not the principal reason.

Mr. SULLIVAN: You mean, to correct your testimony and say it is not?

Mr. ADYELOTT[sic]: I think he has a right to correct that now. **Mr. SULLIVAN:** The special correction?

Mr. LINDSAY: What is the principal reason?

Mr. SULLIVAN: We object to that as not proper redirect examination. You haven't any right to ask your witness that.

Mr. ADYELOTT[sic]: I will ask the witness was the principal reason--

A. The principal reason is because a client informed me that Judge Smith told her that--

Mr. SULLIVAN: I object to that as hearsay.

A. That was the principal reason.

THE CHAIRMAN: That is hearsay.

Mr. ADYELOTT[sic]: The principal reason is based upon hearsay apparently upon hearsay; that is all.

Mr. SULLIVAN: Is it not a fact Mr. Gardiner[sic] that in the most of the cases where Mr. Cassin has acted, Mr. Knight has also been associated with him, that is the cases you have seen tried?

A. Frequently, very frequently.

—oO—

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TESTIMONY OF
EDWARD MARTIN Sworn.

Mr. LINDSAY: Where do you reside Mr. Martin?

A. Santa Cruz.

Q. How long have you lived in this County?

A. This county?

Q. Yes sir.

A. Oh, about 50 years.

Q. Have you ever held any official position in this county?

A. Yes sir.

Q. What?

A. County Clerk, and Deputy Recorder at one time.

Q. For what length of time did you serve in that capacity?

A. 14 years.

Q. 14 years?

A. Yes sir.

Q. What is your profession?

A. I am an attorney at law and referee in bankruptcy.

Q. Are you a member of the legal firm of Martin and Gardiner[sic]?

A. Yes sir.

Q. Are you acquainted with the Honorable Lucas F. Smith, Judge of this Court?

A. Yes sir.

Q. Do you remember the case of the People of the State of California against Otto Lavish which was tried in this Court on the last day of July and the second third and fourth of August 1900?

A. Yes sir, I recollect it very well.

Q. Were you associated in the defense of that trial?

A. I was appointed by the court.

Q. Appointed by the court?

A. Yes sir.

Q. How long before the trial commenced?

A. About half an hour.

Q. You asked for a continuance did you?

A. We did.

Q. Was it granted?

A. No sir.

Q. Now I will ask you Mr. Martin with reference to the second day

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of the trial, was your associate Mr. Gardiner[sic] present?

A. He was not.

Q. He had been conducting the case had he not principally on the first day?

A. Yes sir he had attended to it the first day yes.

Q. And did you make any request of the court on the second day when Mr. Gardiner[sic] was absent on account of his illness?

A. Yes sir, I told the court Mr. Gardiner[sic] was very sick and I would rather hae him present.

Q. What did the court tell you?

A. The court told me I could go on.

Q. And you went on did you?

A. I went on, yes sir.

Q. Did the court explain to you why he wanted you to go on or give any reason for his decision that you should go on?

A. No, not that I recollect of except to go on.

Q. And so you proceeded that day?

A. Yes sir.

Q. And the next day Mr. Gardiner[sic] returned?

A. He returned, yes sir.

Q. Do you remember the matter of the difficulty about the request- ed instructions in that case?

A. Yes sir, there was--after the instructions were given and the verdict rendered, the jury was not discharged, he held them over and then he said something about the instructions to Judge Gardiner[sic], seemed to be directing all his attention to him, that he had been misled by some instruction that was in there and I told him that I was equally responsible, if there was any responsibility attached to it; there was no intention to mislead the court.

Q. And he upbraided Mr. Gardiner[sic] did he before the jury?

A. Oh, yes.

Q. What language did he use do you remember?

A. No sir, I did not take it down, he talked rather severely to him though.

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Q. Accused him before the jury of having deceived the court?

A. That is what I understood the tenor of his remarks--the trend of his remarks, yes.

Q. Mr. Gardiner[sic] was a practitioner before the bar of this Court at that time wasn't he?

A. Oh, yes.

CROSS EXAMINATION.

MR. SULLIVAN: Mr. Martin, you have been practicing law a good many years haven't you?

A. About five or six years.

Q. And of course you were perfectly competent to go with the trial of the case of the People against Lavish when it was brought to trial?

A. Well, I know nothing of criminal cases and when Judge Smith got off the bench I says to him "you must give me a fair show," and he says "you go ahead just like an old criminal lawyer."

Q. You did get along very well? A. A little deaf that was all.

Q. Of course, being a good civil practitioner you were necessarily a good criminal lawyer weren't you? A. I thought I would rather have Mr. Gardiner[sic] for the one special reason that I am a little deaf, and he talks more than I do.

MR. SULLIVAN: I do not know about that.

Q. Now Mr. Martin when you were called upon that day to defend Mr. Lavish you and Mr. Gardiner[sic] consulted the attorneys who formerly represented Lavish did you not? A. Oh, we did not consult with them over five or ten minutes.

Q. The only plea interposed was the plea of insanity was it not?

A. I think that was all we tried to make, a plea of insanity.

Q. You were not present when Mr. Gardiner[sic] checked up the instructions in the transcript that were given and refused in the Plyer[sic] case?

A. I was not.

Q. You was not present when Mr. Gardiner[sic] checked off in the trans-

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cript or checked the instructions that were refused and given in the Plyer[sic] case? A. I think I was; it was done in my office.

Q. Were you present at the time? A. I think so, yes sir.

Q. You did not help him to do that? He had the transcript alone and went over the instructions.

A. I think he consulted with me about the matter, the stenographer was there, he had a typewriter, I think that I looked over them with him.

Q. He checked the transcript for the purpose of picking out his instructions? A. Yes sir.

Q. He did? A. I know so.

Q. Who read from the transcript, you or Mr. Gardiner[sic]?

A. I did, I have the Plyer[sic] transcript.

Q. Mr. Gardiner[sic] made the check marks in that transcript did he not?

A. I think so.

Q. He would not purposely make any instructions, put check marks opposite instructions which were given for the purpose of having it given? A. No sir.

Q. And the judge taxed Mr. Gardiner[sic] with bringing that instruction which was purported to

have been given by the Judge in the Plyer[sic] case. The Judge taxed Mr. Gardiner[sic] with having handed to him instructions purported to have been given in the Plyer[sic] case?

A. Yes sir.

Q. As a matter of fact there was one instruction given which the Judge had refused to give before?

A. Yes sir, I believe there was.

Q. And the Judge gave an instruction which had been refused in the Plyer[sic] case?

A. Yes sir, he gave it.

Q. He gave it upon the assurance of Mr. Gardiner[sic] that the list of instructions given to the Judge were in fact given in the Plyer[sic] case, isn't that so? A. Possibly yes.

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Q. And the whole trouble arose out of that incident?

A. Yes sir.

Q. The Judge told Mr. Gardiner[sic] he had been imposed upon by Mr. Gardiner[sic] didn't he?

A. Yes sir.

Q. That Mr. Gardiner[sic] had given him an instruction purported to have been given by the Judge in the Plyer[sic] case, when in fact all those instructions had not been given in the Plyer[sic] case?

A. Yes sir, he seemed to infer it had been done wilfully.

Q. The Judge believed it had been done wilfully?

A. Yes sir.

Q. The conduct of the Judge implied that the Judge thought that Mr. Gardiner[sic] had wilfully deceived him, isn't that so?

A. Yes sir and he gave him an unnecessary roast.

Q. The Judge did not charge you with any wrong in the matter?

A. No sir, I told him if there was any responsibility about it I was willing to assume it.

Q. But you did not represent to the Judge that this instruction handed to him by Mr.

Gardiner[sic] had in fact been given in the Plyer[sic] case did you? A. No sir, I do not think I did anything about it.

Q. You succeeded admirably in that case of the People against

Lavish, didn't you? A. For an old practitioner--a young practitioner, I ain't very old you see.

Q. And the result was very satisfactory to you and your profession?

A. Oh yes.

Q. You thought you were lucky didn't you, in that case?

A. I thought the fellow was lucky to get off with 6 months; it was a miscarriage of justice that he failed to kill a man that is all.

Q. The result of the trial was very satisfactory to you and your client? A. Oh, yes.

Q. And so anything that the Judge did in that case did not operate to the prejudice of the defendant whom you represented?

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A. Oh, we got through with the defendant that time.

Q. Anything that was done prior to the trouble between Mr. Gardiner[sic] and the Judge did not operate to prejudice the defendant?

A. No sir, I guess not.

REDIRECT-EXAMINATION

Mr. LINDSAY: There is another question, if you remember I would like to have you tell me, is it a fact that after the jury had been

out for several hours deliberating on a verdict in that case, that it returned into court and asked the court if that certain instruction which was erroneous was the law, and didn't the court then and there repeat the instruction to them as to the law?

A. I do not recollect they came in and asked about that particular instruction and I could not say whether, what we told them; I recollect the jury came in and asked for the instructions.

Q. And that was before their verdict was arrived at?

A. Yes sir.

Q. And it was not until after a verdict had been rendered the next morning-- the jury were out all night weren't they?

A. I think so.

Q. The next day after the verdict was announced, then it was that he rebuked Mr. Gardiner[sic]?

A. Yes sir.

Q. He did not rebuke him when the jury called his attention to this instruction? A. No sir.

Q. When they returned? A. No sir.

RECROSS-EXAMINATION

Mr. SULLIVAN: Now, outside of that incident which occurred on that occasion did you ever see any conduct, or witness any conduct upon the part of Judge Smith which indicated unfairness or impartiality or

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injustice? A. Well, I think he has been a little--to speak plainly-- he has been too familiar altogether on the bench.

Q. Did you ever outside of that one incident see him do anything

you considered arbitrary? A. No sir, I do not recollect. I am not here in court very much except when on business.

Q. Do you know of any case at all that was ever tried in this court where the Judge wrongfully gave Mr. Cassin the best of the controversy? A. I do not.

Q. You do not. You would know if there was any gross conduct of Judge Smith from the time of his election up to the present time?

A. Yes.

Q. And you cannot name, testify, now to a single incident where Judge Smith ever gave Mr. Cassin unjustly or unfairly the best of any controversy, can you?

A. Not that I know of now, no sir.

Q. And you have occupied public offices in this county for a number of years have you?

A. Pretty much all my life.

Q. Pretty much all your life? A. Mostly.

Q. And you kept of course in touch with these things transpiring in it didn't you? A. I do, try to.

Q. And you know the standing, and official standing and the character of a judge necessarily don't you? A. Yes sir.

Q. Mr. Martin, what is the general impression.

Mr. SULLIVAN: We object to general impression.

Mr. LINDSAY: In this community, in regard to his treatment of Mr. Charles M. Cassin?

Mr. SULLIVAN: We object to any general impressions.

Mr. LINDSAY: That is not admissible under this general specification any way.

Mr. SULLIVAN: It is not admissible under any specification.

Mr. LINDSAY: I wish to argue it. I will withdraw the question at

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this time, I don't want to take up the time now.

Q. You were county [clerk] when Judge Smith was first elected Judge of this Court weren't you?

A. Yes sir.

Q. There has been reference made here to the case of the People of the State of California against George F. Plyer[sic], do you remember that case? A. I do.

Q. Who prosecuted that case?

Mr. SULLIVAN: We object to that as immaterial, it is not redirect examination.

Mr. LINDSAY: Well, we will leave out who prosecuted it I don't care about that. Who defended the case?

A. Mr. Burchard and Oneal[sic] and some other attorney, I forget his name, afterward Ed [sic] Skirm and Josselyn.

Q. There were two trials?

A. Yes sir.

Q. You remember the first trial do you not.

Mr. SULLIVAN: We object to this as not redirect examination.

Mr. LINDSAY: Do you remember the circumstance of a missing instruction in the Plyer[sic] case? A. I remember something about one instruction that was hunted up by Mr. Burchard at that time, he gave it to the Court and it could not be found for some time.

Q. Was it ever found? A. I think it was found afterwards.

Q. You think it was? A. Yes sir, the Judge said he did not get it and I said he did because I handed it to him, I got it from Mr. Burchard and gave it to him myself; I think it was found afterwards.

Q. I wish you would refresh your memory as to whether it was ever found?

A. I think so, that is my recollection, it was found afterwards.

—oOo—

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TESTIMONY OF
H C WYCKOFF Sworn.

Committeeman BEARDSLEE. Still on specification seven.

Mr. LINDSAY: Yes sir.

Q. Your name is H C Wyckoff? A. Yes sir.

Q. Where do you reside Mr. Wyckoff? A. I reside in Watsonville.

Q. How long have you resided in this County?

A. I was born in this county--excepting I was away a part of the time; I resided there for the last 6 years.

Q. What is your profession? A. Attorney.

Q. You are a graduate of what institution Mr. Wyckoff?

A. The University of California.

Q. Do you know Lucas F. Smith the Judge of this Court? A. I do.

Q. You have practiced before him, have you? A. I have.

Q. I wish to call your attention Mr. Wyckoff to the case of Trafton against Quinn, an election contest which was tried some time ago in this court; do you remember the case?

A. I remember the case, yes.

Q. Were you one of the attorneys in the case.

A. I was the attorney for the contestant, the plaintiff, one of the attorneys.

Q. For Trafton? A. Yes sir.

Q. That was a contested election case? A. Yes sir.

Q. For what office? A. The office of the mayor of the city of Watsonville.

Q. When was it tried, do you remember, -- I have not the date here?

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----- Transcriber's Insert -----

Betty Bagby Lewis (1925-2008), provides the history of the Quinn-Trafton controversy on the Watsonville Public Library website): <https://www.cityofwatsonville.org/272/Library-History>

“Richard Quinn, local realtor, had recently [May 1903] been sworn in as the new mayor following the passage of the city charter. The Board of Aldermen voted on a resolution to have a city election just to see where the people of the town wanted their library building. Mayor Quinn was for this resolution, but, at the last minute, had a change of heart. He decided the library should be in the plaza, and there was no election.

“Meanwhile, Will Trafton, who had lost the mayoral election by only four votes, had appealed to the State Supreme Court as to legality of the ballots. In June of 1904, the decision was handed down from the court that ten of the votes were erroneously counted for Quinn, making Trafton the winner after all.

“On July 8, 1904, William A. Trafton was sworn into office as mayor of Watsonville.”

Case citation: WILLIAM A. TRAFTON, Appellant, v. RICHARD P. QUINN, Respondent S. F. No. 3773 Supreme Court of California 143 Cal. 469 (June 4, 1904)

COUNSEL: Wyckoff & Gardner, for Appellant.

Charles M. Cassin, James A. Hall, and Franklin K. Lane, for Respondent.]

----- End of Transcriber's Insert -----

A. Let me see, it was tried on the 2nd day of July. I am not sure about the year, I think it was 1903, but I am not sure, 1902 possibly.

Q. 1903 I think. A. 1903 I believe.

Q. At any rate it was during Judge Smith's term of office?

A. I think so.

Q. Who represented the defendant Quinn?

A. Mr. Cassin and Mr. James A. Hall of Watsonville.

Q. Mr. Charles M. Cassin? A. Yes sir.

Q. How was the case decided by Judge Smith, in favor of the contestant or the defendant?

A. It was decided in favor of the defendant Quinn.

Q. He was the incumbent of the office? A. He was.

Q. That is, he had been declared elected? A. He had a certificate of election.

Q. He had the certificate of election? A. Yes sir.

Q. On what ground did Judge Smith decide the case as announced by him?

Mr. SULLIVAN: Is there an opinion on file. We object to any oral testimony as to what the decision was; if there was any decision, the findings of the court will show the decision, and we object to any oral declaration of the ground of the decision.

Mr. LINDSAY: I refer particularly to the oral declaration made by the court at the time of the rendering of his decision in favor of the defendant and before the finds were signed and before the judgment was rendered.

THE CHAIRMAN: That is all you ask the witness [to] testify to.

Mr. LINDSAY: Yes sir.

Mr. SULLIVAN: We submit the oral announcement is merged in the written opinion of the court.

Mr. LINDSAY: No, it is an independent fact.

Mr. SULLIVAN: Didn't the Judge write an opinion?

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A. No sir, he announced his decision from the bench on the evening the trial was closed, Saturday night.

(The reporter read the last question as follows: On what ground did Judge Smith decide the case as announced by him.)

A. It will be necessary for me to explain the facts in order that you understand it. The election in question was held on the 11th day of May of that year, the contest was tried on the second day of July. The Legislature and the Governor had amended the Act during the previous session relating to distinguishing marks on ballots, changing the law so as to make it more liberal as to certain marks which would have been held under the old law, distinguishing marks, and would have invalidated the ballot in the amendment. That statute, by its terms, went into effect on the first day of July after the ballots had been counted in this case; it turned out that if we proceeded under the old law at the time the election was held, the contestant, Mr. Trafton, would have won the case; but if the new law would apply, it was argued by the defendant, Mr. Quinn, that the contestee, Mr. Quinn would retain his seat. The Court said at the end of my argument; he said "Mr. Wyckoff, have you any more authorities than those you have cited to the point that the law in force at the time the election was held should govern, and not the law in force at the time the contest was tried." I said I had cited all the authorities I had. As I remember his language it was this: "Do you think I would decide a case on a repealed statute, I would be the laughing stock of the county if I did; the judgment will be ordered for the defendant."

Q. That case was tried on the 2nd day of July you say?

A. The statute had gone into effect the day before; the election had been held on the 11th of May.

Q. That was the decision as rendered at that time?

A. Yes sir.

Q. The case was appealed of course? A. The case was appealed to the Supreme Court.

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Q. And the result-- **A. The result was that Mr. Quinn's attorney, at the argument in the Supreme Court, did not confine himself to that point which was mentioned in the brief and the case was reversed.**

Q. The Supreme Court held that the law governing was the law in effect at the time of the election? **A. Yes sir.**

Q. And not the law at the time of the trial.

MR. SULLIVAN. Mr. Cassin will have to conduct this examination, he knows more about it.

MR. CASSIN. I understand I have the consent of the prosecution, is that so?

MR. LINDSAY. Yes.

THE CHAIRMAN. You are here as one of the attorneys?

MR. SULLIVAN. He is a party affected by the charges here, and he is familiar with the facts and the law applicable to that particular case.

THE CHAIRMAN. We have no objection.

CROSS EXAMINATION

MR. CASSIN. Mr. Wyckoff, do you remember during the trial of the case that there was an objection made as to the receiving in evidence at all or any of the ballots, on the ground that they had not been properly cared for, and properly protected and on other grounds that it is not necessary to state.

A. That objection was made I suppose and in the Supreme Court also.

Q. That objection was made in this court and it was argued and it was overruled was it not?

A. Yes sir.

Q. And Judge Smith decided to receive the ballots in evidence, did he not overrule my objection and receive the ballots in evidence? **A.** Yes sir.

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Q. You have read the decision of the Supreme Court of this State have you not? **A.** Yes sir.

Q. After calling your attention to it, I will ask you to state

if it is not there intimated, that had Judge Smith sustained that objection made by me, that they would have affirmed the judgment of the lower court? **A.** My recollection of that decision is this way: the Supreme Court said the question of whether the ballots here were the same ballots that had been used at the election and whether

I had to prove they had been, was a question of fact, and if there was any conflict in the judgment they would not disturb it.

Q. Had the court Mr. Wyckoff under your understanding as a lawyer and your familiarity with this decision, had the court decided in conformity with my objections and had it excluded those ballots, would not the court have confirmed the Superior Court on that theory in affirming the election of Mr. Quinn?

A. Well, I would rather, -- I would have reversed the case.

Q. I am asking you. **A.** They said principally that it was a question of fact.

Q. And they would not feel called upon to disturb the finding of the court isn't that a fact? **A.** Yes sir, the findings of fact.

Q. Then if Judge Smith had desired to give that office to Mr. Quinn, irrespective of his rights to it, he could have done so by sustaining that objection in that case -- as a lawyer.

A. No sir, in my opinion I would have reversed the case.

Q. Although the Supreme Court said they did not feel called upon to reverse the case because there was some evidence supporting the findings of the court?

A. They would not reverse it on appeal.

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MR. CASSIN. I refer to the 77th Pacific Reporter.

A. They held in the opinion, they did not reverse it on the defendant's appeal, they held they would not reverse it on our appeal if the ballots were ruled out.

MR. CASSIN. On the face of the returns Mr. Quinn had received a majority of four votes in the city of Watsonville had he not?

A. That was the face of the returns.

Q. And because of distinguishing marks, that is, two crosses being in a circle or crosses being out of place, the court held those ballots were rejected?

A. Yes sir.

Q. And prior to the trial of this case the Legislature of the State of California had passed a law which held that the ruling of

the Supreme Court for this case had made in that matter, that the law was in effect at the time of the trial; and Judge Smith held is it not true, that the law being in effect was actually with reference to the admission of evidence and should govern in this case, and the Supreme Court held that that was a mistake?

A. That is the point it was reversed on.

MR. LINDSAY. Mr. Wyckoff, to go on with the examination. MR. SULLIVAN. I thought you had concluded.

MR. LINDSAY. I wish to ask him a few more questions about that.

Mr. Wyckoff, Judge Smith did receive the ballots in evidence did he not? A. Yes sir.

Q. Was there any contest over there being received in evidence?

A. There was a great deal of argument about it.

Q. I wish you would explain, since the question has been raised, to the gentlemen of the committee, what happened at the time the ballots were received in evidence, what was said by the attorneys immediately preceding that if you remember.

MR. SULLIVAN. We object as immaterial what was said by the attorneys.

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(Objection sustained.)

MR. LINDSAY. I will ask you a leading question; I do not ask it to suggest anything to Mr. Wyckoff because that is unnecessary, but so as to get the pertinency of it before the committee. I may be mis- taken about this and if I am I will withdraw the question.

Q. After this discussion you speak of over the admission of the ballots in evidence didn't you in effect inform Judge Smith that the evidence was all one way but that you did not expect he was going to admit the ballots in evidence, and that thereupon Judge Smith ad- mitted them in evidence?

A. That is a fact, excepting he did not admit them at that time, he took it under advisement and admitted them the next morning.

Q. And then he admitted them in evidence? A. Yes sir.

Q. I wish to call your attention to another case, I do not know the title of it but I refer to the circumstance of a consultation be- tween the Judge and certain attorneys in his chambers in reference to a motion; do you remember the incident to which I refer?

A. Yes sir.

Q. Explain to the committee what that was.

MR. SULLIVAN. We object to that; we do not know what it is, what case it is.

MR. LINDSAY. We will find it.

MR. SULLIVAN. We would like to know, if it is a matter embraced in the charges, is it a matter embraced in the charges?

MR. LINDSAY. It is under specification 7.

MR. SULLIVAN. Is it one of the cases referred to in specification seven; we object on the ground the prosecution has no right to con- front us with cases other than those referred to in the specifications.

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(Objection sustained)

THE CHAIRMAN. We would like to have the question more definite, that is what we want.

MR. LINDSAY. If it is not it may be stricken out. COMMITTEEMAN BURKE. Mr. Lindsay,

you should in all fairness specify the case.

MR. LINDSAY. I do not remember it. Can you tell me the case, do you recollect the case Mr. Wyckoff?

A. The case of Reanda[sic] vs. the Watsonville Water & Light Company and others; there were two circumstances in that case; I do not know to which one you refer to.

MR. LINDSAY. State them both.

A. After the verdict--

MR. SULLIVAN. We make the objection now since there is no reference in the charges against Judge Smith to this action of Reanda[sic] vs. the Watsonville Water & Light Company and others; testimony concerning anything that took place in that case is not admissible and immaterial and incompetent.

THE CHAIRMAN. Objection overruled.

A. The verdict was rendered in that case sometime in the month of August, but there were several motions and other matters in reference to the pleadings and judgment was not rendered until nearly Christmas, I think it was rendered the 24th of December; I think

it was during the month of November that there were motions to be argued in reference to the case--I do not remember which one it was; it was set for 2 o'clock in the afternoon; I came from Watsonville on

the train to argue the motion and took my seat at the end of the table there; the Judge was on the bench, another motion was being heard in which some attorney from the outside, I believe, was arguing. Mr.

Cassin and his associates, who were the attorneys for the plaintiff in

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[Editor's Note: ELLEN RIANDA, Administratrix, etc., Respondent, v. WATSONVILLE WATER AND LIGHT COMPANY et al., Appellants, S. F. No. 4318, Supreme Court of California, 152 Cal. 523; 93 P. 79; 1907 Cal. LEXIS 379, December 9, 1907

PRIOR HISTORY: APPEAL from a judgment of the Superior Court of Santa Cruz County and from an order refusing a new trial. Lucas F. Smith, Judge.

CASE SUMMARY

PROCEDURAL POSTURE: Defendants appealed from a judgment of the Superior Court of Santa Cruz County (California), in favor of plaintiff, in the suit to quiet title to certain riparian and other water rights in the county and to set aside two deeds made by the plaintiff to the defendants on the ground of fraud in their procurement.

OVERVIEW: Plaintiff was the administrator of an estate of the deceased, who owned the land in question. The deceased granted to defendants the water and riparian rights and privileges with a covenant that the deceased as grantor was entitled to take water for her household. Plaintiff alleged that there was no consideration for the deeds and that the covenant had never been fulfilled and that when the covenant was made by defendants in the deed it was made without any intention of performing it. The complaint set up a claim of adverse possession to all the water and water rights by the deceased from the date of the deeds to the time of her death. The prayer was for a decree adjudging that the estate of the deceased was the owner of all the water, water rights, and riparian rights and privileges of every kind belonging or pertaining to the land described in the complaint. The court reversed the judgment entered in favor of the plaintiff, finding she had no right to maintain the action. The conveyance before the deceased's death of the property to her two daughters carried with it the interest in the water rights. Thus, the estate had no interest in the land or in the water rights.

OUTCOME: The court reversed the judgment entered in favor of plaintiff, the

administrator of the estate of the deceased, in the suit to quiet title to certain riparian and other water rights and to set aside two deeds made by the plaintiff to the defendants on the ground of fraud in their procurement.

COUNSEL: Wyckoff & Gardner, and Charles A. Shurtleff, for Appellants.
George P. Burke, and Dickerman & Torchiana, for Respondent.]

the case went into the Judge's chambers and I could see them from where I was sitting, and finally the Judge looked around and I saw Mr. Cassin beckon to him to come in, and immediately he interrupted the lawyer who was arguing the case, he said "gentlemen, you will have to excuse me, I have got to go to my chambers." They remained inside in the chambers there for very nearly fifteen minutes I think; several minutes, and after they came out the Judge went on the bench again, and the argument on the other matter was continued; I went into the Judge's chambers then, I might have gone in before he came out, I do not remember, when the door was open; I went in to get some books from the book case, which were in the room, and I found the chairs about the table and the pleadings in my case spread out on the table and I came back and I made a very little argument in the case, in the matter.

----- Transcriber's Insert -----

ELLEN RIANDA, Administratrix, etc., Respondent, v. **WATSONVILLE WATER AND LIGHT COMPANY et al.**, Appellants

S. F. No. 4318

Supreme Court of California

152 Cal. 523; 93 P. 79; 1907 Cal. LEXIS 379

December 9, 1907

PRIOR HISTORY: APPEAL from a judgment of the Superior Court of Santa Cruz County and from an order refusing a new trial. Lucas F. Smith, Judge.

COUNSEL: Wyckoff & Gardner, and Charles A. Shurtleff, for Appellants.

George P. Burke, and Dickerman & Torchiana, for Respondent.

WILLIAM A. TRAFTON, Appellant, v. **RICHARD P. QUINN**, Respondent

S. F. No. 3773

Supreme Court of California

143 Cal. 469; 77 P. 164; 1904 Cal. LEXIS 841 (June 4, 1904)

COUNSEL: Wyckoff & Gardner, for Appellant.

Charles M. Cassin, James A. Hall, and Franklin K. Lane, for Respondent.

PRIOR HISTORY: APPEAL from a judgment of the Superior Court of Santa Cruz County and from an order refusing a new trial. Lucas F. Smith, Judge.

CASE SUMMARY

PROCEDURAL POSTURE: Defendants appealed from a judgment of the Superior Court of Santa Cruz County (California), in favor of plaintiff, in the suit to quiet title to certain riparian and other water rights in the county and to set aside two deeds made by the plaintiff to the defendants on the ground of fraud in their procurement.

OVERVIEW: Plaintiff was the administrator of an estate of the deceased, who owned the land in question. The deceased granted to defendants the water and riparian rights and privileges with a covenant that the deceased as grantor was entitled to take water for her household. Plaintiff alleged that there was no consideration for the deeds and that the covenant had never been fulfilled and that when the covenant was made by defendants in the deed it was made without any intention of performing it. The complaint set up a claim of adverse possession to all the water and water rights by the deceased from the date of the deeds to the time of her death. The prayer was for a decree adjudging that the estate of the deceased was the owner of all the water, water rights, and riparian rights and privileges of every kind belonging or pertaining to the land described in the complaint. The court reversed the judgment entered in favor of the plaintiff, finding she had no right to maintain the action. The conveyance before the

deceased's death of the property to her two daughters carried with it the interest in the water rights. Thus, the estate had no interest in the land or in the water rights.

OUTCOME: The court reversed the judgment entered in favor of plaintiff, the administrator of the estate of the deceased, in the suit to quiet title to certain riparian and other water rights and to set aside two deeds made by the plaintiff to the defendants on the ground of fraud in their procurement.

COUNSEL: Wyckoff & Gardner, and Charles A. Shurtleff, for Appellants. George P. Burke, and Dickerman & Torchiana, for Respondent.]

----- End of Transcriber's Insert -----

Q. Made no argument? A. I submitted it, just a short argument.

Q. And the motion was decided for you or against you?

A. I cannot remember how it was decided; I do not remember which motion it was.

Q. Do I understand that the attorneys who were in consultation with the Judge in his chambers with these pleadings spread out on the table were the attorneys in the case opposed to you?

A. Yes sir they were.

Q. And the pleadings you refer to were pleadings in that case?

A. They were; the pleadings, everything, the papers on file, the files.

Q. Mr. Cassin was one of the attorneys? A. Yes sir.

THE CHAIRMAN. Was the motion taken up that time and decided at all or ever decided; was the case decided at that time?

A. I do not remember; I remember the circumstance.

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MR. LINDSAY. The case had been decided.

A. There had been a verdict of a jury but it was an advisory verdict; the case was afterwards decided against the plaintiff.

MR. CASSIN. The case had been decided by Judge Smith and the decision withdrawn was it not?

A. Yes sir, the decision had been withdrawn and the findings had been stricken from the files and the pleadings amended and further testimony taken; I cannot remember what proceeded, what particular motion this was now, I can find it out by looking at the minutes.

MR. LINDSAY. The effect of this conference you remember particularly?

A. Yes sir, it impressed itself upon me.

Q. You say there [was] another circumstance in that same case; what was that?

A. Well, it was a circumstance of a ruling on evidence which I consider more than erroneous; worse than erroneous.

MR. LINDSAY. What was it?

MR. SULLIVAN. We object to that; there is no lawyer living but what will complain about the rulings on evidence, I suppose when we are through we will complain about the rulings of this committee.

A. In this ruling the Judge said under certain circumstances he would strike the evidence out; those circumstances appeared and he did not do it; and it was the important thing in the whole case.

MR. LINDSAY. Did it seem to you to amount--

MR. SULLIVAN. We object to the attorney coming before this committee and making complaint about the ruling of the Judge.

A. That was not the ruling I complained of.

MR. SULLIVAN. It appears from the question it was a ruling on evidence.

MR. LINDSAY. Mr. Wyckoff has not been allowed to testify to what he complained of. I submit the matter.

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THE CHAIRMAN. Did you ask a question.

MR. LINDSAY. I asked him the circumstances just previous. You considered it more than erroneous did you?

A. Yes sir, I did.

Q. Explain the circumstance.

MR. SULLIVAN. We make the same objection to this question and to questions of like character. (Objection overruled.)

A. The case was a case—I will have to explain a little to the counsel a deed of fraud on the part of the grantor in the grantee in the execution of it; that is it was charged that the plaintiff's assignor was dead and had been defrauded and deceived as to the contents of the deed when she signed it; she being dead they were proving, attempted to prove those facts by the testimony of her statements made by her during her life time which I claim was hearsay and irrelevant.

Q. What was that?

A. They attempted to prove the authority that had been committed to her by statements which she made to that effect before she died to other persons; and when this person was put upon the stand and asked about the conversations that he had with Mrs. McKinley[sic], the assignor, during her lifetime, and the objection was made by the defendant's attorney, by myself, to the question on the ground it was a matter of hearsay and self serving declaration, the Judge then stated that he could not tell until he heard the testimony whether it would be a self serving declaration of self interest; that he would hear the testimony and if proven to be self serving he would strike it out; the testimony was heard and it was proved by the testimony of the witnesses there that the lady stated that she did not convey the property; she was supposed to be defrauded out of it; then the motion to strike out was made and denied and the case tried before a jury.

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COMMITTEEMAN BEARDSLEE. What case was that?

A. Reanda[sic] against Watsonville Water and Light Company.

Q. The same one?

A. Yes sir, the same case.

Q. Was that case ever taken to the Supreme Court?

A. Yes sir, it is on its way there now.

MR. LINDSAY. Just one half minute please. I wish, with counsel's permission and the permission of the committee to ask this witness some questions under specification one because he resides at Watson- ville- any objection.

MR. SULLIVAN. No sir.

MR. LINDSAY. Specification one charges--under consideration here-- states that Judge Smith has been guilty of great partiality and favoritism to Charles M. Cassin, a practicing attorney in this court. I want to ask you whether you know from what you have observed in the courtroom and out of it that Judge Smith has exercised favoritism and partiality towards Mr. Cassin?

A. Well, that is a very hard question to answer; it is largely a matter of opinion; if you ask me what the general impression and general statements of people concerned, and what is generally the belief, I can answer it very readily.

MR. SULLIVAN. We object to any general impressions.

MR. LINDSAY. I will ask that question after a while and take a ruling.

MR. BEARDSLEE. The admission of that evidence, in your opinion, the ruling was erroneous?

A. Yes sir, my opinion it was.

Q. In your opinion? **A.** After the judge had stated he would strike it out if it appeared self serving.

Q. He said he would receive it and you say the court ruled if it came under the ruling he would strike it out, if it did not it would go in?

A. If it appeared to be a declaration against interest. He left it in.

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Q. In your opinion, that is only your opinion that the ruling of the Judge was erroneous?

A. It is only my opinion; it could not be in my opinion as to whether the declaration was self serving against interest, there could be no question as to that under the testimony appearing. The two instances which I cited here they are certainly—in the trial of almost every case in this court—there is something of that kind which arouses the feelings of an attorney.

MR. LINDSAY. What have you noticed Mr. Wyckoff yourself in reference to the conduct of Judge Smith towards Mr. Cassin in the court room while Mr. Cassin was engaged in the trial of cases?

A. Well it does seem to me as to everything that comes up during a trial that Mr. Cassin appears to have an influence over him which he cannot shake off.

Q. How does that influence manifest itself, that is your observation, by what acts and conduct on the part of the Judge?

A. It manifests itself by things that are very hard to put your finger on but you might say by acts, looks, words and gestures, everything of that kind.

Q. Things that are difficult to describe but still are perceptible?

A. Yes sir.

Q. Now I will ask you Mr. Wyckoff what is the general impression, if you know, existing in this county in reference to this question of the partiality and favoritism of Judge Smith towards Mr. Cassin?

MR. SULLIVAN. We object on the ground it is immaterial, irrelevant and incompetent; you cannot deprive a man of his office by general impressions.
(Objections sustained.)

THE CHAIRMAN. I do not think the answer would state any fact. What we want is a fact.

MR. LINDSAY. I know that is true, under the rules of evidence that

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is undoubtedly true. There are some exceptions. You will not hear testimony as to that point.

THE CHAIRMAN. No sir; it would be hearsay testimony. **MR. LINDSAY.** Undoubtedly it is.

Q. Mr. Wyckoff, did you have occasion as attorney, practicing at this court, at any time lately to deposit in court any moneys for an undertaking or security?

A. Not very lately, no.

Q. Now, when was this?

A. Oh, it must have been 4 or 5 years ago.

Q. Four or five years ago?

A. Yes sir.

Q. Was it during the incumbency of Judge Smith?

A. Not the present incumbency, no.

Q. Not the present incumbency, his former term four or five years ago?

A. Yes sir.

MR. SULLIVAN. We object to any evidence of what took place before the present term.

MR. LINDSAY. Of course, I do not concede that but I will withdraw this question for the time being at any rate.

CROSS EXAMINATION

MR. SULLIVAN. Mr. Cassin will propound a few questions. MR. LINDSAY. I have no objection.

MR. CASSIN. Mr. Wyckoff, don't you know as a matter of fact that I was retained simply to try this case before the jury, and that my services ended with the trial of the case?

A. Well, I did not know what your retainer was; I know you took part in the subsequent proceedings in the courtroom.

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Q. Do you know the time I ceased to take part in the case?

A. I know in some of those proceedings you were present and some of them you were not; where we heard additional testimony which was in December you were present.

Q. You mean the regular case and some of the proceedings do you now state that to be a fact?

A. I think in some motion you was not, you were not present.

Q. So this committee will understand that case Mr. Wyckoff I will ask you if that was not an equity case that was tried before a jury of citizens of this county and that the verdict of the jury was simply advisory, is that not true?

A. That is a fact.

Q. Now are you satisfied that those 12 jurors were honest men?

A. I certainly am.

Q. You are satisfied of that fact?

A. Yes sir.

Q. You think the jury was an honest and fair jury?

A. I do.

Q. The verdict was rendered against your client which was a water corporation down in Watsonville and in favor of Mr. Duckworth a citizen down there isn't that so?

A. I considered on the findings of that jury the defendant was entitled to a judgment.

Q. We would disagree upon that at any rate.

A. There were 25 issues and only one was found against us.

Q. I would like to have the committee look at some of those issues.

A. There was a distinct finding by the jury.

THE CHAIRMAN. Just confine yourself to answering the questions. MR. CASSIN. There will [be] nothing personal I think.

A. Oh, no, no.

Q. Assuming that I defeated you in that case, I want you to give me some information, I want you to state to this committee whether or not after the verdict of this jury, if you remember Judge Smith went east and went out of the State for some time?

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----- Transcriber's Insert -----

[Case cited by Mr. Cassin: S. J. DUCKWORTH and FLORA McKINLAY DUCKWORTH, Respondents, v. WATSONVILLE WATER AND LIGHT COMPANY et al., Appellants, S. F. No. 3754, Supreme Court of California, 150 Cal. 520; 89 P. 338; 1907 Cal. LEXIS 544, February 8, 1907
PRIOR HISTORY: APPEAL from a judgment of the Superior Court of Santa Cruz County. Lucas F.

Smith, Judge. DISPOSITION: The judgment is reversed and a new trial ordered.

CASE SUMMARY: PROCEDURAL POSTURE: Appellant water company, sought review of a judgment of the Superior Court of Santa Cruz County (California), in favor of appellees, property owner and lessee, neighbors of the company, allowing appellees to take all the water from the lake that they could have beneficially used on their land up to a maximum measurement.

OVERVIEW: Neighboring landowners sought water rights on land around a lake. Appellees convinced the trial court that they should have all the water that could be used beneficially on their land. The court disagreed and reversed the judgment. The court distinguished between riparian right, which did not expire on disuse and rights, acquired by appropriation, which right ceased with disuse. The water company had the right to use all the water that it wanted for riparian purposes, and had the right to water that it has acquired by appropriation, but not the exclusive right. It had the right to insist upon an amount that would last it through the dry season, but others could acquire water by appropriation, too. The court ordered a new trial as to whether any party had acquired by appropriation, and if so, in what amount.

OUTCOME: The court reversed the judgment against the water company, allowing appellees to take all the water that they could beneficially use on their land up to a maximum measurement, and ordered a new trial.

COUNSEL: C. A. Shurtliff, and H. C. Wyckoff, for Appellants.

H. A. Van C. Torchiana, and W. P. Netherton, for Respondents.]

----- End of Transcriber's Insert -----

A. The verdict was rendered on Saturday night; I think he went east on Monday or Tuesday.

Q. And did not return for some weeks? A. He returned, I think he was gone probably a month, may be longer.

Q. Probably a month? A. Yes sir.

Q. Prior to this day to which you refer which you do not recollect at the present time, is it not a fact that Judge Smith had already decided the case and hadn't the decision already been filed in the case expressing his views, and adopting the verdict of the jury and deciding the case against your client; hadn't that decision been already been filed? A. You mean the findings.

Q. Well, the decision is the finding? A. Yes sir.

Q. Conclusions of law and conclusions of fact.

A. Let me explain how it was; when the judge came back we had a meeting of attorneys in the case in the court room.

Q. Answer the question and then explain?

A. I think the findings were filed.

Q. The findings had been filed?

A. Now then I want to explain my answer.

Q. All right. A. The judge stated he did not at that time know how his decision would be because the verdict of a jury is only advisory; he asked the attorneys on each side to prepare the findings and submit them to him and he would sign one or the other; we took ten days apiece; I believe the other side, the plaintiff, submitted their findings and their findings were served upon me, they took I think 15 days to serve, they went to the Judge before I had prepared any at all, the findings had been filed and signed by the Judge before I had time to submit any at all; that was the first intimation I had how the case was to be decided.

Q. How long after you were served with the findings before the decision was rendered?

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A. I think it was the fourth day; there were 15 days as I remember.

Q. You had 15 days in which to prepare your findings?

A. The statement in court was that they would prepare them and I would submit amendments.

Q. What was the occasion of your receiving the other side before you prepared your own, you knew what the case was?

A. I do not know what the occasion was, they said I should propose amendments to theirs.

Q. Now Mr. Wyckoff as a matter of fact Judge Smith had already indicated before this time you any I called him into the chambers, had already indicated what his decision would be and already had signed a decision, isn't that true? A. He had filed those findings but when I made objection here in court he struck them out.

Q. Isn't it a fact Mr. Wyckoff and I ask you because you know more about it than I do, is it not a fact for some reason or other Mr. Torchiana withdrew the findings from the file on your opposition to them and he came in on a technicality and drew them out isn't that the fact?

A. No sir, I raised a very serious objection to their filing the findings and as soon as I raised objection Mr. Torchiana went in-- I consented to their being withdrawn afterwards and the same findings were filed after I had a hearing.

Q. After the findings were filed in that case state whether or not they were the same, the same findings that had been withdrawn?

A. Nearly the same.

Q. There were some amendments made to the complaint was there not in order to conform to the proof? A. Yes sir.

Q. That is the reason the findings were withdrawn?

A. No sir, that was not the reason.

Q. The case at any rate had already been decided before this conversation took place, is that true?

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A. The only--

Q. Answer the question. Hadn't that case already been decided by the Judge of this court before that conversation took place?

A. I cannot say that the findings were, I will explain my answer; the findings had been filed and then by order of the Judge were stricken from the record; that was the condition the case was in, if you consider that being decided.

Q. Were the findings the same as the first findings?

A. Yes sir.

Q. Some of them? A. Some of them; a few recitals were put in. MR. CASSIN. I assume you word to be correct; I came in the court Judge Smith was here, and I beckoned him to come in the chambers?

Q. You were standing in the chambers. A. With Mr. Torchiana yes.

Q. You were sitting here in open court? A. Yes sir.

Q. In plain view? A. Yes.

Q. There was no secrecy in the matter so far as you could see?

A. Evidently no, except you stood there and from the back of the door beckoned to him; he was on the bench hearing an argument.

Q. Now Mr. Wyckoff, I want to ask you this question; do you consider me an honest man, an honorable practitioner? A. I do, Mr. Cassin; you are a friend of mine.

Q. Of course, I have unfortunately tried some case against you of some importance, and sometimes the verdicts were against you and sometimes for you?

A. A great many cases I have no complaint at all to make, but some I have.

Q. I am the same way? A. Yes sir, that is some errors go so far as to be a gross abuse, it seems to me.

Q. We have tried cases together have we not?

A. A good many yes.

Q. Did you ever know me to state any corrupt proposition for a

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witness to swear to, or take any unfair advantage of opposing counsel?

A. I do not think I ever testified that you did anything of that kind at all.

Q. I will ask you, we have been retained in important cases together? A. Yes sir.

Q. We are now engaged together. Mr. Wyckoff I want to ask you that question so you will understand it; you and I are engaged in a case together in important matters in this county at this time. Do

you believe that you have any better chance to win that case on account of my being with you outside of my ability, if I have any,

I am sure I have not as much ability as you have, if you had any lawyer of equal ability?

A. Mr. Cassin, that case is now pending in this court and an answer of the question would involve perhaps a violation of the confidence of my client.

MR. CASSIN. I will serve you with notice now that I draw from that case. You cannot impose upon this court or upon a jury over my shoulders by associating me with you in that case.

MR. LINDSAY. I move that that statement be stricken out.

MR. LINDSAY. Now Mr. Wyckoff I want to be understood here that I agree with you that Mr. Cassin is in my opinion an honorable gentleman.

THE CHAIRMAN. We are not trying Mr. Cassin.

MR. LINDSAY. I know that. Isn't it a fact that since the question has arisen that it is one of Mr. Cassin's peculiarities in trying a case to ride rough shod over witnesses, the jury and judge in order to win his case?

MR. SULLIVAN. We object to that.

MR. LINDSAY. I have one question. How many cases has he been reversed in the Supreme Court.

MR. SULLIVAN. We object to that question as immaterial irrelevant and incompetent and not pertinent to any question involved here. (Objection sustained.)

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MR. LINDSAY. Notwithstanding your opinion of Mr. Cassin as a man and a gentleman you still say this, you believe, from your testimony, that he has an influence over the judge of this court do you?

MR. SULLIVAN. We object as calling for an opinion of this witness. The witness can testify to facts.

MR. LINDSAY. If I must remodel my question I will do so; you still testify to that do you Mr. Wyckoff?

MR. SULLIVAN. I object on the ground the witness has testified fully. (Objection overruled.)

A. I have no reason to change what I said before in the way I said it. MR. LINDSAY. That is all.

MR. SULLIVAN. Just a question. Mr. Wyckoff, you were a candidate for the office of Judge of the Superior Court at the last election were you not? A. I was.

Q. You were the nominee of the Republican party as against Judge Smith on the Democratic ticket? A. Yes sir.

Q. The campaign was quite a bitter campaign was it not?

A. Not so far as, I think, as the Judge and myself were concerned personally.

Q. But so far as appearances were concerned, friends were concerned, it was a quite bitter campaign?

A. In some respects, yes.

Q. As between you personally and the judge there was not much bitterness?

A. Not that I know of.

Q. What was the judge's majority over you? A. I think it was 700, in that neighborhood, I do not know exactly.

Q. Nearly 700? A. It might have been more, a little more, or may be less.

Q. This county is republican by how many majority?

A. It is usually republican I think by 200 or more; Lane the democratic candidate for governor carried it by 100.

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----- Transcriber's Insert -----

[Transcriber's Note: Franklin Knight Lane (July 15, 1864 – May 18, 1921) was an American Democratic politician from California who served as United States Secretary of the Interior from 1913 to 1920. He also was the Democratic nominee for Governor of California in 1902, losing a narrow race in what was then a heavily Republican state.]

----- End of Transcriber's Insert -----

Q. The Lane campaign was in 1902. The other state officers run up to about 500 didn't they? A. I do not know; there was a great difference on different votes in this county.

MR. SULLIVAN. You feel as though you have a grievance against Judge Smith on account of his ruling in the case of Trafton vs.

Quinn as I understand it? A. I may be mistaken but I do not think we had a fair trial.

Q. As I understand that proposition under the law, prior to the trial of the case, the rules of the Supreme Court were strict as to distinguishing marks on ballots?

A. The law which was in effect on election day.

Q. And the law in force at the time of this trial was the amended law, was it not? A. Yes sir.

Q. More liberally construed the election law?

A. Intended to be so, yes.

Q. If Judge Smith had ruled in favor of the contention of Mr.

Cassin that the ballots had not been kept properly or in the hands of the proper custodian, of course you could not have produced any evidence.

THE CHAIRMAN. I think we have gone all over this.

MR. SULLIVAN. What was the nature of that case when the court erroneously admitted evidence? A. It was a case sought to cancel a deed for alleged fraud.

Q. On the ground of whose fraud. A. Fraud of two of the defendants Francis Smith and Mr. Montague.

Q. What relatives? A. Yes sir.

Q. What Montague is that? A. W. W. Montague of San Francisco.

Q. And in that case the jury found your client guilty of fraud?

A. There were two deeds covering the same property, as to the second deed it was amply sufficient to support our title; the jury found in terms there was no fraud in the execution of the deed. As to the

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second deed they disagreed, on no other special issue they found against us. There were some

twenty or thirty issues.

Q. And it was an equity case too was it not?

A. Yes, all part of the same case; a different issue of the same case.

Q. Mr. Wyckoff, you are the partner of Mr. Carl Lindsay are you not?

A. I am, yes, not in San Francisco.

Q. Had you anything to do in the preparation of these charges?

A. None whatever.

Q. None at all? **A.** I didn't know it until they had been-- until I saw them in the papers, they had been prepared.

MR. SULLIVAN. I think that is all.

COMMITTEEMAN BURKE. What is the title of the case in which you and Mr. Cassin are now associated together pending in this Court?

A. The Estate of Richard R. Welch.

Q. Who do you represent? **A.** The contestant of the will.

Q. Whose case was it originally? **A.** My case; well I think both of us, I think we were both associated at the same time. **MR. CASSIN.** No, Mr. Wyckoff.

A. I think I saw Mr. Cassin in reference to the case, my client saw me first.

MR. BURKE. Did Mr. Cassin come in at your suggestion or at the suggestion of your client?

A. Well, both I think.

MR. LINDSAY. Have you any feeling towards Judge Smith on account of his defeating you at this election spoken of?

A. I do not think I have Mr. Lindsay. I have a friendly feeling for Judge Smith personally; I think I have a friendly feeling towards Judge Smith personally.

MR. LINDSAY. That is all.

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MR. LINDSAY. I will recall Mr. John H. Leonard to testify to specification seven.

MR. SULLIVAN. I think he testified.

THE CHAIRMAN. You haven't closed 7 yet.

MR. BURKE. He testified as to both of them.

MR. SULLIVAN. I think Mr. Wyckoff testified as to only one.

----oOo----

TESTIMONY
OF

Professor JOHN J. MONTGOMERY . . . sworn.

MR. LINDSAY. I call this witness somewhat out of order, he desired to return on the train this evening; specification 7 and also specification one.

Q. What is your name please?

A. John J. Montgomery.

Q. Where do you reside Mr. Montgomery?

A. Santa Clara College, Santa Clara.

Q. And what is your profession?

A. Well I am recognized at the college as professor of mechanics and assistant professor of physics, astronomy and electricity.

Q. How long have you been connected with the institution professor?

A. Well, in the neighborhood of seven years; in the neighborhood of 10 years.

Q. Are you acquainted with Judge Lucas F. Smith, Judge of the Superior Court of this County? A. I met the gentleman on a former occasion in this court.

Q. Your acquaintance with him is a casual one is it not?

A. Yes sir.

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----- Transcriber's Insert -----

[John Joseph Montgomery was just 47 years old when he testified on February 17, 1905, before this Committee. He was born at Yuba City, California, February 15, 1858. He was the son of Zacharia and Ellen Montgomery. His father was a lawyer by occupation and when better opportunities presented themselves in Oakland, Cal., in 1863, the family moved to John's grandmother's farm, near Oakland. He enrolled at Santa Clara College in 1874, showing an interest in the sciences. After one year at Santa Clara he transferred to St. Ignatius College in San Francisco to pursue the sciences. His main interests were astronomy and flight. In 1879, John graduated from St. Ignatius with his interest in flight and electricity still in their infancy. Also in 1879, John's father moved the family to an 80-acre farm at Fruitland, near San Diego, where he opened a law practice. John was 21, and the farm was assigned to him and his other brother James. It was during his first three years at Otay that John began in earnest his study of aviation. In late 1883, John and James tested their home-made glider, where he flew 600 feet from the point of take-off.

John Montgomery was appointed an instructor in 1896 at Santa Clara College. At the invitation of a fellow professor at Santa Clara, James E. Leonard, Montgomery began experiments at the Leonard ranch on the San Andreas Rancho in Santa Cruz County. Three actual flights took place at Leonard's ranch in March of 1905, about the same time as this Smith Impeachment hearing in which he testified.

Extracted from "John Joseph Montgomery, his life in brief, a research paper presented to the California Pioneers of Santa Clara Valley, by George P. Connick, June 6, 1959," and published in Santa Clara County Pioneer Papers, 1973. San Jose, California Pioneers of Santa Clara County. More information about John Montgomery and his experimental flights may be found in Craig S. Harwood & Gary B. Fogel's Quest for Flight: John J. Montgomery and the Dawn of Aviation in the West. University of Oklahoma Press, 2012.]

----- End of Transcriber's Insert -----

Q. You are acquainted with Mr. Charles M. Cassin, an attorney at this bar? A. Yes sir, I met him on the same occasion.

Q. Were you in Santa Cruz last September, professor?

A. I was here during the fall, some month I do not recollect.

Q. Do you remember being present in this court room at any time during the trial of the case entitled Ramirez vs. Big Creek Power Co.?

A. Yes sir.

Q. You were here in what capacity? A. I was called here as an expert witness on electrical matters.

Q. You testified in the case, did you? A. Yes sir.

Q. Who were the attorneys in that case?

A. There was Mr. Leonard attorney for the plaintiff, and Messrs Cassin and Jeter for the defendant.

Q. While you were present in the court room during the trial of that case, did you have occasion to note the conduct of the presiding judge toward the witnesses?

A. Yes sir.

MR. SULLIVAN. We make an objection to this testimony on the ground it is irrelevant immaterial and incompetent, that we are not confronted with any charge arising out of this case of Ramirez against the Creek Power Company, and if the committee takes testimony of witnesses like this we will insist upon our right to bring here a 1000 witnesses on behalf of Judge Smith to show the character and conduct of the Judge in the trial of cases. If you allow these witnesses to come here as this witness is going to testify, we will persist upon our right to bring a 1000 witnesses to testify as to the manner in which Judge Smith has conducted trials in this court.
MR. LINDSAY. I do not know what complications this may lead to;
I do not know how it is possible to attempt to prove the charges made here except by evidence

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MR. SULLIVAN. We have a list of all the jurors that have set[sic] in Judge Smith's court during the last past several years and if you--
THE CHAIRMAN. Mr. Sullivan, we will hear a certain amount of evidence as to Judge Smith's conduct but we won't listen to cumulative evidence that is unnecessary, cumulative evidence; this gentleman's evidence will go to show the conduct of Judge Smith, that is what we are here for, to get the facts.
MR. SULLIVAN. If this kind of evidence is attempted it means an immense volume of testimony and we are entitled to--
THE CHAIRMAN. It will open it on this one occasion I presume that he has testified to.
MR. SULLIVAN. If you allow all the witnesses to testify on that occasion, that is the jurors and the parties present.
THE CHAIRMAN. What is it offered on, subdivision 7. **MR. LINDSAY.** Specification seven and one also.
THE CHAIRMAN. We will hear what the witness says.
MR. LINDSAY. Judge Lucas F. Smith was presiding at that bar?
A. Yes sir.
Q. Was the case a jury case? A. Yes sir.
Q. State now the conduct of the Judge toward Mr. Cassin and toward Mr. Leonard?
MR. SULLIVAN. We object on the ground it calls for the opinion of the witness; if counsel will ask the witness what the Judge said then you will get something.
THE CHAIRMAN. Ask a question so it will be directed to some act or word. We want facts.
MR. LINDSAY. That is the reason I put the question that way.
Q. Just state the facts, just what you observed. **THE CHAIRMAN.** But not your opinion.

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MR. LINDSAY. In reference to the conduct of Judge Smith towards Mr. Cassin and towards Mr. Leonard?
A. You mean--
MR. BURKE. You mean by that what took place.
MR. LINDSAY. What was said and done? A. The first palpable thing I noticed was in my connection with the case as an expert witness on electricity; I had been called here for the purpose of giving expert testimony regarding electrical matters in the case
and among those matters was a construction and safety of the lines that were in question, the lines of the Big Creek Power Company.
Mr. Cassin after thoroughly and completely admitting my fitness as an expert in a very flattering manner, listened to my testimony regarding electrical matters in general; then when Mr. Leonard

put the question to me as to the safety of those lines, Mr. Cassin immediately arose and said he objected to my answering the question for he said “I know what his answer will be, and it will be no, that the lines are not safe;” and the Judge--

MR. SULLIVAN. May it please this committee if this testimony is to be taken, you cannot abolish the record of the testimony taken in the case; we had a record of testimony taken in that case and I am perfectly satisfied to have the record introduced subject to my objection to it so we can understand from the record itself regarding what did take place. Now the rule of evidence is the best evidence must be accepted if obtainable before secondary and inferior evidence is introduced and the evidence during the trial of that case was taken down by the official court reporter and presumably it has been subscribed has it?

MR. CASSIN. No sir.

MR. SULLIVAN. The official record of this court may be read.

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THE CHAIRMAN. The record is the best evidence.

MR. SULLIVAN. As to what Mr. Cassin said and what the witnesses said.

THE CHAIRMAN. That is, what he said was taken down as evidence.

MR. LINDSAY. I am not so sure that the notes of the shorthand reporter of the evidence of what occurred at the trial; any one, any witness may testify here as to his recollection as to what occurred and the evidence is exactly as that of the shorthand reporter; it simply goes to the weight of the testimony, that is all.

THE CHAIRMAN. Is the record of the proceedings in that case obtainable.

MR. SULLIVAN. I believe the record is now obtainable. The record may be obtained, the shorthand reporter has taken it down; he is here and will testify as to what was said and done.

MR. LINDSAY. So will this witness testify as to what was done and said.

MR. SULLIVAN. We will submit it is a saving of time.

THE CHAIRMAN. We will hear the testimony of the time saver. MR. LINDSAY. Go on Professor.

MR. SULLIVAN. In reply, we will produce the record for the purpose of saving time.

MR. LINDSAY. Undoubtedly if the record contradicts the witness it may be introduced, the testimony of any witness.

THE WITNESS [Professor Montgomery] And the Judge sustained the objection of Mr. Cassin, although Mr. Leonard attempted to point out that I had been called here for the purpose of giving testimony on that very line, contradistinction as to that--

of course that shut out my testimony and one of the important matters in the case in contradistinction; and when the witness for the defense was called he came and gave testimony here which pertained only to good workmanship and in such a manner as to convey to our mind that the lines were safe, and that testimony was allowed to go

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in the case and whereas the prosecution was entirely shut out from showing the lines were not safe, as they were in fact not safe as I knew from personal inspection; that testimony was cut out entirely under Mr. Cassin's objection and the other testimony was allowed to go in.

MR. LINDSAY. Do you know of any other instance?

A. Yes sir.

In regard to the examination of witnesses, while not being an attorney, I know somewhat of legal procedure; during the examination of one of the boy witnesses for the defense I noticed a very peculiar condition of affairs.

MR. SULLIVAN. We object to his leading the witness; state what was said and done.

A. I will state what was said and done; I will state exactly what was said and done.

MR. SULLIVAN. This goes in under our objection.

THE WITNESS [Prof. Montgomery] Mr. Cassin was examining one of the boys, putting to him leading questions; the questions were something like this: "did you get on a certain street car at a certain time and get off at a certain place--yes." Mr. Leonard arose and objected and allowed the questioning to go on. The next question was something like this: "When you reached a certain point you got off at a certain place and walked towards a certain telegraph pole--yes, when you got close to that pole--

MR. SULLIVAN. I submit the best evidence of what took place would be the questions in the record. Here is a layman criticizing counsel in the trial of a case; we submit it is going to too great an extent to allow lay people to come in here, absolutely ignorant of law, to come in here and criticize the trial of a case. You might let Mr. Lindsay, who is also experienced, testify.

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THE CHAIRMAN. Of course we have got to get the evidence here, that question may be material.

MR. SULLIVAN. Before he testifies as an expert I would like to test him as to his qualifications.

COMMITTEEMAN BEARDSLEE. Is the rest of that answer or statement that you are going to make similar to this you have just made. Are those circumstances that you noticed, or facts you noticed here in court only of this kind?

A. The facts I noted are only of this kind.

Q. That you are relating now, is that the sort of facts you are going to state? A. Those are the same; and then there are others; there are several facts pertaining to some trouble with the jury.

THE CHAIRMAN. Go on and state those other facts.

THE WITNESS [Professor Montgomery]. All right. During the course of the trial, or rather as Mr. Leonard was about to commence his argument to the jury he stated that he had information that there was some taint regarding one of the jurors; that of course caused a little ripple in the court room at the time but nothing was done; it was allowed to go on. When the jury brought in its verdict at the end of the trial, when the verdict was delivered, one of the jurymen arose and asked Mr. Leonard to produce the proof or retract what he had said reflecting upon the jury. Mr. Leonard arose and said that he was not able at that time to produce the name of the jurymen because the party who had told him of the fact had not given him the name but had promised that he would give him the name. Then the counsel for the defense insisted that the name be given; Mr. Leonard protested that he was unable to give the name.

MR. SULLIVAN. Do you mean one of the counsel for the defendant?

A. Yes sir. Mr. Leonard insisted that he was not able to give the name of the jurymen in question, that his informer had not given it to him

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but promised he would give it to him; then the jury became more or less excited; the attorneys for the defense became excited also and the Judge became excited, and he demanded that Mr. Leonard give the name; Mr. Leonard protested that he was unable to give the name, and said he

would give the name as soon as he possibly could obtain it, if he did not succeed in obtaining the name he would produce the party in court who had given him the information and asked for time; but the counsel for the defense persisted that the name be given, and then immediately joined in insisting and threatened Mr. Leonard that if he did not give the name he would call the Grand Jury and have an investigation. Mr. Leonard told him that he had done all that was in his power to be done at that time but that he would within twenty four hours or at least two days produce the name of the party who had furnished the information. The judge would not hear to it and turned to the jury, informed the jury that he would not believe a word of it and that he dismissed them with honor.

CROSS EXAMINATION.

MR. SULLIVAN. Mr. Montgomery have you ever been a practicing attorney? **A.** No sir.

Q. Have you ever studied law? **A.** To a slight extent, in my father's office.

Q. To a slight extent? **A.** I never entered it as a student of the law though I was there as copyist for a time.

Q. For how long? **A.** Well, I could not say exactly how long, not very long.

Q. How many months? **A.** That I could not say because it is so many years ago.

Q. It was an experience of a few months as a copyist that you had?

A. Yes sir, then with my father in discussing cases he tried.

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Q. Did your father discuss legal propositions with you in cases he tried?

A. He discussed many of them, various cases of law.

Q. That is while you were a copyist in the office?

A. And afterwards.

Q. After you left your father's office as copyist what was your business?

A. Well, I was engaged in farming; in various business.

Q. What first? **A.** Farming.

Q. What next? **A.** Then I passed through a professional business as teacher.

Q. What profession? **A.** Of teacher, professor.

Q. Now you are an electrician are you? **A.** Yes sir, one of my studies.

Q. Have you ever built an electrical system?

A. Excuse me.

Q. Have you ever built an electric system, system for operating railroads or plants for the transmission of electricity or for motive power or for any other purpose? **A.** No sir, I was engaged in obtaining information for those who do build.

Q. You never engaged in construction of any kind?

A. No sir.

Q. Do you know what electricity is? **A.** Nobody knows what electricity is.

Q. Now Mr. Montgomery have you ever appeared in court before, before the trial of this case, of Rameriz against the Big Creek Power Company? **A.** Not to my recollection.

Q. Did you ever appear in court in a trial of a case before?

A. No sir.

Q. Never did? **A.** How do you mean?

Q. As a witness, or as a party? **A.** Yes sir, some years ago

I had some litigation with a man in San Diego--it never came to trial.

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Q. You never appeared in court during the trial of a case before?

A. This is the second time in my life I have been on the witness stand.

Q. And your experience then during the trial of the Rameriz case was a novel experience?

A. A novel experience barring the time which I was present at the trial in court by my father.

Q. How many years ago was that Mr. Montgomery?

A. Well, the last trial that I attended with him, by my father, I think was in San Diego in about 1883.

Q. 1883, oh yes. And now while you were a witness on the stand Professor you were treated in a gentle manner weren't you by the counsel? A. Perfectly.

Q. Mr. Cassin in his questions to you acted in a gentlemanly manner didn't he?

A. Most decidedly.

Q. When questions were propounded to you by counsel on the other side Mr. Cassin in a gentlemanly manner objected to the question did not he? A. Yes.

Q. On the very ground that counsel allege? A. Not on account, on the grounds of Mr. Cassin, but the court's treatment of me in that matter, for if I should believe half the praise given me I should think I was the greatest man ever lived.

Q. Praise from both sides. There were other experts here were there not Professor from other institutions who testified.

A. I know that.

Q. One of those experts was a gentleman who had constructed an electric system? A. Yes.

Q. Did Mr. Cassin argue in his objections that an expert who had built an electric system was a better expert for the purpose of trial than you who had never built a system?

A. He argued, whether his argument was rational or not I doubt. Those who build lines usually have to learn from those who investigate. I am entirely

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engaged in investigation which I give to the world. Those who construct lines have to take up those matters given out by such individuals.

Q. Now, Mr. Cassin in his objection to your testimony, objected that you were not an expert as to the safety of this line in question at that time, because you had never built a system as I understand, is that so? A. That was not the foundation of his objection.

Q. What was the foundation? A. The foundation was that he knew I would say no.

Q. What examination did you make Professor at the time you examined the wires in question? A. I went out there and looked at the condition of the wires, the manner in which they were put up.

Q. You simply made a visual examination?

A. You sir, it is not necessary to touch them.

Q. Not necessary to touch them? A. No sir.

Q. You did not climb the pole and apply any instrument and test them, anything of that kind?

A. No sir, only a crazy man would do that.

Q. The professor from Berkeley testified he did that didn't he?

A. No sir, not that I know of.

Q. Didn't he make a physical examination of the wires and the system itself? A. Not that I know of, if he did. He brought in some knobs and brought some wire to show the workmanship, where the workmanship in the construction might be very perfect the system of

the construction might be very poor, and if the gentlemen or counsel want me to state--

Q. No, we will not try that case over.

A. I know that; that answers that.

COMMITTEEMAN BURKE. Will you allow me to ask a question. MR. SULLIVAN. Yes.

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MR. BURKE. Were you permitted to answer that question that was put to you? A. No sir.

Q. What would your answer have been if you were allowed to answer?

A. I would have answered that the wires were not safe and give my reason.

MR. SULLIVAN. Mr. Cassin is a very good guesser?

A. Yes sir. I would not only rest with telling him the wires were not safe but give my reasons; I know they were not safe from the inspection I had made.

Q. You observed Mr. Montgomery that during the examination of the boys that Mr. Cassin put leading questions; who were those boys?

A. I do not remember their names.

Q. They were witnesses in the case? A. Yes sir.

Q. Did you understand at the time that it is within the discretion of the court to allow leading questions to witnesses?

A. I understood in a general way it is a principal of law not to allow leading questions to willing witnesses.

Q. Did you understand it was within the discretion of the court, under certain facts, under certain circumstances?

A. I did not understand such was the case.

Q. That is the rule. How old were the boys?

A. Why, I should judge somewhere in the neighborhood from 12 to 15 years old, something like that.

Q. You came to the conclusion that the judge was favoring him in allowing Mr. Cassin to put leading questions to those boys?

A. Yes sir. I spoke to Mr. Leonard of the matter at the time. I asked him why he did not raise the roof off of the hall; I would have tried to do it myself if I was an attorney.

Q. You and Mr. Leonard agreed the questions should not have been permitted?

A. Yes sir, because Mr. Leonard objected at the time.

Q. When the jury brought in the verdict Mr. Leonard announced that

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one of the jurors had been tainted as I understand?

A. No sir, he announced that during the trial, before the commencement of the argument.

Q. When he made that announcement did the attorneys for the defense call upon him to produce the source of his information, the name of the juror?

A. I do not remember whether they did or not.

Q. Did Mr. Cassin say if you have any information here showing that any single juror on this jury is corrupt I want you to name the juror? A. I remember Mr. Cassin made that statement during that afternoon but I think it was after the trial had been completed.

Q. Didn't he, when Leonard made this charge, that one of the jurors had been corrupted, didn't he jump up and say [the] name [of] the juror, I demand you name the juror? A. He may have said so but I could not swear positively that he did.

Q. Didn't he say during the argument of Mr. Leonard when he said

one of the jurors here is corrupt, did Mr. Cassin jump up right then and there and say here, you point out that juror, name that juror or cease your argument? A. I do not know whether he did or not.

I give you my answer regarding the statement; there is in my mind now a condition of thought which would not enable me to state one way or the other because from the expression that you have made might be a portion, might be construed as a portion of what Mr. Cassin said there regarding the matter. I will simply state what I understood. I do not remember distinctly whether he did or not; it is probable that he did.

As I said in my direct examination there was some stir in the court; now Mr. Cassin may have been part of that stir but there was a stir in the court at the time.

Q. According to your observation did Mr. Cassin jump up as soon as Mr. Leonard commenced his argument and made that statement and demand

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that he point out the juror, name the juror there in the presence of all the people present?

A. I have given you my answer Mr. Sullivan.

Q. What is your best recollection?

A. I stated, from the remarks you have made and the manner which you insist upon and the attitude and so forth, leaves a cloud in my mind as to whether the impression is in my mind now is the attitude and your expression and not Mr. Cassin's expression at the time.

Q. Didn't Mr. Cassin at that time say that if he knew a single juror in that jury box was corrupt it was the duty of Mr. Leonard to have informed the court of the fact before he began his argument?

A. I do not remember.

Q. Didn't Mr. Cassin then and there in the presence of the court and jury and Mr. Leonard charge Mr. Leonard with trying to intimidate the entire jury, the 12 jurors by making such a charge?

A. I do not remember any such statement.

Q. Were you present here when the jury returned a verdict against Mr. Leonard's client?

A. Yes sir.

Q. Were you present in the court when the foreman of the jury stood up in the box and asked Mr. Leonard to then and there name the juror?

A. At the end of the trial?

Q. Yes sir, after the verdict had been rendered?

A. Yes sir, then it was during that proceeding that storm took place, then it was that Mr. Cassin insisted on his naming, that the juror's name be given.

Q. Professor, did Mr. Leonard on that occasion say that he could name or he had the name of the informant in confidence?

A. No sir. He said he had not been able to obtain it from his informant; his informant for some reason withheld the name from him but promised to give it at the proper time.

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Q. Didn't Mr. Leonard on that occasion refuse to give the name of his informant after Mr. Cassin had repeatedly demanded the name of his informant?

A. He said he would produce the informant, he would produce the name of the juror, if the informant failed to give him the name he would then produce the informant.

Q. Didn't Mr. Leonard state his word was out to the informant not to produce the name of the informant and he refused to produce the name of the informant on that occasion?

A. I do not know that he made any such statement; I do not remember that he did.

Q. Don't remember that he did? A. No sir.

Q. Were you present the next day in court Professor?

A. No sir.

Q. When the informant appeared? A. No sir.

Q. And you do not know that the informant stated that he did not give his name in confidence to Mr. Leonard did you?

A. No sir.

Q. What was your theory in that case as to the cause of action Professor?

MR. LINDSAY. I object as not cross examination. (Objection sustained)

MR. SULLIVAN. Mr. Cassin is present and he wants--

MR. CASSIN. I would like about two questions or three of this witness, that is, not more than three.

THE CHAIRMAN. Do you object. MR. LINDSAY. I will not object.

MR. CASSIN. Mr. Montgomery. Wasn't your theory that the alleged accident in that case happened on account of a string that remained for three months over the wires, taking the electricity from up the coast down here and that the salt from the ocean got into this little

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string and forming a conductor over which electricity passed from one wire to the other, and that by reason of the electricity passing from one wire to the other, one of the wires was burnt and fell to the ground, was that not the theory? A. No sir.

Q. Was it testified to by eye witnesses to that prosecution that that string got on a wire by reason of a boy flying a kite a few hours before the accident and that another boy came along just as this lady was passing under the wire and pulled the string over two wires together and didn't we produce the witness?

MR. LINDSAY. I object to that.

Q. You hadn't any feeling because a jury adopted the belief of the professor of the University of California and rejected your belief?

A. Not at all.

Q. I will ask you one question, and I ask it in view of whether Mr. Cassin was gentlemanly to you, of course you say his examination was gentlemanly of you, I will ask you whether when this matter of a jury arose, whether you considered the conduct of Mr. Cassin or of the pre-siding judge as being particularly gentlemanly?

A. Not by any means.

Q. It was not gentle? A. No sir; it did not pertain me at all it all pertained to Mr. Arnold[sic].

Q. You say there[sic] conduce was not gentle?

A. Yes sir.

Q. How would you characterize it?

MR. SULLIVAN. I object as calling for the opinion of the witness. (Objection sustained.)

MR. LINDSAY. It was not gentle at any rate. That is all Professor I think.

MR. CASSIN. Was the conduct of the jurors gentle who were mentioned by Mr. Leonard as this Judas iscarot[sic] as he called him, was the juror's conduct gentle?

A. No sir.

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----- Transcriber's Insert -----

[Transcriber's Note: Judas Iscariot (aka Iscarot), the son of Simon, was the one who betrayed Jesus.]

----- End of Transcriber's Insert -----

T e s t i m o n y
of
JOHN LEONARD,
Recalled.

MR. LINDSAY. I will call your attention without any undue examination to this case of Rameriz against the Big Creek Power Com- pany, you remember it? **A.** Yes, sir.

Q. You were attorney for the plaintiff? **A.** Yes sir.

Q. And Mr. Cassin one of the attorneys for the defendant?

A. Yes sir.

Q. You heard the testimony of the witnesses this morning on the stand in reference to the scene created by your stating one of the jurors had been, that you had received information that one of the jurors had been tainted? **A.** Yes, sir.

Q. I will ask you if on the next day, or the succeeding day you produced in court your informant that gave you the information in reference to that?

A. He came by himself, he came with me, but he came of his own volition, it was not any process, or any- thing of that kind, that brought him; he came of his own volition.

Q. When was that, Mr. Leonard? **A.** That was on the following day.

Q. On the day succeeding the verdict of the jury?

A. Yes, sir; I gave the information, I gave the name of the juror that my informant had given me; I gave also the name of my in- formant that evening, I think about twenty minutes perhaps after the adjournment of court.

Q. To whom did you give the information?

A. To the judge of the court and the attorneys on the other side.

I went over to the corner of the street and came back and the juror's name was presented.

Q. Well, then on the following day your informant appeared in court?

A. Yes, sir.

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Q. Were there jurors present on that occasion?

A. Some of them.

Q. Some of them were? **A.** Yes, sir.

Q. Did you come into the court room with him? **A.** Yes, sir.

Q. Was the Judge presiding, Judge Lucas F. Smith? at that time?

A. Yes, sir.

Q. The court was in session? **A.** Yes, sir.

Q. Was Mr. Cassin present? **A.** Yes, sir.

Q. The next day when your informant appeared was Mr. Cassin addressing the Court, state whether or not Mr. Cassin did not state to the Court to the effect that he knew all about this before the case went to the jury at all, and

that he informed the
judge of the court about it?

MR. SULLIVAN. We object, the best evidence of what took place
the next day is the record of this court. The record is the best evi-
dence.

MR. LINDSAY. I do not know whether it was reported or not. **MR. CASSIN.** It was reported; we
have the record here.

THE CHAIRMAN. The witness can answer the question.

A. I was not informed at the time the statement was made, Mr. Lindsay, ever made at all.

Q. You did not know it? **A.** I came in with this witness. After he had been put on the stand I
defended him as I thought proper until his examination was through, as I thought, then I left the
court room, and said it was my day to go home.

Q. Will you state to the committee as briefly as you can what did occur that morning?

A. Yes, sir. Well, I came in with Mr. Rich; Mr. Cassin and
Mr. Jeter came in about that time, and Judge Smith came from his chambers; after he had
arrived here he said "is Rich in Court".

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Q. Who is Rich?

A. Rich was my informant.

Q. Your informant?

A. Yes, sir. "Is Rich in court"

and he repeated it again that the sheriff get Mr. Rich. Mr. Rich stepped forward and said I would
like to make a statement. The Judge commenced saying "Mr. Clerk swear the witness, swear the
witness", and then I arose and said on behalf of Mr. Rich, I would like Mr.

Rich to know what was before the Court before he was sworn, whether he was accused of any
crime, or whether he was here as a witness,

whether there was anything before the court. The Court thereupon

grew very abusive to me and told me to sit down and keep quiet, swear the witness, the witness
was sworn by the Clerk and sat up here in

the witness chair, the Judge then said to Mr. Cassin or Mr. Jeter, "Any questions to ask this
witness". The witness requested that he

be permitted to make a statement, and Mr. Cassin proceeded to question him, asking him about
that whether he was a detective for me,

whether he was a detective working for me, whether he had any inter- est in that case that had
been tried, and whether or not his father had been arrested by that company for stealing and
numerous questions of that kind, to each of which I objected, my objections were invariably

overruled, and the Judge in a very abusive and criticizing manner said to me "Mr. Leonard your
objections are all overruled and make them on whatever point you please."

Q. What matter was before the Court at that time?

A. Well, I do not know as there was anything before the Court.

Q. Now, go on.

MR. SULLIVAN. Several lawyers were before the Court. **MR. LINDSAY.** That does not mean
that there was much.

A. Well, I however, continued to interject my objections, then

Judge Smith turned to me, and said "Mr. Leonard, your interruptions will not be permitted".

He then turned to the witness and said, I want to know by what right do you come in here in this
court and

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charge this court and the honorable officers of this court and this jury with corruption". I then stated to the Court, I asked the Court whether I was not to interpose any objections when I thought they were proper and whether I was to sit there in silence, and if so, I assured the Court I had no inclination to be in contempt and would sit there in silence. At that period the Judge said "I suppose you may proceed". I then kept interposing objections until Mr. Cassin got through examining Mr. Rich, and finally Mr. Rich was permitted to make his statement in which he told the story about this juror's conduct.

Q. What was the story?

MR. SULLIVAN. I object to that as hearsay.

THE CHAIRMAN. It is hearsay; it would be hearsay unless the witness knows of his own knowledge.

MR. LINDSAY. I mean what was the story Mr. Rich stated in Court?

MR. SULLIVAN. What somebody else stated in court.

MR. LINDSAY. I will have Mr. Rich here. What did you do then, Mr. Leonard?

A. After Mr. Rich had left the stand I stated "now I believed he had substantiated the charge, my wife was waiting for the train and it was almost time to catch it". I excused myself to the Court and officers that were there and attorneys, assuring them it was no disrespect, I was going to leave the court room.

Q. You left Mr. Rich there, did you?

A. Yes, sir.

CROSS EXAMINATION.

MR. SULLIVAN. Did you before the commencement of your argument make any statement to the Court of the fact you had been informed that one of the jurors were corrupted?

A. Well, I did not say it in that language, Mr. Sullivan.

Q. Did you, before your argument, intimate to the Court that

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one of the jurors in the case had been corrupted, was corrupt?

A. Yes sir; before my argument is the time I made the statement.

Q. Just before your opening argument? A. Yes sir.

Q. About the commencement of your opening argument?

A. Yes sir; it was about, that is about five minutes after I had learned of it.

Q. When you made the statement didn't Mr. Cassin make the statement "name the juror?"

A. He made the statement; if you will permit me I will tell just what occurred.

Q. It will take up too much time? A. It will take less time.

Q. I think not; just answer the question Mr. Arnold?[sic]

A. He did not say it in those words.

Q. Did he substantially say it; what did he say when you made that announcement?

A. Name your man.

Q. As soon as you accused one of the jurors of the panel as corrupt in the jury box, Mr. Cassin said "name your man." Didn't you say there was a Judas Iscariot[sic] in the jury box? A. No sir.

Q. Didn't you use the words "Judas Iscariot?"[sic] A. I did not say there was one in the jury box; I know I did say I hoped the juror would repent as St. Peter did.

Q. That the juror would repent as St. Peter did?

A. I hoped so.

Q. Believing, knowing there was a corrupt juror in the box, that there was then engaged in trying a case that was about to decide the case, and upon demand of Mr. Cassin to name the man, why didn't you name the man or give the court the name of your informant and name the man? A. I did not know the name of the man and I feared to give the name of my informant unless I knew the name of the man.

Q. Did you decline to give the name of your informer? A. Not at that time, no sir.

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Q. Did not Mr. Cassin demand upon your statement you did not know the name, did not Mr. Cassin demand you give the name of your informant? A. No sir.

Q. Well, did not give the name of your informant to the court that day that one of the jurymen in the case had been corrupted?

A. I did.

Q. After the case was finished? A. Yes sir.

Q. After the verdict had come in? A. As soon as I found out who the juror was.

Q. Why didn't you give the name of your informant before the verdict came in?

A. Because I was afraid I would never find out who the juror was; I kept that back until I found the whole story.

Q. Did you say your word was out that you could not give the name of your informant?

A. No sir, I did not; I said I was under obligations not to give it.

Q. Under obligations not to give the name of your informant?

A. Yes sir, I said I would not use that name.

Q. Didn't you say "my word went out, or is out, I cannot give the name of my informant?"

A. I do not think I ever used the expression.

Q. Didn't you say you were under obligations not to give the name of your informant, you refused to give the name of your informant who this corrupt juror was? A. That is what I meant; that is what I said meant; this was after the trial however, after the trial was completed I said that.

Q. The jury was still in the box? A. After the [jury] had rendered their verdict and it had been recorded.

Q. The verdict had been recorded? A. Yes sir.

Q. And they were in the box still? A. Yes sir.

Q. And the foreman of the jury called for the name of the cor-

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rupt juror didn't he? A. No sir, I think that was not the foreman of the jury; I think it was another juror, Mr. Wagner.

Q. Didn't some juror ask you to give the name of your informant?

A. Yes sir, Mr. Wagner.

Q. Mr. Wagner? A. I do not remember he said the name; I am under the impression he wanted me to give the name of the juror because it put a cloud on all the jurors, somebody might think they had all sold their vote.

Q. Now, on the next day you and Mr. Rich, your informant and Mr. Cassin and Governor Jeter appeared here in court did you not?

A. Yes sir. I stayed in that night at the request of Mr. Jeter for that purpose.

Q. Now at that time, that was the day after the verdict was rendered Mr. Rich was sworn as a witness and gave his testimony did he not?

A. Yes sir.

Q. Did he swear there in your presence and hearing that he did not impose confidence upon you not to divulge his name?

A. I do not remember his exact language about that.

Q. Didn't he say you was under no obligation to him to conceal his name, do you remember that?

A. I do not know whether he

did or not; the obligation between Mr. Rich and myself was entirely on my part, as I said to him I would not use his name at that time, I wanted to find out the name of the juror, and could not find it out from him at that time because I had no other means of finding out who the juror was without he told me his name.[sic]

Q. Subsequently did you appear before the Grand Jury of this county? A. Yes sir.

Q. In relation to this same matter? A. Yes sir.

Q. And then and there in the presence of the Grand Jury did you decline to answer certain questions concerning that matter on the

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ground that the answer would incriminate you? A. No sir.

Q. Did you in the presence of the Grand Jury, when they were in- vestigating that matter, the matter of the corruption of a juror declined to answer certain questions propounded to you by the District Attorney on the ground that an answer to the question would incriminate you?

A. No sir, and I wish to explain that now. I wish to explain that answer if you please.

MR. SULLIVAN. Did you while the Grand Jury was investigating that particular matter of the alleged corruption of one of the jurors in that case, decline to answer in the presence of the Grand Jury ques- tions put to you by any other member of the Grand Jury?

A. Yes sir.

Q. On the ground that to answer it would incriminate you? (Objected to and objection sustained)

MR. SULLIVAN. Now, did you, while the Judge was endeavoring to investigate the alleged corruption of a juror decline to testify as a witness after the verdict was rendered?

A. Immediately after the verdict was rendered.

Q. The day after or immediately after? A. Well, immediately

after the Judge said "Mr. Clerk, swear Mr. Leonard." The Judge was very abusive to me as I consider it; he said "Mr. Clerk swear Mr.

Leonard; have Mr. Leonard sworn; we will have him sworn as a witness;" I says "if your Honor please Mr. Leonard refuses to be sworn."

Q. You refused to be sworn? A. Yes sir.

Q. That is the very day the verdict was rendered?

A. Yes sir.

Q. Immediately after the rendering of the verdict I at that time further said that as soon as I could learn the name of the juror I would bring it here with twenty four hours, or bring the name of my informant.

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Q. The next day when the matter came up before the court, you appeared as attorney for your informant did you not?

A. Yes sir.

Q. Did you advise Mr. Rich, your informant to decline to be sworn?

A. No sir.

Q. Didn't you advise him not to be sworn and remarked the court had no jurisdiction to

investigate the matter?

A. No sir.

Q. You did not? A. No sir. All that I remember was, from the court room door up here on that point, he said “I would like to have you represent me up here” I think the language was; he said he would like to have me represent him up here so he would not make a fool of himself, I think was the language and we came into court without another word about it.

Q. Did you give any advice to Mr. Rich not to be sworn?

A. No sir.

Q. Or not to testify? A. No sir.

Q. Didn't you here in Court tell Mr. Rich not to be sworn and testify as to that particular matter?

A. No sir; I asked the court to inform him before he was sworn what was before the court.

Q. Mr. Leonard, do you remember hearing Mr. Rich testify when this matter was investigated by the court.

MR. LINDSAY. You objected a while ago that that was hearsay.

MR. SULLIVAN. I am reading from the record. I want to test his recollection. You remember this question being put to you and this answer given: “q. you say that you did not know Mr. Rich last night Mr. Leonard had used your name? a. I know he did use my name. q. You had given him authority had you not? a. I had.” Do you remember that testimony?

MR. LINDSAY. I object to the question if not asked to test the witness's recollection.

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MR. SULLIVAN. You remember Mr. Rich testified he did give you authority to use his name?

A. I think so.

Q. Why then did you refuse to give the name of Mr. Rich when this matter was investigated by the court?

A. I did, after he had authorized me to do so.

Q. You did after he had authorized you to do so?

A. He authorized me after I left the court room.

Q. Didn't he authorize you at the time he gave you the information? A. No sir.

Q. Don't you know that the testimony of Mr. Rich referred to the authority he had given you at the time he had given you the information concerning the corrupt juror? A. It could not have.

COMMITTEEMAN BURKE. How long before you made this statement did you receive this information?

A. Well, I take it it was less than five minutes; it was just while I was coming from my office to go into court; it was just the time for the court to meet; in fact

I was kind of late, I was a little late coming from my office down to court, three or five minutes, and that was the first thing I heard.

THE CHAIRMAN. Did the source of information lead you to believe it was true?

A. It certainly did. I would like to relate some of the information for the purpose of showing my connection with the matter.

THE CHAIRMAN. We don't care about it.

MR. SULLIVAN. If the information conveyed to you led you to believe one of the jurors was corrupt, why didn't you, as a sworn officer of this court insist upon Mr. Rich coming into this court and divulging the name of the juror and have the whole thing explained to the court in an orderly manner before you commenced your argument?

A. I will tell you, Mr. Sullivan; it was told me in my office by Mr. Rich, and I begged for the

juror's name at that time; he refused to

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tell me the name, particularly because he had not seen his attorney yet, and said "you will find the juror in my Forges'[sic] office if you look down the street and I immediately looked down the street and came direct into court, and I was determined to find out who the juror was if possible.

Q. Who was Mr. Rich's attorney at that time?

A. I think it turned out to be Mr. Adyelott.

Q. Mr. Adyelott?

A. Yes sir.

Q. Were you present at the conversation between Mr. Adyelott and Assemblyman Cleveland from this County in which you reminded Mr. Cleveland of his anti-election promise to do all he could to accomplish the impeachment of Judge Smith and how, this promise of Mr. Cleveland, you worked for his election and Mr. Cleveland responded: "Did I make that promise before election;" and you responded "you certainly."

MR. LINDSAY. I object as not cross examination.

(Objection sustained.)

Q. Have you seen an article published in the Watsonville paper, the Evening Pajaronian, written by Mr. Adyelott, one of the citizens who are seeking to impeach Judge Smith in which Mr. Adyelott states that you were present in the conversation when he--

MR. LINDSAY. I object as not cross examination.

MR. SULLIVAN. When he and you and Cleveland were present and you referred Mr. Cleveland to the anti-election promise which Cleveland had made, in pursuance of which he was to assist in the impeachment of Judge Smith?

THE CHAIRMAN. Objection sustained.

THE WITNESS. I would like to answer that.

MR. SULLIVAN. Have you seen this article written by Mr. Adyelott

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which appeared in the Pajaronian, which is in question marks from beginning to end setting forth the conversation which took place between you, Cleveland and Adyelott in which this anti-election promise was referred to by you?

Objected to and objection sustained.

THE WITNESS. It would not take very long, I would like to answer that question.

MR. SULLIVAN. I show you a circular, an anonymous circular signed H. W. Rich, headed "Jury Corruption." Had you anything at all to do with the editing of this circular?

MR. LINDSAY. I do not see where that is material.

MR. SULLIVAN. We will introduce it in evidence to show the material-ity of it.

MR. LINDSAY. What is the date of it?

MR. SULLIVAN. It is undated, signed "H. W. Rich."

THE CHAIRMAN. Do you claim it is connected with this matter?

MR. SULLIVAN. It shows the animus of the writer against Judge Smith, that is all; the hostility of the writer, or the editor of it against Judge Smith; that is the only purpose for which we offer it. THE CHAIRMAN. Mr. Sullivan I think that is improper cross examination.

MR. SULLIVAN. I submit we have a right to know, for the purpose of showing the hostility and animus and bias, that is the main purpose of the cross examination, the main purpose of asking this question is to ascertain the feeling against Judge Smith.

MR. LINDSAY. Are you going to introduce that in evidence.

MR. SULLIVAN. I do not know whether I will or not; if he says “no” it won’t be admissible.

MR. LINDSAY. If you want to examine the witness about it, about

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that article, introduce it in evidence and we won’t object to it. **MR. SULLIVAN.** We don’t propose to offer it in evidence until we know something about it.

MR. LINDSAY. Pardon me. You have no right to go [on] a fishing excursion here and find out whether he had anything to do with it.

If you desire to ask him any questions about it, put it in evidence and I won’t object, and you can ask all the questions you please about it.

MR. SULLIVAN. We don’t propose to offer it in evidence until we know something more about it.

MR. LINDSAY. Then I do object as being unfair.

THE CHAIRMAN. Mr. Sullivan, you can call him as your own witness. **MR. SULLIVAN.** If you pardon me just a second, Mr. Chairman, I will direct your attention to the law in the case of —127 Cal.

MR. LINDSAY. Will you offer the paper in evidence?

MR. SULLIVAN. I am not committing myself and I am not on the stand.

THE CHAIRMAN. The witness may answer the question.

THE WITNESS. If I had anything at all to do with that it was by way of counseling with Mr. Rich, which if I did, it would prevent me from answering whether I did or not, whether I counseled him or not in that matter.

MR. SULLIVAN. That is not an answer to the question. You answer the question by saying yes or no?

A. I refuse to answer the question because the question--

MR. LINDSAY. The witness refuses to answer the question on the ground it may violate the confidence existing between him and client.

MR. SULLIVAN. He says “if I did write this paper or not, I could not state how I wrote it, if I did, it was as counsel for Mr. Rich,” but

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he don’t answer the question. **A.** I do not think the question was as to his writing it.

THE CHAIRMAN. Mr. Sullivan asked you the question specifically.

MR. SULLIVAN. Did you aid in the composition and preparation of this circular which I hold in my hand, headed “Jury Corruption?”

A. I had nothing to do with it other than adviser, as counsel, and I refuse to state what I did in that capacity.

MR. SULLIVAN. I submit we are entitled to an answer. This is not under section 1081; we are not asking for a communication between an attorney and a client; in other words we are asking him if he had anything at all to do with the composition and preparation of that article in that paper; he is not divulging a privileged communication, if he says the answer might incriminate him.

THE WITNESS. I would not say any such a thing.

THE CHAIRMAN. Mr. Leonard, you are one of the memorialists in this matter and unless you are regularly employed as attorney by Mr. Rich this is not a privileged communication.

MR. SULLIVAN. We insist you answer the question.

THE WITNESS. I will state that other than as counsel for Mr. Rich I had nothing to do with it.

Q. As his attorney? **A.** Yes sir.

Q. Did you before the Grand Jury decline to answer concerning your connection with this statement on the ground that the answer would incriminate you? **A.** No sir. I wish now to explain that answer which I did not explain before.

THE CHAIRMAN. I think it is immaterial; it took place before the Grand Jury--unless there is no objection.

MR. SULLIVAN. I have no objection.

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MR. LINDSAY. I do not want to object to anything, but there are some things which I think we ought not to require this investigation to go into it; they are the secret of the Grand Jury room; I understand that it is a crime to divulge what transpires in a Grand Jury room except when a man is being tried on a charge of perjury; always was.

MR. SULLIVAN. Not when you were District Attorney.

MR. LINDSAY. Yes, and when you were District Attorney?

MR. SULLIVAN. Never was.

MR. SULLIVAN. That is all I care to ask the witness. He wants to make an explanation but Mr. Lindsay objects.

THE CHAIRMAN. I would like to ask Mr. Leonard, as a memorialist, if he has any explanation to make.

THE WITNESS. In this matter before the Grand Jury the question was asked regarding that pamphlet and I refused on the ground that anything i might have to do with it would be a privileged communica- tion. Mr. Knight then asked me after a little adjournment of a few minutes whether, if an attorney were to aid in the editing of any- thing that was criminal, whether he could then shield his client by stating it was a privileged communication; if he entered into the matter for the purpose of committing a crime with his client and I said at that time “certainly not”; that the only way he could refuse to answer that would be on the ground it would incriminate himself; then Mr. Knight said “Do you want that ground added here.” I said “I don’t care.” He said “Well, I am sure I do not.”

MR. SULLIVAN. Didn’t you say to him to put that ground in because it would incriminate you?

A. I said, “you can put all the ground down you like;” then he whispered something to the reporter, I do not know what he got in the record.

Q. Didn’t you say “you may put that ground down also?”

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A. I do not remember my exact words.

Q. Didn’t you Mr. Leonard reply that to be compelled to answer you replied that the answer would incriminate you?

A. No sir; I would like to state in regard to this other matter; during my examination at that time Judge Smith being on the bench and the other attorneys were assembled, I stated to them, what

information I had received, in regard to the juror and he was present in court, the name of my informant, and the Judge[sic] was called up at that time and the Judge asked him if he had any statement; when told he had been the informant he said “so that young fellow is a traitor; he pumped it out, he got no money,” and then the court said something about where Mr. Rich was and sent the Sheriff for him. I informed him I left him at my office and the court adjourned until next morning.

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TESTIMONY
OF
W P NETHERTON Sworn

MR. LINDSAY. Mr. Netherton you reside at Santa Cruz? A. I do.

Q. What is your profession? A. I am an attorney.

Q. You practice at the bar of this court? A. I do.

Q. You are a member of the bar of the Supreme Court of the State of California? A. I am.

Q. How long have you been practicing law in this State?

A. 11 or 12 years.

Q. You know Lucas F. Smith the Judge of this Court? A. I do.

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Q. Are you acquainted with Mr. Charles M. Cassin?

A. I am.

Q. Are you acquainted with Mr. John H. Leonard? A. Yes sir.

Q. Do you know one H. W. Rich? A. Well, I am not personally acquaint-ed with him; I know him when I see him.

Q. You are on friendly terms with Mr. Cassin? A. I am.

Q. And with Judge Smith? A. Yes sir.

Q. Now, were you in court Mr. Netherton at the time mentioned by the last witness when the court of its own motion was investigating the matter of this alleged jury corruption, if it may be termed such?

A. I was, yes sir.

Q. Have I ever spoken to you about this matter? A. No sir. You nor no one else. I did not know I was to be summoned in this matter.

Q. Not before you were here and for that reason I called you as a witness. I will ask you to state to the gentlemen of the committee what you saw and what you heard with reference to it as briefly as may be. A. You want me to state all that I saw and all that I heard as near as I can

Q. In Court? A. Yes sir.

MR. SULLIVAN. We object to what he heard in court.

THE WITNESS. I think that I happened to be in court the afternoon after the verdict was rendered, just about the time Mr. John Leonard returned and gave the name of the witness to the court; at that time as I remember it the juror who had been referred to by Mr. Leonard in his argument to the jury, his name had not been given; I think he was was[sic] sworn and testified at that time as to his version of the story; and that is all I remember that occurred that afternoon, and then I

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was present the following day when Mr. Rich came into the Court at the time Mr. Leonard has related; at that time Mr. Rich took the stand and testified to his connection with the affair and as to what the juror had said to him in reference to it, and what he had said to Mr. Leonard -- of course, I am not supposed to repeat his testimony -- I do not understand that is what you want of me.

Q. No, I am not asking you to repeat the testimony but I want you to state the manner of examination.

A. Well, I will say this in reference to the manner of examination, that, as I said at that time, that I did not think they proceeded in a fair way as to Mr. Rich; and after the examination had gone on for some time and Mr. Leonard had left, I think the record will show that I passed, as an officer of the court, although I had no interest in the matter, a remark something of this character; "That it seems to me that the character of the examination that was being conducted was calculated to put a premium on the silence of a man who has accused a juror of doing that which was not right, something of that kind and I think the record will bear me out.

Q. You felt called upon as an officer of the court and present at the time to raise a protest did you?

A. I told this to Mr. Leonard.

Q. You remember what you said? A. That is exactly what I said.

Q. Who was conducting the examination to which you refer?

A. Mr. Cassin.

Q. Who was presiding?

A. Judge Smith.

CROSS EXAMINATION.

MR. SULLIVAN. Were you present on the occasion the verdict was rendered?

A. No sir, I was not.

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Q. You do not know what took place there at all?

A. No, nothing about it at all.

Q. Then you appeared the next day when Mr. Rich appeared?

A. Yes sir.

Q. Had Mr. Rich consulted you at all about appearing in the matter?

A. Never had spoken to me at all until about two weeks ago on matters entirely disconnected with this.

Q. Mr. Leonard left the court room that day didn't he before the matter was over? A. Yes sir.

Q. And everybody felt excited because this charge had been made and the name of a juror had been concealed isn't that so?

A. Yes sir.

Q. Wasn't there a general complaint by all the attorneys for the defense and by the Judge that Mr. Leonard did not act rightly in keeping from the court the name of his informant, didn't they claim that Mr. Leonard had acted unprofessionally and had reflected upon the administration of justice in this court by not divulging to the court and counsel for the defense the name of his informant who told him the name of the corrupt juror? A. I do not know that they said that.

Q. Didn't the court know and didn't counsel for the defense know that a reflection had been made? A. Yes sir.

Q. And that accounted for their temper did it not?

A. I could not say that it would be the case but probably.

Q. They were more or less excited when Rich was on the stand were they not? A. Yes sir.

Q. And was one of them called upon to conduct the examination?

A. Judge Smith said to me, I think he said after I had interposed the objection which I had related that it would be proper for me to go into an examination of the matter as thoroughly as I felt doing; that

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is my recollection. I am not certain that Mr. Cassin called upon me to conduct the cross examination; I refused, I declined to do so

I am not certain about it I think somebody did.

Q. You were really a disinterested person at that time?

A. Yes sir, I was absolutely disinterested Mr. Sullivan. I explained in my testimony as to the fairness, that I thought Mr. Cassin was not treating Mr. Rich right in this, that he immediately started in

to cross examine Mr. Rich without giving him an opportunity to make a statement of what he had seen and what he had heard.

Q. Didn't Mr. Cassin act as though he believed that Mr. Rich was acting in concert with Mr. Leonard at the time? A. I think--I thought Mr. Cassin acted as though he considered Mr. Rich had been guilty of a crime if the juror had not.

Q. Did not Mr. Cassin cross examine the juror?

A. Yes sir, afterwards.

Q. Did not Mr. Cassin invite you to cross examine the juror?

A. Yes sir, I think so.

Q. Did you do it? A. No sir, I did not.

Q. Do you know anything at all about the character of this man Rich?

A. No sir, I did not know him until, I had never anything to do with him until about two weeks ago.

Q. Didn't you know at that time he was a man of bad reputation in this community?

A. No sir, I never heard of him at all.

Q. You have some knowledge of his character and reputation from other people?

A. I knew absolutely nothing.

REDIRECT EXAMINATION

MR. LINDSAY. Did not the juror upon examination admit all that Rich had said about him?

A. Well, I should say that he did practically as I remember the testimony.

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Q. Did not the juror also state that on that morning, that same morning, before coming into court, that he had a consultation with Mr. Cassin at his office?

A. Well, I am not certain that he did;

I think Mr. Cassin made that statement himself; the statement was made by some one; my recollection is Mr. Cassin and Mr. Jeter made that statement at the beginning of the proceedings, they came from Mr. Cassin's office that morning; I think Mr. Cassin and Mr. Jeter and the juror

came over together.

Q. Did Mr. Cassin state in court that morning that he knew all about this the day before, before Leonard had reported the thing to the Judge? **A.** I think not.

Q. You think not? **A.** I do not remember of it.

MR. CASSIN. It was proper to state that I reported it to the Judge at the conclusion of Mr. Leonard's argument what I heard; I stated what I had heard. Mr. Leonard repeated over and over again. He is here. You do not claim Mr. Rich was connected with the case or the defendant corporation.

MR. LINDSAY. Nobody is blaming anybody particularly about this matter except to show the tyranny; this is specification seven.

MR. SULLIVAN. Nobody claimed the Big Creek Power Company, had any- thing to do with that.

MR. LINDSAY. I certainly do not claim it.

THE CHAIRMAN. It is understood the evidence is introduced for no other purpose only to show tyranny.

THE WITNESS. [W. P. Netherton] I would like to state while I am on the witness stand I expect to go to San Francisco in the morning; I had been subpoenaed by both sides; if I could get through tonight I would like to.

MR. LINDSAY. I certainly have no objection with that.

MR. SULLIVAN. I do not know that we will need you at all.

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MR. LINDSAY. I want to introduce in evidence, gentlemen, the opinion rendered by the Honorable Lucas F. Smith, Judge of this court, upon the matter of this investigation.

MR. SULLIVAN. Have you any other record, testimony of what was done and said; we would like to have it before the committee. We would like it all to go in.

THE CHAIRMAN. You mean the evidence of Mr. Rich?

MR. SULLIVAN. And of Mr. Leonard, what took place at the time.

THE CHAIRMAN. You mean all the evidence of this jury trial?

MR. SULLIVAN. It is all written up.

THE CHAIRMAN. Is this part of the evidence, the opinion you refer to in relation to the Judge's opinion in the trial?

MR. LINDSAY. No sir, this investigation or whatever it may be termed.

MR. SULLIVAN. As to the alleged embracery[sic] as you would call it. **MR. LINDSAY.** You want the entire record in, if there is a record

I would be glad to have it. I am informed by Mr. Leonard that there cannot be any complete record, that the stenographer was not present during all the time.

----- Transcriber's Insert -----

Transcriber's Note: Embracery is the attempt to influence a juror corruptly to give his or her verdict in favor of one side or the other in a trial, by promise, persuasions, entreaties, money. The person making the attempt, and any member of the jury who consents, are equally punishable.

----- End of Transcriber's Insert -----

MR. SULLIVAN. We will introduce the record so far as it is made up. **MR. LINDSAY.** It does not conclude the proposition that other matters did occur, that is all.

MR. SULLIVAN. No, if other matters occurred, and the shorthand reporter is proven to have been absent.

MR. LINDSAY. We have no objection to putting that in.
THE CHAIRMAN. You give that to the stenographer so he will receive it.
MR. LINDSAY. I have not seen it.
MR. SULLIVAN. You will when we offer it.

-----oOo-----

MR. LINDSAY. I will offer the opinion of the Judge.

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THE CHAIRMAN. It will be understood as offered by the attorneys.
MR. SULLIVAN. We will have it written up. We will have the notes transcribed and the opinion of the Judge if it was written up; I suppose it was.
MR. LINDSAY. It was.
MR. SULLIVAN. If it is not filed we will have it transcribed and filed.
MR. LINDSAY. I have a copy of it here. Here is a copy of the opinion. It is entitled in the Superior Court of the County of Santa Cruz, State of California, in the matter of the investigation into the conduct of J. B. Gregory, a juror, charged with contempt of court; it was dated October 1st, 1904, signed Lucas F. Smith, Judge of the Superior Court, filed October 1st, 1904, H. H. Miller, Clerk by H. E. Miller, Deputy Clerk. It is not certified.
MR. SULLIVAN. If you say it is a copy.
MR. LINDSAY. I am not going to say it is a copy.
MR. ADYELOTT. I will say it is almost a correct copy. **MR. SULLIVAN.** We don't want almost correct copies.
MR. ADYELOTT. The reason why I made that statement, there are several erasures in the original, we have attempted, copied those erasures.
MR. LINDSAY. So far as the language is concerned it is identical? **MR. LINDSAY** here read the opinion as follows:

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1.

In the Superior Court of the County of Santa Cruz, State of California.

In the Matter of the Investigation into	}
the conduct of J. B. Gregory, a juror,	}
charged with contempt of Court.	}

During the argument of the case of Ramirez against the Big Creek Power Company, plaintiff's attorney stated in his argument that he had reliable information that one of the jurors had approached some person connected with the defendant, with the hope of being compensated for his verdict, etc. In other words, an open charge of corruption was made against one of the jurors sitting on the trial of that case.

At the conclusion of the trial, the foreman of the jury requested the Court to make an investigation of the serious charge made by the attorney for the plaintiff against one of their number, so that the name of the juror referred to might be ascertained, and the other jurors would not have to rest under such an accusation. The Court fully concurred in this request, and asked the attorney who made the charge, to be sworn and give the source of his information. This he declined to do, but shortly thereafter appeared in Court and gave the name of Harry Rich, as the person who had

given him the information upon which he based the charge, and that
J. B. Gregory was the juror referred to.

Without the issuance of a citation, both Gregory and Rich appeared and testified regarding the matter under investigation. Their testimony was so directly conflicting, and positively contradictory, that the Court is reluctant to credit the statement of either. But if their testimony regarding the conduct of each other

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be true, then they both deserve to be punished to the fullest extent of the law. But each exonerated himself and implicated the other, without any corroborating evidence to show which one was telling the truth regarding the matters testified to by them.

However, several other credible witnesses testified, and from their evidence I am fully satisfied that no corrupt proposition was made by juror Gregory to any person, or to any one in any way connected with the defendant corporation; and that no offer of money or other consideration was made to Gregory by any one connected with the defendant, or otherwise.

While I am satisfied that juror Gregory conversed with Rich about the case in flagrant violation of the Court's instructions to the contrary, and is therefore guilty of contempt of Court, yet I do not feel inclined to punish him on account of the unreliability of the evidence upon that point. If the evidence warranted it,

both Gregory and Rich should be severely punished for their nefarious conduct in this matter. In conclusion I may say, that out of the hundreds of trial jurors that have been selected from the citizens of this County to serve in the Superior Court, this is the first instance where a charge of corruption has ever been made against any one of them, and I sincerely hope it may be the last. In fact, such a serious charge should never be made unless the party making it has ample proof to sustain the accusation when once made.

Dated, Oct. 1, 1904.

Lucas F. Smith,
Judge of the Superior Court.

(Endorsed): Filed Oct. 1, 1904.

H. H. Miller, Clerk,

By Harry E. Miller, Deputy Clerk.

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MR. LINDSAY. I desire also to have it appear of record, which I understand is the case, that there was no process in this matter, no affidavit for contempt, no citation issued and no service, is that correct?

MR. CASSIN. I do not know.

MR. SULLIVAN. He came voluntarily into court.

MR. LINDSAY. Yes sir.

MR. SULLIVAN. He came voluntarily into court without citation affidavit or attachment.

MR. LINDSAY. Voluntarily, there was no affidavit accusing Mr. Gregory of bribery.

MR. SULLIVAN. I presume that is a fact. MR. LINDSAY. Their testimony goes in.

MR. SULLIVAN. We agree that that go in.

THE CHAIRMAN. Is that the end of the investigation on that point.

(Subdivision 7)?

MR. LINDSAY. Yes. I say we have closed our evidence on that point unless certain witnesses arrive

from Salinas; Mr. Zavala[sic] and Wyatt, with the exception of that, it is closed.

THE CHAIRMAN. Specification seven is closed. We will stand adjourned until eight o'clock this evening.

(Thereupon an adjournment was taken until eight o'clock P. M.)

-----oOo-----

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EVENING SESSION

THE CHAIRMAN. Come to order please.

MR. LINDSAY. Mr. Chairman, and gentlemen, we will proceed, now with your permission, to offer additional evidence in support of specification nine.

-----oOo-----

TESTIMONY OF
Mrs. FRANCES BUELNA Sworn.

MR. LINDSAY. What is your name please? A. Frances Buelna.

Q. Where do you live Mrs. Buelna? A. I live in San Jose now.

Q. Did you ever live at Santa Cruz? A. I did.

Q. Do you know one Lewis[sic] Buelna? A. Yes sir.

Q. Is he any relation to you? A. My son.

Q. He is your son? A. Yes sir.

Q. He was convicted in this court in the month of November of last year of the crime of rape was he not? A. Yes sir.

Q. Do you know the honorable Lucas F. Smith the Judge of this Court? A. I do.

Q. After the conviction of your son for this crime and before he was sentenced did you see Judge Smith? A. Yes sir.

Q. Where did you see him?

A. I saw him right here and I spoke to him, I wanted to see him.

Q. Speak a little louder please?

A. I saw him in this court room.

COMMITTEEMAN BEARDSLEE. Will you kindly tell the witness to speak

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to us?

MR. LINDSAY. Speak to those gentlemen over there.

A. I saw Mr. Smith here one morning, and I told him I wanted to see him so he says all right and I went over here to the hallway and I stood there; him and myself, at that time, I asked him I wanted to have a new trial; I says "Lewis[sic] wants to have a new trial;" then I asked him for what he thinks, if he had better to have a new trial, he says "no sir, because it is not better to have a new trial; he would give him a small sentence and he would have a small sentence and be kind to him.

Q. What also did Judge Smith say to you if anything about your son asking for a new trial?

A. That time he said no more.

Q. Go on and tell all he said? Just state now what Judge

Smith said to you? A. He say[sic] that time he did not say any more to me because people stepping through the hall, gentlemen, at this time they come this way; he says somebody come an

see; he stepped back in this room again and I stood there in the hallway myself and I went downstairs.

Q. Did he say anything to you as to whether you should tell anybody what he told you or not?

MR. SULLIVAN. I object to leading her. Let the witness state what said.

MR. LINDSAY. State what he said.

A. He said to keep this private and he say no more. The man come in the hallway; I do not know who the man was; then Mr. Smith go this room. I went out.

Q. What did Judge Smith say about the sentence?

A. He have him a small sentence.

Q. He would give him a small sentence? A. Yes sir.

Q. And not to ask for a new trial? A. Yes sir.

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Q. To keep it private?

MR. SULLIVAN. I object as leading.

MR. LINDSAY. Your son was in jail at that time? A. Yes sir.

Q. Did you see your son after you had this talk with Judge Smith?

A. I saw him afterwards.

Q. You saw him afterwards? A. Yes sir.

Q. And before he was sentenced? A. Yes sir.

Q. Did you talk to him about this matter? A. I did.

Q. You did? A. Yes sir.

Q. You told him about--

MR. LINDSAY[sic]. I object to anything the witness said to her son as purely hearsay and not binding upon Judge Smith. It may be a question between this witness and Judge Smith as to what conversation took place between them, and we object to her giving the conversation that took place as purely hearsay and not binding upon Judge Smith.

MR. LINDSAY. Excuse me one moment. Was this the only talk that you had with Judge Smith while your son was being tried?

A. Yes sir.

Q. Did you see him before, during the trial of the case?

A. I saw him but I never speak to him no more.

CROSS EXAMINATION.

MR. SULLIVAN. Where do you live now Mrs. Buelna?

A. I live in San Jose.

Q. How long have you lived there? A. Pretty near a month, I guess.

Q. Where did you live before you went to San Jose?

A. I lived here in Santa Cruz.

Q. How long did you live in Santa Cruz? A. I lived here pretty near fourteen months; I do not know exactly how long it was.

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I lived here before.

Q. How long ago did you come to Santa Cruz to live?

A. To live?

Q. Yes. A. I come to Santa Cruz, I come to Santa Cruz.

Q. Haven't you lived in Santa Cruz county nearly all your life?

A. Before this trial I lived here pretty near all my life in Santa Cruz county.

Q. You were born in Santa Cruz county? A. No sir.

Q. Where were you born? A. I was born in San Juan.

Q. In San Benito County? A. Yes sir.

Q. Shortly after your birth, while you were a child you came to Santa Cruz didn't you?

A. Yes sir.

Q. And are you a married lady? A. I am a married lady, I am divorced.

Q. How long ago were you divorced? A. Pretty near, I guess;

I do not remember exactly how long, but about 7 years ago I think.

Q. 7 years ago? A. Yes sir.

Q. How old are you? A. Fifty.

Q. Fifty? A. Yes sir.

Q. You know Mr. Cassin pretty well, do you? A. I do.

Q. After your divorce were you married to another person? A. No sir.

Q. Do you know Mr. Ryan? A. I do.

Q. You sued him for breach of promise of marriage, didn't you?

A. Yes sir.

Q. And Mr. Cassin was your attorney in that suit and Mr. Knight?

A. Yes, Mr. Smith sent me to him.

Q. What is that? A. Mr. Smith gave me line to go to Cassin.

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Q. Some years before that didn't Mr. Cassin defend your brother for murder?

A. Yes sir.

Q. Before Mr. Smith was ever elevated to the bench?

A. Yes sir.

Q. And Mr. Smith was associated in that case, when Mr. Smith was practicing at the bar?

A. Yes sir.

Q. And in the breach of promise case Mr. Lindsay and Mr. Netherton defended Ryan did they not?

A. Yes sir.

Q. Now, when were you married to Mr. Buelna?

A. I do not remember exactly.

Q. About how many years ago?

A. More than twenty one or twenty two.

Q. What is the answer?

A. I do not remember when I married him but it is quite a number of years ago.

Q. Quite a number of years ago. Don't you remember how long ago it was? How long ago was it Mrs. Buelna? A. Oh, it was 27 years ago; may be less and may be more, I do not know.

Q. How old is this son of yours Mrs. Buelna who was convicted of rape?

A. 21.

Q. 21 years? A. Yes sir.

Q. Was he living with you at the time of his arrest and conviction?

A. Yes sir.

Q. Where were you living at that time?

A. Near the beach.

Q. Near the beach? A. Yes sir.

Q. Now after his conviction you called upon Judge Smith you say?

A. Yes sir.

Q. Did anybody come with you? A. Yes sir.

Q. Who came with you? A. Who?

Q. Did anybody come with you to see Judge Smith?

A. No sir, not that day, no.

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Q. You came alone did you? A. Yes sir.

Q. You came to the court room did you?

A. Yes sir.

Q. You saw the judge in court did you? A. I did.

Q. Were there other people in the court also? A. There were men here in this court.

Q. There was men in this court; was there anybody in the courtroom?

A. No sir, nobody only Mr. Smith and another person.

Q. Did you go up to the bench and talk to Mr. Smith?

A. No sir. Mr. Smith was walking on the floor.

Q. Walking on the floor? A. When I came in, yes.

Q. Was he walking back and forward? A. Yes sir.

Q. Walking back and forward in the court room here?

A. I saw him standing in the floor.

Q. Was he talking to any person at the time.

A. No I did not listen if he was talking to any one when I came in.

I saw Mr. Smith there, I says [sic] "Mr. Smith I want to see you; I say Mr. Smith, Judge, I tell you what I say, I want to see you."

Q. What did Mr. Smith say to you?

A. In reference to that trial, what I asked him.

Q. What did you say to Mr. Smith? A. I says if they go to have a new trial for Lewis[sic] what do you think would be the best and he says" be the best not to have a new trial; I be kind to him and give him small sentence."

Q. Now was this [man?] present at the time you talked to the Judge?

A. No sir.

Q. How far away from the Judge was that man? A. Mr. Smith went with me in that hallway; he closed this door; this man was sitting on that side of the bench.

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Q. And the Judge walked with you to the door over there?

A. Yes sir.

Q. Into the hall way? A. Yes sir.

Q. You did not go with the Judge into the chambers?

A. No sir.

Q. How long were you engaged in talking to the Judge?

A. A very small time.

Q. Just about a minute or two?

A. No sir, more than that.

Q. Did the Judge tell you that he sympathized with you?

A. Yes sir.

Q. Did he tell you that he did not care to talk with you concerning the case?

A. No sir, he did not say nothing of that.

Q. Was Judge Skirm in the court room at the time you met Mr. Smith?

A. No sir.

Q. Are you sure of that? A. Not that time.

Q. And after you son was convicted and before the sentence you saw Judge Smith once didn't you? A. After--

Q. After your son was convicted, after the jury came in and found your son guilty? A. Yes sir.

Q. And up to the time he was sentenced you saw Mr. Smith only once didn't you?

A. Only once, may be twice; I saw him in a buggy in the street.

Q. You spoke to Mr. Smith only once? A. Only once I speak to him.

Q. That is from the time the jury convicted your son up to the time your son was sentenced by Mr. Smith, is that right?

A. Yes sir.

Q. Did you speak with Mr. Smith after the sentence?

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A. No sir.

Q. Did you speak with Mr. Smith before the jury brought in a verdict? A. I speak to Mr. Smith after the trial was over.

Q. After the trial was over?

A. May be Monday or Tuesday, I do not know exactly what day.

Q. Where did you speak to him? Where was he at the time?

A. I spoke to him in the hall way.

Q. That is the only time you spoke to him? A. Yes sir.

Q. You only had one conversation with Mr. Smith concerning your boy and the boy's case? A. May be have more; you ask me and I answer you.

Q. That is all you remember? A. Yes sir.

Q. There is only one conversation in which Mr. Smith told you that he would sympathize with you and he would be light with the boy, is that so? A. That time, yes.

Q. Now, did Mr. Smith ever tell you "I pity you very much."

A. Mr. Smith tell me he always speak to me whenever he see me.

Q. And when you came to see Mr. Smith about your boy, did he say to you "I pity you very much?" A. He did not say he pitied me.

Q. He did not say "I pity you very much" did he?

A. No sir, not that time.

Q. Did he say "I promise I will do all I can in my power for your boy?"

A. He said that different time.

Q. He did not say "I promise you I will do all within my power for your boy?" A. That was another time. I came to him and spoke to him in regard to the sentence; that was another time; that was the time I was here.

Q. Did he say in that conversation, during that conversation, say to you "I will do all within my power for your boy?"

A. He says "I promise you to be kind to your boy; I will do all I can

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to give him a small sentence." That is what he said.

Q. Did he say in that conversation to keep very quiet?

A. He said keep it private.

Q. To keep it private, did not say to keep it very quiet?

A. No sir, he said keep it private.

Q. Did he say “don’t say a word to any one?”

A. No sir, he did not.

Q. He did not? A. No sir.

Q. Did he say “tell your boy not to ask for a new trial.”

A. He did, yes sir.

Q. He said that then? A. Yes sir.

Q. Did you ever make an affidavit or sign a paper in relation to this conversation you had with Judge Smith?

A. What do you mean?

Q. Did you sign a paper before a Notary Public?

A. I did.

Q. You did? Who asked you to sign that paper?

A. Mr. Leonard.

Q. Mr. Leonard did? A. Yes sir.

Q. How long ago was that Mrs. Buelna? A. I guess may be a month I think; I do not know exactly how long.

Q. About a month or so ago? A. May be more may be less, I do not remember exactly.

Q. Where were you at the time you signed the paper?

A. In Santa Cruz.

Q. Did you go before a Notary? Did you go to the Notary’s office?

A. Yes sir.

Q. You did not go to the Notary’s office? A. No sir.

Q. Do you know the name of the Notary who signed his name to this paper? A. The name what?

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Q. Notary Public? A. Mr. Leonard read it to me.

Q. Mr. Leonard read the paper to you?

A. Yes sir.

Q. You signed your name to the paper? A. Yes sir.

Q. And Mr. Leonard took the paper away? A. Yes sir.

Q. Had you ever talked to Mr. Leonard about this statement before that? A. No sir.

Q. Never did? A. No sir.

Q. Now about a month or so ago Mr. Leonard came to you with a paper a long paper, and read it to you, and told you to sign your name?

A. Yes sir.

Q. You signed your name? A. Yes sir.

Q. You do not know how to read or write do you?

A. No sir.

Q. Mr. Leonard did not read the paper to you did he?

A. He did.

Q. He did read the paper to you, you are sure of that?

A. I am sure of it.

Q. Where did you sign the paper? In Mr. Leonard’s office?

A. I signed it in my sister’s house.

Q. Where does she live? A. At her house.

- Q. About where in the city is that? A. It is out of the city.
Q. In the southern part of the city?A. It is only a few, short distance from my place where I live.
Q. Whereabouts in this city, I am not acquainted with the different parts of the city; whereabouts in the city does your sister live?
A. They live near the other side of the Cowles[sic] Wharf, near to Perz. [i.e., Perez?]
Q. After you had this talk with Mr. Smith you did not tell anybody at all about the talk did you?
A. No sir.
Q. You did not? A. No sir, I did not.

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- Q. You kept that all to yourself? A. Yes sir.
Q. Didn't say anything to Mr. Leonard or to Mr. Adyelott or to Mr. Lindsay or to anybody else about it, until Mr. Leonard appeared at your house, at your sister's house, is that so?
A. I do not know; I might tell somebody.
Q. You do not remember telling any person do you?
A. May be I do not.
Q. You had a talk with Mr. Smith after your son was convicted in which Mr. Smith said to you that he felt sorry for you and that he would give the boy a light sentence and you went away?
A. Yes sir.
Q. You didn't say anything at all to your sister about that talk?
A. I did, I told her about it.
Q. Did you tell any other person? A. I did.
Q. What did you say? A. I told Mr. Leonard.
Q. But you did not tell Mr. Leonard until he came to your sister's house with the paper?
A. No, I did not tell him, nobody.
Q. Did you tell your sister about it until Mr. Leonard came to your house with the papers. Mr. Leonard came to your house one day with a paper. Before that time did you tell your sister about your talk with Mr. Smith? A. I did.
Q. You are sure of that? A. Yes sir.
Q. You never spoke to Mr. Leonard about it?
A. I never knew Mr. Leonard.
Q. You do not know Mr. Adyelott? A. No, may be I do not.
Q. You do not know whether you know them or not?
A. I saw Mr. Adyelott may be the second time there I went to Mr. Leonard the second time; two times there; may be three times.
Q. You never spoke to Mr. Adyelott about this talk with Mr. Smith?
A. I never spoke to him at all because I never had opportunity.
Q. So that I understand one day Mr. Leonard cam to your house with a paper like this?
A. Maybe like that.

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- Q. You think it was like this don't you?
A. I think so.
Q. Was it typewritten? A. Yes sir, it was typewritten.
Q. Who read this paper to you? A. May be that is the same.
Q. Just like this wasn't it? A. Just like that.
Q. He brought this paper, he read this paper to you in your sister's house, is that so?

A. May be that is the same one.

Q. He read the paper to you in your sister's house?

A. He read it to me then I can tell you.

Q. You do not claim you don't want to testify, you don't want to say this is the same paper, it is a paper like this? A. Yes sir.

Q. He read it to you and afterward you signed your name?

A. It was typewritten.

Q. After he read it he told you to sign your name did he?

A. Yes sir.

Q. You signed your name? A. Yes sir.

Q. There was no Notary Public there at all?

A. There was outside a man there; he came with Mr. Leonard in a buggy.

Q. But he did not come into the house with Mr. Leonard did he?

A. No sir.

Q. He did not? A. No sir.

Q. You did not raise your hand did you? A. I did.

Q. You did not raise your hand before this man did you?

A. I did.

Q. Before Mr. Leonard? A. I raised my hand to that man; they asked me.

Q. Who stayed outside? A. When I stood in the door Mr. Leonard was going out, I came out myself; I stand in the door; the man was standing out there.

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----- Transcriber's Insert -----

[Transcriber's Note: The surname Gardner is misspelled throughout.]

----- End of Transcriber's Insert -----

Q. Who was he? A. I do not know who it was came there; I do not know the man; if I can see the man possibly I know it right away. You see this gentlemen they ask me if that paper signed was true and nothing but the truth, and I raised a hand and say yes.

Q. Do you know the name of that man Mrs. Buelna?

A. I do not know.

Q. You do not know. Do you know Mr. Gardiner?

A. I know Mr. Gardiner.

Q. Notary Public. It was not Mr. Gardiner was it?

A. No sir.

Q. Do you names[sic] Mr. James O. Wanzer? A. May be Mr. Wanzer.

Q. Do you know Mr. Wanzer? A. I know Mr. Wanzer in town, and may be it is him. I do not know, but if I can see the man I can tell.

Q. Do you know Mr. Wanzer who lives here in town, don't you?

A. Yes sir.

Q. Will you say positively it was Mr. Wanzer who lives here in town that called at your sister's house?

A. May be it was him.

Q. Will you say it is he? A. I guess so, I think so, it is him.

Q. How long have you know [sic] Mr. Wanzer? A. I do not know; I cannot tell you how long.

Q. Had you ever spoken to Mr. Leonard before he came to your sister's house with that paper to sign? A. Yes sir.

Q. You never had spoken to him before? A. Yes sir, I spoke to him, to Mr. Leonard, before that

paper was signed, yes in my house.

Q. You spoke to him in your house?

THE CHAIRMAN. I believe she testified to that once.

MR. SULLIVAN. You mean before this paper was signed? A. Yes sir.

Q. How long before this paper was signed, or that paper?

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A. May be two weeks or may be a week. I do not remember exactly how long.

Q. Did he tell you what was in the paper?

A. No sir, he did not have any paper at that time.

Q. Did he talk to you about Mr. Smith then?

A. I told Mr. Leonard what Mr. Smith told me here.

Q. You say that Mr. Leonard went out to your house for the purpose of learning what you know about Mr. Smith?

A. They sent word to me they wanted to see me, so I says for him to come down to my house.

Q. Did you report the conversation which you had with Mr. Smith to your son, did you tell your son about this conversation?

A. I tell my son about it?

Q. Yes. About the talk you had with Mr. Smith?

A. No sir.

Q. You did not?

A. Tell my son don't have any new trial because Mr. Smith told me he wanted to be kind.

Q. Did you tell your son about the talk you had with Mr. Smith?

A. I did not.

Q. What did you tell your son about Mr. Smith?

A. I told him about Mr. Smith; I did not mention Smith's name in that time; I tell him right here when the trial was began, I tell him Mr. Smith was going to be kind to him.

Q. While the trial was going on? A. Yes, sir.

Q. That was before your son was convicted you told your son Mr. Smith was going to be kind to him? A. After the conviction.

Q. But how long after the conviction did you tell your son Mr. Smith was going to be kind to him?

A. The day he come back from Monterey.

Q. What day was that?

A. It was Tuesday--Thursday.

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----- Transcriber's Insert -----

[Transcriber's Note: In the following dialogue, Enoch Alzina, Deputy Sheriff, is referred to as "Noke Alzeno"]

----- End of Transcriber's Insert -----

Q. Thursday? A. Yes, sir.

Q. Was Noke Alzeno present at the time you told him?

A. Noke Alzeno was present in jail.

Q. Was he present at the time he had the talk with your boy?

A. Yes, sir.

Q. And he was present at the talk you had with your boy?

A. Yes sir.

Q. And he heard what you said to your boy and what your boy said to you? A. Yes, sir.

Q. And Mr. Noke Alzeno, he speaks Spanish, does he?

A. Spanish.

Q. He is a Deputy Sheriff of this county, isn't he?

A. I believe so.

Q. And you told your son everything that took place between you and Mr. Smith while Mr. Noke Alzeno was present?

A. I did not tell him everything in his presence.

Q. You told him substantially, at least you told him about everything, didn't you?

A. I told Louie better not to have a new trial, I was afraid he make a mistake, Mr. Smith go against him, may be, it would be worse for him and like that, because I was speak to him in regard to it. He says alright, whatever I tell him, he say is alright.

Q. Did you tell your son not to have Mr. Adyелotte for his attorney?

A. No, sir.

Q. You did not mention Mr. Adyелotte's name at all?

A. I did not.

Q. Didn't you, during the conversation with your son, in the presence of Alzeno? A. I did not.

Q. Say you did not want your son to have Mr. Adyелotte?

A. No, sir; I did not mention Mr. Adyелotte's name.

Q. Not at all? A. No, sir.

Q. You are positive, sure, are you? A. I am.

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Q. Now, during the trial of your son for this offense, that is before the conviction, had you any talk at all with Judge Smith?

A. During the trial?

Q. During the trial, that is up to the time the boy was convicted by the jury? A. Yes, sir.

Q. Did you have any talks with Judge Smith?

A. Only one or two, that is all.

Q. You did not have any conversation with him, did you?

A. No, sir.

Q. About the case, you had no conversation with him about the boy, about the case, did you?

A. No, sir.

Q. You simply bowed to him when you saw him, that is all?

Q. No, sir; there was just before the trial I spoke to him in regard to -- well, I do not think for me necessary to say that, to tell that.

MR. LINDSAY. What did you say just then? A. I did, but I do not think it necessary for me to say it.

MR. SULLIVAN. Did you have several conversations with the Judge before the boy was convicted?

THE CHAIRMAN. She has already testified she only had one.

MR. SULLIVAN. Did you not in this paper you signed say you had several conversations. During the trial, that is while you were sitting in the court room, did you have any talks with Judge Smith at all?

A. I sent somebody to talk for me.

Q. Did you have any talks with him yourself? A. No, sir.

Q. You did not? A. I had one word or two words downstairs after we talk here in this hallway, I have a word or so downstairs in the presence of Mr. Alzona.

Q. That was after the conviction? A. That was after the conviction.

Q. But before the conviction did you have any talks with Judge Smith?

A. Not before, only sent person here.

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Q. Had no talk yourself personally? A. No, sir.

Q. With Mr. Smith? A. No, sir.

Q. In this paper you signed for Mr. Leonard did you say “that during the trial of said Louis Buelna affiant affiant[sic] had several conversations with the Honorable Lucas Flattery Smith, the Judge of said Superior Court before whom the trial of said Louis Buelna was being heard, and that said Judge in each of said conversations assured affiant that she had his deepest sympathy”. Did you say that in the paper you signed for Mr. Leonard?

A. I do not remember.

Q. If you did say that, you were mistaken, were you not?

A. I do not remember.

Q. If you did say in that paper, if you swore in that paper “that during the trial of Louis Buelna you had several conversations with the Honorable Lucas Flattery Smith, Judge of the Superior Court” you were mistaken, were you not? A. I do not know.

Q. You do not know. Do you remember Mr. Leonard read that part of the affidavit to you?

A. I remember he read something.

Q. Do you remember Mr. Leonard read to you this language, I will read it slowly, “that during the trial of said Louis Buelna affiant had several conversations with the Honorable Lucas Flattery Smith, the Judge of said Superior Court before whom the trial of said Louis Buelna was being heard, and that said Judge in each of said conversations assured affiant that she had his deepest sympathy, and further assured her that he would be lenient with her son”. Did you, during the trial, have any conversation, that was before the conviction, mind you, did you? A. Before the conviction?

Q. Before the conviction? A. I do not think so.

Q. Did Judge Smith, or Mr. Smith, tell you before the boy was convicted that you had his sympathy, and he would be lenient with him, before the conviction?

A. I do not understand it, what you say?

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Q. You know what conviction is? A. Convict?

Q. You know what conviction is? A. Yes, sir.

Q. Before the conviction did Judge Smith tell you that he would be lenient with your son?

A. Lenient with him --

Q. That he will be easy with him? A. Yes, sir.

Q. Before the conviction? A. I do not understand very well the language.

Q. Before the conviction, before the jury came in.

COMMITTEEMAN: I think you, you will have to make your question more simple.

MR. SULLIVAN. You know what the trial was. The trial took place while the jury was in the box?

A. Yes, sir.

Q. Now, while the jury was sitting in the box over there, while the trial was going on, and while the jury was in the court room here, you had no talk with Mr. Smith here at all? had you?

A. No, sir.

Q. You did not? A. No, sir.

Q. And while the jury was here and while the trial was going on, the Judge never told you he would be easy with your son, or be light with your son? A. No, sir.

Q. He did not. So if Mr. Leonard read a paper to you in which you said “that during the trial of said Louis Buelna, affiant had several conversations with the Honorable Lucas Flattery Smith, Judge of said Superior Court, before whom the trial of said Louis Buelna was being heard, and that said Judge in each of said conversations assured affiant that she had his deepest sympathy, and further assured her that he would be lenient with her son”, he did something that was not true, didn’t he? A. Yes, sir.

Q. He did? A. Who you mean?

Q. Mr. Leonard, when he went to your sister’s house and had you sign this paper? A. No, sir; I sign what is true.

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Q. You said only what was true? A. Yes, sir.

Q. But Mr. Leonard have you this paper and you signed it for him?

A. Yes, sir.

Q. You did not think, you did not know that you were signing a paper in which you said or swore that you had several conversations with him, Mr. Smith, while the trial was going on, did you? You never told Mr. Leonard you had several talks with Mr. Smith while the trial was going on?

A. I told Mr. Leonard what Mr. Smith tell me.

Q. You told Mr. Leonard you had one talk with Mr. Smith after the boy was convicted?

A. I did, yes.

Q. That is all you told Mr. Leonard, isn’t it?

A. I told Mr. Leonard about I had sent somebody to Mr. Smith in regard to his sentence.

Q. You only told Mr. Leonard you had one talk with Mr. Smith after the boy was convicted, that is all.

A. I told him ---

THE CHAIRMAN. Mr. Sullivan, she might have misunderstood you, in any event the committee won’t pay any attention to an ex parte affidavit.

MR. SULLIVAN. That the committee would not pay any attention to her testimony?

THE CHAIRMAN. I say an ex parte affidavit.

MR. SULLIVAN. Did you ever tell Mr. Leonard you had a talk with Mr. Smith in his chambers in the room over there?

A. No, sir, not in his room; right in the corner way.

COMMITTEEMAN BEARDSLEE. Mrs. Buelna, do you understand what the word “lenient” means? A. No, sir.

Q. Do you understand what the word “conversation” means?

A. Conversation?

Q. Yes? A. Yes, sir.

Q. Do you understand that? A. Yes, I understand that; I do

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not speak good English.

Q. Do you understand what the word “assured” means; do you understand what that means?

A. What is that meant?

Q. Do you know what that means; do you understand what that means?

A. That is what he mean?

Q. Do you understand what the word “assured” means?

A. Yes, sir.

Q. You know what it means?

A. Yes, sir.

Q. You do not know what the word “lenient” means? A. No, sir.

Q. Do you understand what the word “affiant” means?

A. No, sir.

Q. You understand what the word “statement” means?

A. Yes, sir.

THE CHAIRMAN. How old was your son when he was convicted?

A. Twenty one.

A COMMITTEEMAN: Can you write your name, Mrs. Buelna?

A. No, sir.

THE CHAIRMAN. Can you read English? A. No, sir.

A COMMITTEEMAN: Who wrote your name in this affidavit, who wrote your name in that paper handed to you by Mr. Leonard?

A. My daughter; I tell her to write it for me.

COMMITTEEMAN BURKE: Did you say, Mrs. Buelna, that Judge Smith represented you as your attorney, was he your lawyer once before he went on the bench? A. Yes, sir.

Q. How many years ago? A. It was, I do not know exactly, it is a long time.

Q. At the time your son was convicted, was he friendly with you?

A. The time he was convicted in this court?

Q. At the time your son was convicted was the Judge friendly with you?

A. Yes, sir; he always was.

Q. What made you go to see him that day? A. That day?

Q. Why did you go there? A. What made me go to see him?

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Q. Yes. A. Because I believe him, I tell you exactly why; when they had that trial for my brother in Hollister, Mr. Smith and Mr. Cassin says to me “whenever you need me and do a favor to you kindly, I will be your friend as long as I live”. That is what Mr. Cassin and Mr. Smith says to me one day here, before I came back, I came and see Mr. Cassin in his office and I came and see Mr. Smith and I believe all him--say so much, have doing kindly to us, treating us right on that trial of my brother, I believed at that time they were friendly to us forever, like I believe in--

COMMITTEEMAN BEARDSLEE: You went to Judge Smith because you thought he was your friend? A. Yes, sir.

Q. Do you understand what the word “waive” means, the English word “waive”? A. Yes, sir.

Q. Do you understand what it means?

A. I do not know, may be I take it for another word, waive is to waive[sic] the hand. (illustrating).

Q. That is what we generally say?

A. That is what I want to know, it might mean another word, you know.

Q. Do you understand this expression “in open court waived the right”, do you understand what that means?

A. No, sir.

Q. You do not understand. Was that explained to you when this affidavit-- was this expression explained to you when this affidavit was presented to you? A. No, sir; I do not remember.

Q. Was the word “lenient” explained to you when this affidavit was given to you? A. I do not remember if he did.

Q. Was any explanation of what was in this made to you?

A. What Mr. Leonard read to me?

Q. He read it to you, did he? A. Yes, sir.

Q. Did he explain what it means? A. Yes, sir.

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Q. He did? A. Yes, sir.

Q. You explain to me what is the meaning of “lenient”?

A. Of “lenient”?

Q. Can you explain to me now what is meant by “lenient”?

A. No, sir; they read it to me.

Q. You did not sign your name, did you?

A. I did not sign my name; I told my daughter to sign it for me.

Q. Did you hold the pen this way? A. I hold the pen and make a cross.

MR. SULLIVAN. Held the pen and made a cross? A. Yes, sir; I did.

Q. Are you sure you made a cross? A. Yes, sir.

MR. SULLIVAN. No cross is there?

MR. BEARDSLEE. No, sir.

MR. SULLIVAN. How old is your daughter?

A. She is fifteen.

Q. She is fifteen years old? A. Yes, sir.

Q. Was she at school that day? A. Yes, sir.

Q. What time of the day was this, part?

A. It was in the afternoon, in the evening.

Q. What time in the afternoon? A. O, it was 4 o'clock.

Q. Do you know what the meaning of the Judge's Chambers is in this affidavit, do you know that room over there the other side of the hall, where the Judge has his books?

A. Yes, sir.

Q. That is what they call the chambers? A. Yes.

Q. You never went in that room over there to speak to the Judge, did you? A. No, sir.

Q. Now, Mr. Leonard had you swear in this paper “before the time set for the sentencing of said Louis Buelna, affiant had a conversation with said Hon. Lucas Flattery Smith, at his chambers”, that is

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not true, is it, you did not have any talk with him in that room inside the hall here? A. Inside the hall way I was there once, you know.

Q. What is the meaning of the word “assurance”, you told Mr. Beardslee you knew what assurance was; what is the meaning of the word “assured” -- rather?

A. In Spanish to be certain.

Q. Do you live in San Jose now? A. Yes, sir.

Q. Who paid your expenses from San Jose to Santa Cruz?

A. I pay myself.

Q. You pay your self? A. Yes, sir.

Q. When did you come from San Jose to Santa Cruz?

A. I come here at 2 o'clock.

Q. Anybody give you any money to come from San Jose to Santa Cruz?

A. No, sir.

Q. Were you served with a subpoena, a paper?

A. Yes, sir.

Q. Who gave you the paper? A. Well, there was telephoned to me, and speak.

Q. Somebody telephoned, they spoke to you? A. Yes, sir.

Q. You got no money for expenses at all to come here?

A. No, I did not.

Q. You do not expect your expenses to be paid by Mr. Leonard, or any of the other people here, do you; you have not been promised anything?

A. Nobody promise me anything.

Q. Do you expect anything for coming here to testify against your friend of many years ago?

A. Yes.

Q. How much do you expect?

A. What did you say?

Q. Do you expect anything for coming here? A. Nobody say anything to me; I do not know.

Q. Do you expect to be paid for the testimony you gave here?

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A. I do not.

Q. You do not? A. I ask nobody.

Q. Do you expect anything from anybody?

A. No, sir; I do not, because what did they want me for, I only speak here, I do not know who subpoena[sic] me at all.

Q. When you signed this paper did you get any money?

A. No, sir.

Q. Got no money since?

A. No, sir; got no money from anybody.

Q. Did Mr. Leonard when he asked you to sign this paper, did he tell you he was trying to get Judge Smith removed from his office?

A. No, sir.

Q. Put him out of his office?

A. No, sir.

Q. Did you know why you signed this paper? A. I did, I know I signed.

Q. Do you know why you signed it, the purpose of signing it?

A. I signed it in regard to Mr. Smith telling me there, I do not know what he could do, I do not understand that at all.

Q. After talking to Judge Smith you thought your son was going to have a light sentence, did you?

A. Yes, sir.

Q. When Judge Smith went upon the bench and your son was in court here with the lawyer, didn't you kneel down on the floor and pray?

A. Yes, sir; I did.

Q. Didn't you pray to God that the Court would impose a light sentence? A. I prayed myself, I always pray.

Q. You prayed your son would get a light sentence, notwithstanding what Mr. Smith told you.

Didn't you pray to God your son would get a light sentence? A. Do I have to answer that?

Q. You do not remember what you prayed for? Didn't you pray that the Court would impose a light sentence on your son, that the Court would impose a light sentence?

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A. I prayed to God Mr. Smith did not go back on what he promised to.

COMMITTEEMAN BURKE: Did the Judge go back on what he promised?

A. I believe he did.

MR. LINDSAY. Mrs. Buelna, do I understand you to say that when your son was sentenced you kneeled here on the floor and prayed to God that Judge Smith would keep his word that he gave you?

A. Yes, sir; I have.

Q. Now at the time that Mr. Leonard read this affidavit to you, did he explain to you what it meant, did he tell you what it meant?

A. I believe Mr. Leonard read to me what it was in the paper and say he did.

Q. Did he tell you what it meant, the words, what they meant, did you understand it?

A. I understood it.

Q. This question: Do I understand you to say that in the breach of promise case you had against my client, Mr. Ryan, that Judge Smith told you to go to Mr. Cassin? A. Yes, sir.

Q. Judge Smith was Judge here then, was he not? A. Yes, sir.

Q. He tried the case, did he not? A. Yes, sir.

MR. SULLIVAN. I object to counsel leading the witness.

MR. LINDSAY. Who tried the case? A. Mr. Smith.

Q. He did? A. He did.

Q. And your attorneys won the case for you, didn't they?

A. Mr. Knight and Mr.---

Q. Cassin? A. Cassin.

Q. They won the case for you? A. The won the case.

MR. LINDSAY. That is all, Mrs. Buelna.

THE CHAIRMAN. Excused.

COMMITTEEMAN BEARDSLEE: I want to ask her a question. You said a while ago that Judge Smith had been your attorney prior to that?

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A. When was that?

Q. Prior to that time Judge Smith had been your attorney, had he not?

A. Before that time, yes.

Q. He had represented your brother, you say?

A. My brother's case in Hollister.

Q. You came to him because you thought he was your friend?

A. Yes, sir.

Q. When you came to him and he advised you to go to Mr. Cassin, what did he say to you? A. When I went and spoke to Mr. Smith in regard to Mr. Ryan, he asked me if I had a lawyer, I says "no" I says "I think Mr. Lindsay" so Mr. Smith says "no, you go get Mr. Cassin, you tell him I sent you there."

Q. Mr. Cassin had also represented your brother, had he?

A. Yes, sir.

T e s t i m o n y
of
WILLIAM M. ADYELOTTE,

SWORN

----- Transcriber's Insert -----
[Transcriber's Note: Aydelotte is misspelled throughout.]
----- End of Transcriber's Insert -----

MR. LINDSAY. What is your name, please?

A. William M. Adyelotte.

Q. Where do you reside, Mr. Adyelotte? **A.** Santa Cruz.

Q. How long have you lived here? **A.** Since September, 1901, I think.

Q. What is your occupation? **A.** That of the law--attorney at law.

Q. You practice at the bar of this court, do you? **A.** I do.

Q. I wish you would state to the committee what you known in reference to specification number nine now under investigation.

MR. SULLIVAN. That is rather a broad question, it is indefinite.

MR. LINDSAY. That is not leading.

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MR. SULLIVAN. No, it is not leading, but it is too broad, I think. Go on.

MR. LINDSAY. Proceed and state what you know.

A. I was sitting in my office one evening at work, when a gentleman came to my office and introduced himself as Willie Buelna, or William, I think that is the way he styled himself, and said that he had heard I would take his case.

MR. SULLIVAN. I object to anything he said to you.

MR. LINDSAY. Never mind the conversation then.

A. I made arrangements with him to prosecute an appeal, and to do the necessary work for a motion for a new trial in the case of Louis Buelna who had just been convicted.

THE CHAIRMAN. Was this Buelna's brother that came in?

A. I think it was his half brother, Mr. McCartney, although I am not certain, I do not know the relationship -- I believe it was his half brother. I made satisfactory arrangements with him, although they were not absolute definite and complete, but I agreed to take hold of the case. The next day, I think it was the next day, a substitution of attorneys was filed, and that substitution of attorneys was signed by Mr. McPherson and Mr. Houck, and by Mr. Buelna and by me. On receiving the substitution of attorney I came to Judge Smith's chambers with Mr. Houck and Mr. McPherson, and Judge Smith was very much surprised.

MR. SULLIVAN. I object to that.

MR. LINDSAY. What did he say? **A.** I desire to state it conveyed the impression - - -

MR. SULLIVAN. Never mind about your impression. Let the impression be made upon the committee. I submit the witness should testify what was said and done.

MR. LINDSAY. Just confine yourself to that.

A. He said "gentlemen" something like this-- he said to Mr. Houck and

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Mr. McPherson something on this order "you had no right to do that, you should not have done it, you were appointed by the court" or some words to that effect, and Mr. Houck had the substitution in his hands and handed it to the Judge and showed Judge Smith that the defendant himself had signed the substitution and had made the substitution rather than the defendant's attorneys. I thereupon requested that a continuance be had until the following Monday, as I

recollect now the sentence was to be imposed Friday, it was set for sentence Friday morning at ten o'clock. Judge Smith said it was very satisfactory to him, to go and see the District Attorney. I saw the District Attorney down in front of the court house and he said it was satisfactory to him. I then went to my house, it was late in the evening I telephoned to Judge Smith and told him I had seen the District Attorney and it was satisfactory to him, and I guess Judge Smith verified that by telephoning himself to the District Attorney, whether he did or not I do not know. I gave as my reason for the continuance that I was compelled the next morning to go to San Francisco on legal business and that no harm could be done, that I wanted to make a motion for a new trial. Judge Smith discouraged that very much, saying it would put the county to a great big expense, I told him frankly that I felt the record was full of errors and it would surely be reversed by the Supreme Court, and he had nothing to lose whatever by a new trial.

Thereupon the next morning I went to San Francisco, relying upon Judge Smith's word and the District Attorney's word also that the matter would be postponed until Monday. I also requested Mr. Houck to serve a notice of substitution, which I understand was done and service thereof accepted by Benjamin K. Knight, District Attorney, and I think the record will bear me out. I was working in San Francisco and took the Friday afternoon train, and was utterly horrified on arriving in Santa Cruz--

MR. SULLIVAN. I object; I move to strike out "horrified".

A. That is the fact of the matter; I was utterly horrified to see on

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my arrival in Santa Cruz.

(Objection sustained.)

A. (Continuing.) That the sentence, that Buelna had been sentenced. I arrived here at 6 o'clock; in that positive at that time I left I was the only attorney of record for the defendant, and on my arrival in Santa Cruz the newspapers had an account of the sentence of Mr. Buelna.

MR. LINDSAY. And he was sentenced in your absence?

A. He was, I had no opportunity whatever to consult with him except-- first two consultations, and if I may be permitted I will state that in that conversation--

MR. SULLIVAN. Never mind that. I will object to it.

MR. LINDSAY. With the District Attorney or with Buelna?

A. With Buelna, I am not sure of that.

THE CHAIRMAN. You considered you were employed by the prisoner?

A. I considered it was an employment, although I had received no contract at that time but had made special arrangements whereby they were to pay my retainer and some money later on.

MR. LINDSAY. Pardon me; I am not through with this witness. Upon arriving here and learning of the sentence having been pronounced in your absence did you call upon Judge Smith in reference to the matter?

A. I did.

Q. When and where?

A. I think it was the first thing next morning; I watched for Judge Smith at my window as I recollect it now-- my office is right across the street; by looking out of my window I can see when Judge Smith went up to the court house; I remember it was in the morning, I think on Saturday morning when I came over and knocked at the door; Judge Smith said "come in;" and I come [sic] in; he said "good morning Mr. Adyelott, your man Buelna went back on you, he asked to be sentenced and waived the motion

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for a new trial." I repeat his words, I won't say his exact words, I guess it is impossible to repeat

the exact words; I says “I am not so sure about that Judge, but what there has been some evil influence at work;” or words to that effect; whereupon he replied “it is a nasty case; you could not afford to have anything to do with it;” or words to that effect; I replied “I don’t care whether it was a nasty case or not; I would never throw a man down if I once accept his case;” then the conversation turned to Buelna having been taken out of the County that morning, that was Saturday morning; I think he was conveyed away the Friday evening before, I am not sure, but Judge Smith made a remark to that effect, whereupon I replied, I answered, “yes, he was taken away before he even had a chance to consult with his lawyer;” I believe that during the conversation Judge Smith made the request that I not go on or something like that, that Buelna made such a statement in open court and upon that statement of Mr. Buelna, Judge Smith went ahead and sentenced him Friday morning as per schedule. I understand also Mr. Knight made the statement in court, during court--

Q. Never mind the record speaks for itself.

A. The record is not introduced in evidence.

Q. Have you seen the record, part of it?

A. Yes sir, a few moments ago, just a few minutes ago.

Q. The shorthand reporter’s notes? A. No, it is not the notes, but the records in the case; the record as it is now.

Q. When you say the record do you mean the transcript of testimony?

A. No the judgment roll.

Q. The judgment roll does not show what happened then?

A. It does in a brief sketch; not all the evidence.

Q. Is that all? A. I never saw Mr. Buelna from the

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time the substitution was signed. I have never seen him since, I was not in court at the time he was sentenced.

CROSS EXAMINATION.

MR. SULLIVAN. You say you lived in Santa Cruz how long Mr. Adyelott[sic]? A. Well, I think my permanent residence is from September 1901; I think my wife and me came out from Indiana prior to that time; I came here for a few months during the summer of 1901 and went back to Indiana and returned in September, and since that time I have lived in California.

Q. How long had you been living in Indiana before you came to Santa Cruz? A. Practically all my life with the exception of a few years of my early life; I lived in Philadelphia, Pennsylvania and New York City.

Q. Where did you live in Indiana? A. Terrahaute [sic] and Indianapolis, Indiana.

Q. What other place in Indiana? A. No other place.

Q. Did you ever live in Brazil, Indiana?

A. No sir.

Q. Never? A. I was over there occasionally, in fact a great many times; it is ten miles from Terra Haute and I had a good many friends there; I never lived there.

Q. Do you know Mr. Zimmerman there?

A. I do very well. He is an insurance agent there and claims to have a claim against me for \$26 I believe.

Q. By the way how old are you?

A. I am 31.

Q. Did you own a place in Indiana before you came here-- yes or no?

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MR. LINDSAY. I object as not cross examination.

(Objection sustained.)

THE WITNESS. [Aydelotte] I wish to say--

MR. SULLIVAN. Didn't you leave Indiana shortly after the place had been burned down and insurance money collected?

A. Not that I know of.

MR. LINDSAY. I object as not cross examination.

THE WITNESS. There were several places in Indiana that burned down since I lived there.

MR. SULLIVAN. I mean a place you were interested in?

A. Not that I know of Mr. Sullivan; I would be pleased if the committee would permit me--

Q. Which your father in law had?

MR. LINDSAY. I object as not cross examination; we are not trying the case of some building being burnt down.

MR. SULLIVAN. Didn't you shortly before your departure for California, was there not a certain piece of property belonging to your father in law--

MR. LINDSAY. I object as not cross examination.

(Objection sustained.)

MR. SULLIVAN. We want to attack the character of this man.

THE WITNESS. Go right ahead; go right ahead.

MR. LINDSAY. We are not here for the purpose of trying this man. MR. SULLIVAN. We intend to, I say in the presence of Mr.

Aydelott, we intend to impeach the character of this young man. By quite a number of reputable citizens of Santa Cruz County, we will show he is the father of this scheme to oust Judge Smith from his office; he is the arch conspirator engaged with a number of persons in this county here, disgruntled litigants and dissatisfied attorneys; he is the arch conspirator to ruin Judge Smith, and

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we propose to show the character of this man from the time of his birth almost up to the present time; we desire to show and we will show by a number of reputable witnesses here that his reputation for truth honesty and integrity in this community is bad and that he is not worth of belief under oath. I say candidly and frankly to this young man that we will prove he is utterly unworthy of belief, I am informed, and of course I am taking for my statement it is based upon information conveyed to me by Judge Smith.

THE CHAIRMAN. Do you expect to impeach the witness by his own testimony.

MR. SULLIVAN. Certainly you can impeach a witness by his own testimony.

THE WITNESS. I am perfectly willing to testify and I ask the witness. THE CHAIRMAN. Your questions should be founded upon cross examination. MR. SULLIVAN. Perhaps in accordance with the strict rules of evidence his testimony might not be admissible.

THE CHAIRMAN. Please proceed with the cross examination. MR. SULLIVAN. All right.

Didn't you shortly before your departure from Indiana make a deed of that property to your father-in-law?

MR. LINDSAY. I object as not cross examination. (Objection sustained.)

MR. SULLIVAN. Shortly before your departure from Indiana was a certain building belonging to your father-in-law destroyed by fire?

(Same objection. Objection sustained.)

MR. SULLIVAN. Shortly before your departure from Indiana was there a certain amount of money paid to your father-in-law or to you

----- Transcriber's Insert -----

[Transcriber's Note: William Mack Aydelotte's father-in-law was Jacob Hysong; Aydelotte married Winifred P. Hysong, daughter of Jacob & Emily A. Hysong.]

----- End of Transcriber's Insert -----

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in satisfaction of loss by fire on a certain building belonging to your father-in-law.

MR. LINDSAY. Same objection.

(Objection sustained.)

Q. Where did you first locate after coming to California?

A. In Santa Cruz.

Q. Where were you admitted to practice law first?

A. I was admitted in Marion County, in the Circuit Court.

----- Transcriber's Insert -----

[Marion County is a county in the U.S. state of Indiana. Census 2010 recorded a population of 903,393, making it the largest county in the state and 55th most populated county in the country, greater than the population of six states. The County Seat is Indianapolis, the State Capital and largest city. Source: Wikipedia - viewed Oct. 21, 2019]

----- End of Transcriber's Insert -----

Under our rules there Mr. Sullivan we are admitted in the various circuits in the State and in the Supreme Court, which admits you to all the courts; I was subsequently admitted to the Supreme Court of California; also the United States Court.

Q. Were you admitted to the Supreme Court of California on motion?

A. No sir.

Q. Were you admitted to practice by the Supreme Court of California upon a certificate issued by the Supreme Court of Indiana?

A. No sir.

Q. How were you admitted to practice in the Supreme Court of the State of California?

A. I was admitted to practice in the Supreme Court of the State of California on my certificate from the Supreme Court of Indiana, and on the motion of J. J. Scrivner. ["Scrivner" is hand written]

Q. Were you admitted to practice in the Supreme Court of Indiana?

A. I was.

Q. Upon motion or upon examination? **A.** I was on motion.

Q. Did you practice law in Indiana? **A.** I did for a number of years.

Q. Then you came to California? **A.** I had a law partner, Judge McBride;

Judge of the Supreme Court of Indiana for a number of years; and also Denny, Mayor Denny; he was mayor in

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Indianapolis for two terms and City Attorney for two terms, and after that we joined partnership.

----- Transcriber's Insert -----

[Transcriber's Notes: The Marion County Circuit Court is located in Indianapolis, Indiana. It was established in 1816 with the signing of the Indiana Constitution. The original jurisdiction of the Court included civil, criminal, juvenile, probate, and small claims.

Caleb S. Denny was mayor of Indianapolis two terms: 1886-1890 & 1893-1895

Robert Wesley McBride: In 1882, McBride was elected Judge of the 35th Judicial Circuit, ... He held this post for six years. In June 1890, McBride moved to Elkhart, Indiana. After losing his bid for a seat on the Indiana Supreme Court to Judge J. A. S. Mitchell, he was appointed by President Harrison to a commission to investigate matters on the Puyallup Indian Reservation in Tacoma, Washington. However, Justice Mitchell died suddenly and McBride was appointed to fill his seat in December 1890. McBride immediately returned to Indiana to accept the post. He left the Supreme Court bench when his term ended in January 1893 and moved to Indianapolis to resume the practice of law.]

----- End of Transcriber's Insert -----

Q. Now, Mr. Adyelott, you have a feeling against Judge Smith?

A. As a man absolutely none.

Q. I am asking you the question, have you a feeling against Judge Smith? A. I have no prejudice against him as a man, no sir.

Q. Answer the question yes or no? A. I will answer it that way.

Q. Can't you answer it any other way? A. I will answer it that way.

Q. How long have you known Judge Smith?

A. May I be permitted to answer that question.

Q. How long have you know [sic] Judge Smith?

A. Since I came from Indiana; as soon as I came from Indiana I believe I went and called on Judge Smith, told him who I was, with whom I had been associated with back there, and he was very glad and welcomed me to Santa Cruz as a permanent resident.

Q. Did you have any difficulty or trouble with Judge Smith before you filed this memorial with Mr. Leonard in Sacramento?

A. I never had a personal difficulty with Judge Smith.

Q. Have you ever had any difficulty with Judge Smith, in the courtroom; answer the question.

A. No sir, Judge Smith, what do you mean by the word "difficulty"; do you mean a row?

Q. In the court room? A. Nothing more than Judge Smith did not seem to take my view of the law once in a while.

Q. You never had any trouble with him at all?

A. Never at all, no sir.

Q. In court or out of court? A. I regard Judge Smith as -- as to Judge Smith's private life, I could not say that against him. (snapping his finger)

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[typing repeated:] him (snapping his finger) so far as I know he is honest, upright and a sober man; goes home to his family; his daughter sings in my choir; they are charming people.

Q. That is enough; never mind, that is enough. Do you know who prepared the memorial that was signed by John H. Leonard and presented to the Legislature of this State in which it was requested that Judge Smith should be impeached?

A. Do you mean that first part of the specification?

Q. Yes, the first of the specification? A. Yes sir, I know who prepared it.

- Q. Who prepared it? A. I did.
- Q. You did? A. Yes sir.
- Q. That is you prepared that portion of the memorial: “To the Assembly of the State of California, Greeting, John H. Leonard an attorney at law, licensed to practice in all the courts of the State of California, etc.” You prepared that did you?
- A. I think that is a paper; they are all copies bunched together.
- Q. You had John H. Leonard sign his name to it?
- A. I did not have him, he did it.
- Q. He signed his name to it? A. He did.
- Q. At that time you had the utmost respect and admiration for Judge Smith didn’t you?
- A. As a man but not as a Judge.
- Q. As a man? A. Yes, as a man but not as a Judge.
- Q. And in this memorial it is charged with his being guilty of misdemeanors in office?
- A. I did not charge him.
- Q. You wrote it and Mr. Leonard signed it?
- A. We charged misdemeanors in office?
- Q. Yes sir. A. I will explain that.
- Q. It charged him with misdemeanors in office?
- A. I will give you an explanation.

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- Q. Specification 1. “That Lucas Flattery Smith as Judge of the Superior Court of the county of Santa Cruz, State of California.” Did you prepare this first specification?
- A. Not wholly.
- Q. Well, very nearly, did you? A. Yes sir.
- Q. John H. Leonard signed it did he? A. I think he did.
- Q. You think he did? A. Yes sir.
- Q. Did you prepare the affidavit to the specification, the affidavit signed by Harrison Rich and duly sworn to?
- A. Is that the general form?
- Q. That is the omnibus form, the general form?
- A. Yes.
- Q. You prepared that didn’t you? A. I think, I remember that almost all of those is the work of a number of us.
- Q. You say “a number of us?” A. A number of people.
- Q. Give us the name of “us.”
- MR. LINDSAY. What difference does it make?
- MR. SULLIVAN. We propose to show a conspiracy here; we want to know who all these conspirators are. We want to know who “us” are. Give us the name of those people who acted in concert with you in preparing this memorial, these specific charges.
- A. I do not know all of them. I will explain to the committee.
- Q. Who are those that acted in concert that you recollect of as “us?”
- A. I think there were not more than-- well, now I do not know how I can answer that question.
- A. Try and answer it the best you can?
- A. I will if you will allow me Mr. Sullivan--those that came to my office.
- Q. Answer the question, those parties you refer to as “us”.
- A. Can’t you realize that a man cannot remember everything that

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happens -- you may but I do not.

Q. Now name those people who refer to as "us."

A. At the time of the signing?

Q. Who took part in the preparation of this memorial and the specifications annexed to the memorial?

A. I think at that time--

Q. Give the names?

A. This memorial was in my office.

Q. You said there were several of us?

A. That is what I want to explain.

Q. Go on. Who else was included in this move that is referred to as "us?"

MR. LINDSAY. I object.

MR. SULLIVAN. Give us the names.

THE CHAIRMAN. He has answered the question; if you give him time-- MR. SULLIVAN. Who are those he refers to as "us?" Who are those people you refer to as "us?"

A. I will tell you in my own way.

MR. SULLIVAN. I will appeal to the committee to make him answer the question?

A. I will answer the question.

Q. Who are the people referred to by you in your testimony as "us?"

A. Mr. Leonard and I, when this form was drawn.

Q. Are those all that were interested in preparing this memorial and the specifications?

A. On that day in my office, yes.

Q. How long ago was this memorial prepared?

A. Well, I cannot say exactly. It was prepared a few days before I went to Sacramento.

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Q. How long was that?

A. This last month, January.

Q. Well, now after that first meeting who else acted with you in broaching these charges against Judge Smith?

MR. LINDSAY. I have no objection to counsel proving anything that may be necessary in his defense, but I submit it ought to be done according to the rules of evidence; this is not cross examination; it is cross examination to show the interest of this witness to be true, but now he is going into a matter which is absolutely independent of this witness's testimony and is part of their case, and they can introduce that evidence when it comes to their time.

MR. SULLIVAN. I submit that is regular. We propose to attack the truth of this witness.

A. You may; I beg of you.

MR. SULLIVAN. We have contended all along that these charges against Judge Smith are absolutely unfounded; they are base fabrications.

MR. BURKE. You have made that statement three times.

MR. SULLIVAN. I propose to show from the lips of this witness.

THE CHAIRMAN. Just ask your question.

MR. SULLIVAN. Then after this memorial was prepared by you and signed by John Leonard, you met several other persons didn't you who acted in concert with you and Leonard in preparing the charges against Judge Smith?

MR. LINDSAY. I object as not cross examination, as immaterial irrelevant and incompetent and as part of the case in chief of the gentlemen on the other side.

MR. SULLIVAN. For the purpose of showing the motive of the witness.

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THE CHAIRMAN. You may state of your own knowledge what was done. That would be material testimony.

A. I think I can do that Mr. McCartney. If I am permitted I can go ahead, and go through it very quickly.

MR. SULLIVAN. I want to know to whom you made, with whom you discussed these charges against Judge Smith after the memorial and the charges were prepared?

THE CHAIRMAN. I instruct the witness to answer the question, that material part of it, which he knows of his own knowledge; we don't want to hear any hearsay testimony.

THE WITNESS. [Aydelotte] Mr. Leonard brought to me the charges that some one had prepared; I suppose they were prepared, to submit them to me, the latter part of January; I had been consulted and advising with Mr. Leonard and talking about this matter and I had in fact signed charges that first went to Sacramento.

Q. That is not in response to the question. That was after the memorial and charges were prepared and written up. After the memorial and charges were written out with whom did you discuss the charges for the purpose of further prosecution against Judge Smith?

A. With whom did I discuss them?

Q. Yes sir. **A.** After they were prepared?

Q. Yes sir? **A.** Up to the present time?

Q. About the time they were prepared.

A. I say at that time there was one or two people in my office, I remember Mr. Leonard and I.

Q. One or two. After they were prepared with whom did you discuss the matter? **A.** I think I discussed them with Mr. Gardiner, not in a very careful way I do not think.

Q. Go on, with whom did you discuss them. Did you talk to Mr. Porter?

A. No sir--in town here, not down here.

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Q. Mr. Cleveland? **A.** No sir, not down here.

Q. Mr. Younger? **A.** Who?

Q. Answer the question please? **A.** I discussed them with Mr. Cleveland going up one day on the train.

Q. I see here an article in the Evening Pajaronian issued February 16th. You have seen this article?

A. I have, sir.

Q. Wasn't that written by you? **A.** Portions of it. I suppose that was written by me.

Q. Wasn't the entire article written by you?

A. No sir.

Q. I wish you would show me that part that was written by you. Reading. "I found Mr. Adyelott a courteous genial fellow." That part you wrote? **A.** I did not write that Mr. Sullivan.

Q. Go on and eliminate the language that you did write.

A. I cannot show you--

Q. Will you show what you have written there?

A. I could not say without comparing it with the carbon copy.

Q. Don't you remember your composition?

A. Most of it; whether it has been changed or not I do not know.

Q. I will read this to you.

MR. LINDSAY. I object to it unless you offer the newspaper.

MR. SULLIVAN. You submitted a typewritten copy?

MR. LINDSAY. I seriously object; it is not cross examination.

THE CHAIRMAN. I will state now that the committee is going to wind up the evidence down here in Santa Cruz to-morrow night and if there is any more testimony it will have to be forwarded to us in Sacramento or the witnesses will have to come to Sacramento and the more time you take up with this kind of evidence, of course it may shut off some material matter.

MR. SULLIVAN. We will offer this newspaper, if your Honor please.

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This [is the] portion of the newspaper written by him.

A. Now, I did not say I wrote that portion.

Q. Did you write that portion?

A. I could not tell until I have compared it with the copy I have in my office.

MR. LINDSAY. I will consent to this Mr. Sullivan; Mr. Adyelott may compare that with Mr. Adyelott's copy of the part of this article and you read it and let it go in evidence.

THE CHAIRMAN. I should think that would be fair.

THE WITNESS. That is satisfactory to me.

MR. LINDSAY. You can put the whole article in evidence if you want it.

MR. SULLIVAN. As contained in this paper?

MR. LINDSAY. Yes.

MR. SULLIVAN. Were you present at a conversation that took place between Mr. Cleveland and Mr. Leonard in relation to the charges to be prosecuted against Judge Smith?

A. When and where?

Q. In Sacramento. A. I was on a number of occasions. We were up there several days; I don't think we talked about anything else.

Q. Were you present during any conversation when Mr. Leonard reminded Mr. Cleveland of his anti-election promise to do what he could to accomplish the impeachment of Judge Smith.

MR. LINDSAY. I object as immaterial and as not cross examination; it is an attempt to attack a man who is at present a member of the Legislature of the State of California.

THE CHAIRMAN. He can answer whether he was present or not.

MR. LINDSAY. He can answer whether or not he was present when the conversation ensued, but the question is, were you present when the conversation ensued between those people, when Mr. Leonard

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reminded Mr. Cleveland.

THE CHAIRMAN. That part is hearsay.

MR. SULLIVAN. Question withdrawn. Did you write this portion of the article published in the Pajaronian "Mr. Leonard reminded Mr.

Cleveland of his anti-election promise to do all he could to accomplish the impeachment of Judge Smith and how on the strength of this promise Mr. Leonard worked for his election and Mr. Cleveland said "did I make that promise before election". You certainly did was Mr. Leonard's reply and Mr. Cleveland did not deny it. Mr. Cleveland finally said that he supposed the buck would pass up to him and he would see us in the morning." Did you write that part of the article published in the Pajaronian?

MR. LINDSAY. My objection is only so far as made that it is not cross examination; that it is not an attempt in any manner to impeach the witness on the stand; that it is an attack against a person, against a member in the Legislature of the State of California; an attempt to convict him of some offense upon hearsay testimony, upon unsworn testimony.

THE CHAIRMAN. I think the committee will desire that the witness make that statement.

MR. SULLIVAN. I read the statement. Did you write that portion of the article published in the Pajaronian yesterday?

A. I will say that was in that exact language. I have a copy of it in my office and if you compare that matter with my copy.

MR. BEARDSLEE. Did you write anything in substance of that kind?

A. In substance of that kind?

MR. SULLIVAN. Did you write in substance the matter, the part of this article, the heading “as a struggle was in progress,” the matter contained in these quotation marks?

A. Not all of it.

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Q. Not all the matter contained in those quotation marks?

A. If you will let me see that. I certainly did not write the first part of it.

Q. But look at the matter in quotation marks.

A. “Like monkeying with a buzz saw,” I did not write that phrase.

Q. That is a sub head written by the editor. Of course the part about monkeying with a buzz saw, there is no question about that, that was put in by some one else, that was put in by the City Editor.

MR. LINDSAY. So far as I am concerned I have business in San Francisco and I must return.

MR. SULLIVAN. Judge Smith has more important business here in Santa Cruz.

THE CHAIRMAN. Mr. Sullivan, if the witness will testify in answer to that question so far as his testimony goes it will not bind the other party.

MR. SULLIVAN. No; it would show that he is a part; at least a part of the conspiracy formed to injure Judge Smith.

MR. LINDSAY. It would show interest.

MR. SULLIVAN. He won't admit anything. **A.** Yes, I do.

MR. SULLIVAN. Didn't you write everything there that was in the quotation marks except the subhead?

A. I will not admit that; I know of one change here.

Q. What change is it? **A.** I do not care to tell; it is not material.

MR. SULLIVAN. Tell me. I want to get an admission from him if I can. **MR. LINDSAY.** Just to take up the time.

MR. SULLIVAN. No sir. The matter is very important to Judge Smith.

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MR. LINDSAY. Very well, I want you to understand I have no desire to interfere in any testimony you consider material.

MR. SULLIVAN. Will you admit Mr. Adyelott wrote that article, I know he did.

THE WITNESS. You do not know anything of the kind.

MR. SULLIVAN. I know from a very responsible source you did.

THE WITNESS. I cannot find it Mr. Chairman but the matter is this; where I mentioned some names in this article, the names have been left out and words substituted, the word parties,

whereas I have the names of the parties.

Q. That is the newspaper excluded the names of the parties and you exposed the names of the parties?

A. I suppose they were exposed, the name of the parties.

MR. SULLIVAN. Give me the names of the parties suppressed?

A. That is not material Mr. Sullivan.

MR. SULLIVAN. We ask it; he is one of the prosecutors in this case and Mr. Leonard was advised in this prosecution. I would like to know who else acted with him.

MR. SULLIVAN. Let us proceed orderly if we can. Give me the names of the parties you furnished the Pajaronian, which names were suppressed in the publication?

MR. LINDSAY. I submit that is immaterial and can serve no good purpose.

MR. SULLIVAN. We want to know the accusers of Judge Smith.

MR. BURKE. Put the question in this way and I think it would be material: if the names of the parties who have been suppressed by the Pajaronian are some of those who were mentioned a little while ago by the witness.

MR. SULLIVAN. I understand your testimony there were certain names written by you in this manuscript article which you gave to

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the Pajaronian, is that so, when the names were mentioned?

A. Yes a number of names were mentioned.

Q. And the parties' names were suppressed by the editor?

A. Yes, I understand so.

Q. And were those names which were suppressed by the publication a part of the parties referred to by "us" in your testimony a short time ago? **A.** They are not necessarily, one of Judge Smith's best friends; quite the contrary.

Q. Now after this examination thus far, are you willing who "us" were that you referred to when you said "us" a while ago when you visited Leonard's office?

MR. BEARDSLEE. Tell what it was about. As one of this committee I would like to hear a statement of what it was about; the proposition was that the memorial was prepared and it was signed by Mr. Leonard. In the preparation Mr. Adyelott said that it was prepared by several of us; he has named Mr. Leonard and he has named himself.

MR. LINDSAY. What you want is if anybody else was interested in the preparing of the memorial and you want to know who it was.

MR. BEARDSLEE. He has up to this time simply given only himself and Mr. Leonard; is that right?

A. That is correct at that time Mr. Beardslee.

THE CHAIRMAN. If there is anybody else give who it was.

MR. SULLIVAN. To whom did you refer when you said there were several of us?

A. I refer to the parties who were present. I do not remember, there were several.

Q. Give the names?

A. I told you I do not know whose names.

Q. You do not know who us was. To whom did you refer when you said us in answering the question?

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A. That us I think meant myself and Mr. Leonard, it means Mr. Gardiner and it means Mr.

Younger.

Q. What Younger, the gentleman who testified here to-day?

A. And it means we discussed the matter with Mr. Leonard; I discussed too the matter with Mr. Porter.

Q. Now, Mr. Adyelott, there is an affidavit here prepared by the affiants referring to partiality show by Judge Smith to Mr. Cassin?

A. I think I prepared the final form.

Q. The final form? A. Yes sir.

Q. In the verified affidavit prepared by Peter P. Hartman, did you prepare that form, the final form?

A. What affidavit is that?

Q. That is the only affidavit made by Peter Paul Hartman which he stated verbatim almost last night?

A. No sir, I did not prepare that.

Q. Who prepared that? A. I do not know.

Q. Did you prepare the affidavit as signed by Mr. Leonard under specification four. Did you prepare specification four?

A. Not wholly.

Q. Did you partially? A. I did.

Q. Who else helped in the preparation of specification 4?

A. I do not know; when it was handed to me I made some correction.

Q. Did you prepare specification 3?

A. I think it was the same way.

Q. Who assisted in the preparation; Mr. Leonard?

A. When they were finally drawn.

Q. Specification 5; who prepared that?

A. I think that is the same way.

Q. Specification 6; who prepared that?

A. In the same way.

Q. And the affidavit annexed to the specification 6 signed by

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Mr. Leonard; who prepared that?

A. I do not know who prepared that.

Q. Who prepared specification 7 and the papers annexed to specification 7?

A. I think I prepared that myself wholly.

Q. Who prepared specification 8?

A. I got some of my information from George P. Burke.

Q. He is the gentleman who made campaign speeches against Judge Smith two years ago?

A. I think that is the same party.

Q. Specification 9, who prepared that? A. I think that was partially prepared by me.

Q. That was in reference to the Buelna incident?

A. Yes sir.

Q. Who prepared the affidavit signed by Frances Buelna?

A. I do not know.

Q. You prepared specification 9 annexed to the affidavit didn't you signed John Leonard?

A. Yes sir, I answered that.

Q. But you didn't prepare the affidavit referred to in specification 9? A. No sir.

Q. Annexed to specification 9? A. No sir; the Frances Buelna affidavit?

Q. Yes sir. A. I did not prepare the specifications from the affidavits, I assisted in it.

Q. Who prepared the other papers annexed to specification 9?

A. My own affidavit, I prepared that most assuredly.

Q. You prepared that yourself? A. Yes sir.

Q. Now Mr. Adyelott, I see in specification 9 is detailed conversation alleged to have taken place between you and Judge Smith.

A. Yes sir.

Q. When did that conversation take place?

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A. I have gone into that.

THE CHAIRMAN. He has gone over this.

MR. SULLIVAN. I see you detail in this affidavit the conversation which took place between you and Judge Smith in November 1904. Can you now recite that conversation?

A. I cannot recite it absolutely but I can certainly give you the facts as I have done already.

Q. State what you said to Judge Smith and what Judge Smith said to you?

A. Judge Smith made the statement to me before I had a chance to open my mouth; he said something like this: "Good morning Mr. Adyelott, your friend Buelna went back on you; he asked to be sentenced and waived all his rights of having a motion for a new trial or something to that effect."

Q. What did you say? A. Then I said to him some thing like this: "I believe that some pernicious influence," or similar words, some words just as strenuous "has been at work" and the Judge nodded his head and went on in words to this effect: "It was a nasty case and you could not afford to have anything to do with it."

Q. Did you make a reply to that?

A. I said I didn't care how nasty it was or words to that effect-- I won't attempt to be absolutely correct in giving the testimony;

I said "I didn't care how nasty it was; if I accept a client's case I never throw him down."

Q. Did you say "I would never be so dishonest and cowardly as to throw him down?"

A. Yes, I think I did use the words "dishonest and cowardly." Of course when directed to that now I remember about that, and I recollect the conversation, as nearly as I give it, the exact conversation.

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Q. Did you have any conversation with Buelna before you go the substitution of attorney?

A. Yes sir.

Q. Who prepared specification ten?

A. I think that was prepared the same way.

Q. By you and Mr. Leonard? A. Yes sir.

Q. Who inserted the extracts from the "Serf"[i.e., Surf] of November 12th 1904?

A. I think I did that myself.

Q. Who wrote and published the articles that were published in the Cerf [i.e., Surf] concerning the Wyatt and Zavalla [sic] case?

A. I certainly could not tell you Mr. Sullivan.

Q. Didn't you contribute the articles to the Cerf? [i.e., Surf]

A. I contributed one.

Q. What one was that? A. I do not know if it is here; I will find it for you; I gave just the

law of the matter.

Q. On that page? A. It is on page 12 of this volume. I looked up the law on the proposition; the legal points I gave to the Cerf [i.e., Surf].

Q. Didn't you write the article yourself?

A. No sir, not all of it.

Q. Much of it? A. The legal points it contained-- most of the article.

Q. Since these charges were filed have you contributed articles concerning the committee and concerning the trial before the committee?

A. You mean-- absolutely no. You mean reference to this committee?

A. Yes. A. Certainly not.

Q. Did you at the time the committee was appointed by the legislature, or by the Assembly, have a consultation with Mr. Taylor of the Cerf [i.e., Surf] concerning the personality of the committee?

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A. I do not remember if I had a consultation with him about that or not; I believe I did one day ask him who the members were, and the personnel, in the sense I think you imply that the personnel was not composed of honest men, no sir, I never did.

Q. Do you remember that article in the "Cerf" [i.e., Surf] in which it was said the committee would do no harm?

A. Yes sir.

Q. Did you have anything to do with that article?

A. Absolutely none.

Q. Did you write this portion of the article, or the charges referring to the number of cases in which the judgment of Judge Smith was reversed, appearing on page 10?

A. This?

Q. Answer yes or no? A. You mean this?

Q. Specification 11 refers to a number of cases where Judge Smith has been reversed and accompanying the specification is a table referring to the number of cases in which Loag [i.e., Logan] and McCann were reversed and sustained?

A. No sir I did not write that.

Q. Who wrote that? A. I think Mr. Osborn wrote that.

Q. Who? A. Mr. Osborn, so I am informed.

Q. Who is Mr. Osborn? A. An attorney practicing at this bar.

Q. Do you know who wrote this portion of the charges?

A. What portion is that?

Q. That is a portion containing the reference to the cases which Judge Smith-- THE CHAIRMAN. He just stated he did not know.

A. No sir, I do not know.

Q. Now, specification 12; who prepared that?

A. I think that was prepared in the same way.

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Q. By you and Mr. Leonard?

A. Yes sir.

Q. Who prepared this article "Pandering to the Populace?"

A. I do not know.

Q. What that taken from the Cerf? [i.e., Surf]

A. I think it was.

Q. Who wrote that for the Cerf? [i.e., Surf]

A. I do not know.

Q. Who inserted in the charges the extracts from the Cerf [i.e., Surf] “Voice of the People” page 11?

A. At the bottom?

Q. Yes sir.

A. You say that I wrote it-- no sir.

Q. Who did?

A. I do not know.

Q. You took an active part in the preparation of this memorial from beginning to end thereof didn't you?

A. Beginning about the 3rd week of January, yes.

Q. Did you ever try a case in this court when Mr. Cassin was retained on the other side?

A. No-- yes I have.

Q. How often?

A. I think Mr. Cassin has only been opposed to me in 2 cases, if I remember correctly now; just two cases.

Q. And one of those cases was a jury case was it not?

A. Yes sir.

Q. And in that case, that jury case, didn't the judge give every instruction to the jury that you asked for?

A. He certainly did; then he denied my motion for a new trial.

Q. He gave every instruction didn't he?

A. Well, I won't say he gave every one; but almost every one; because they were correct propositions of law.

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Q. Of course you were dissatisfied with the verdict of the jury in that case? A. Very much.

Q. That was the case of Blum against Langley?

A. Yes sir.

Q. Simply an appeal from the Justice Court?

A. Simply an appeal from the Justice Court where we could get no further.

Q. A simple case?

A. A small case, but it involved a very great principle.

Q. Oh, certainly, involving a horse trade?

A. It was a horse trade. It was the principle.

Q. Have you had any interview with Mrs. Buelna in the last few days?

A. I have not, I never talked with Mrs. Buelna in my life until just a few moments ago right over there.

Q. You did not?

A. Never.

Q. Do you know F. R.[sic] Billing? A. I should say I do to my sorrow.

Q. Do you know Charles[sic] Hester[sic]? A. Yes sir.

Q. You were attorney for Mr. Billing at one time were you not?

A. I was.

Q. You prepared a bill of sale for Mr. Billing by which he conveyed property to Mr. Hester[sic] at one time?

A. I did.

Q. Or Mr. Hester[sic] conveyed certain property to Mr. Billing?

A. Yes sir; I advised him fully as to his rights under that bill of sale.

MR. LINDSAY. I object as irrelevant and immaterial.

(Objection sustained.)

MR. SULLIVAN. We simply want to show he represented three sides of the controversy at one time.

MR. LINDSAY. I think such remarks as that are hardly fair.

----- Transcriber's Insert -----

[Transcriber's Note: VILLA FONTENAY was a resort hotel in the Santa Cruz Mountains. In 1902 the owner was Julius H. Haesters. Previous owner was Frederick William Billing; Haesters added two 8-room houses.]

----- End of Transcriber's Insert -----

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MR. SULLIVAN. Very well.

COMMITTEEMAN BEARDSLEE. You say you helped to prepare specification 12?

A. Yes, I think I did; I think I testified 12 was one of those.

Q. At the bottom of page 10? **A.** I think my answer was it was one those we went over.

Q. You have spoken in the highest terms of Judge Smith as a man haven't you, as a man outside of the courtroom?

A. Outside of his official life, yes.

Q. The proposition is you have prepared specifications against a man who you say was upright and honest in his every day life, what do you mean by that?

A. I mean to refer to his official life, his judicial conduct, his official life, his official life Mr. Beardslee, his private life, his conduct, I have naught to say against it.

Q. When you say he is an honest man in private life, at the same time you allege he was not an upright judge?

A. I am not the memorialist.

Q. You prepared this? **A.** I helped to prepare it certainly; I did not have control over that.

Q. I understand.

A. I had no control over those things; I was merely advising as a friend of Mr. Leonard's that was all.

MR. BEARDSLEE. We are here to find out everything we can.

A. I am glad to give it.

MR. SULLIVAN. Will you explain how a person can be an upright and honest man and at the same time be a partial and corrupt and prejudiced judge? **A.** Did you ever hear me say Judge Smith was corrupt?

Q. How can a man be an upright honest man and be a partial judge, a prejudiced judge?

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A. That is the easiest thing in the world Mr. Sullivan; a man can lean one way unconsciously.

Q. Now then if Judge Smith has ever leaned one way while sitting as a judge upon the bench in this court, he did so unconsciously did he not? **A.** I won't say.

Q. He is an upright just man? **A.** You see how it can be; how it can be--

Q. Isn't it your opinion, if Judge Smith did lean one way or the other he did so unconsciously?

A. Possibly that is the case.

Q. Isn't that your opinion? **A.** That is what my opinion is worth, yes.

Q. You remember the Langly case?

A. Yes sir, I do.

Q. Which way do you think he leaned in that case during the trial?

A. During the trial of the Langly case Judge Smith leaned to me.

Q. Leaned to you?

A. Until Mr. Cassin came in court and made a speech and Judge

Smith went right over.

Q. A speech to the jury was it? A. It was a speech to the jury made for their benefit, and they got all the benefit of it. It was a motion for a non-suit where the plaintiff had admitted under oath that he made no demand for his money.

Q. Now Mr. Adyelott, do you know of a single instance during the official career of Judge Smith while you resided in this county where you could say that he deliberately rendered an unfair or partial judgment or decision, deliberately, mind you?

A. What is that?

Q. Can you recall one instance during your residence in this community where Judge Smith rendered an opinion or judgment which was unfair or partial and did so deliberately?

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A. I cannot say that he did it deliberately but I can state his opinions were unfair and partial.

Q. Isn't your grievance against Judge Smith against what you consider erroneous rulings by Judge Smith while presiding as a Judge of this Court?

A. Not wholly so, no sir, Mr. Sullivan. I consider Judge Smith's conduct in the Rich proceeding absolutely reprehensible.

Q. What proceeding is that?

A. That is the Rich jury bribe investigation, that whole question.

Q. Were you in that case?

A. I was in it in this way--

Q. Answer the question. Were you in the case? A. Yes sir.

Q. Didn't you come to court that morning for the purpose of getting material to add to these charges against Judge Smith, for the purpose of removing him from office? A. No sir, I did not.

Q. Didn't the incident which took place while Mr. Leonard was making an argument to the jury in which Mr. Leonard said there was one corrupt juror in the box? A. I was not in court at that time.

Q. Didn't you tell Mr. Rich to come in this court and remain in court and watch the progress of that case?

A. I did sir, if you want me to tell you why.

Q. No, no. Isn't it a fact that from the time Mr. Cleveland was nominated for the Assembly up to the commencement of the trial of this case, you have been gathering material and interviewing witnesses for the purpose of presenting the case of Judge Smith to the Legislative Committee? A. Me?

Q. Yes. A. Not all the time, no sir.

Q. Well, have you not most of the time? A. No sir.

Q. From the time Mr. Cleveland was nominated up to the present

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time been engaged in getting material and interviewing witnesses for the purpose of presenting the case to the Legislature, or before the committee of the legislature?

A. No sir.

Q. Against Judge Smith? A. No sir.

Q. Haven't you been the active spirit in this movement to impeach Judge Smith? A. No sir.

Q. Who has been more active than you?

A. Mr. Leonard.

Q. Mr. Leonard was more active than you?

A. I think he is.

Q. You think he is?

A. In my humble opinion I will say to you Mr. Sullivan that my preference was never to impeach Judge Smith but to create another department to our Superior Court here.

Q. You are satisfied then that Judge Smith should continue as Judge of the Superior Court of this county and that another judge should come here to assist in the administration of the office?

A. No, I won't say that I was satisfied but I wanted another department to the Superior Court.

Q. Who was the new judge you had in mind, the other judge?

A. What do you mean?

Q. To sit here with Judge Smith? and to administer the official affairs of the office? A.

Unquestionably Mr. Wyckoff; certainly he was the republican nominee and he would be the logical person for the office would he not?

Q. Mr. Wyckoff is "one of us." A. I think Mr. Wyckoff is one of "us" quite reasonably.

Q. Don't you know that Mr. Wyckoff expressed himself to you if Judge Smith was impeached, he would get Judge Smith's position?

A. No sir, he did not.

Q. Don't you know he has hopes in the event of the impeachment

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of Judge Smith of getting his position?

A. I do not know what he hopes.

Q. You know he is a brother-in-law of Governor Pardee?

A. No sir, I do not.

COMMITTEEMAN BURKE. What is his brother-in-law's name?

MR. SULLIVAN. This was a fact given to me by some other parties, that is all.

A VOICE. His name is Ellston. [i. e., Elston?]

MR. WYCKOFF. I would like to say, if I will be permitted, and I have said it many times, I would never accept the appointment if Mr. Smith was removed.

THE CHAIRMAN. Those statements are not material.

MR. SULLIVAN. I think that is sufficient.

----- Transcriber's Insert -----

[Transcriber's Note: The wedding of Hubert Coke Wyckoff [Sr.], U. C. '96, and Miss Annabel McDonald of the same class, will take place next Wednesday evening at the home of the bride's parents in San Francisco. Mr. Wyckoff is one of the brainiest young men ever graduated from the State University. His bride to be was also one of the brightest students at college. A year ago he was admitted to the practice of law, locating in Watsonville as an associate of Will Rogers, U. C., '88. A short wedding trip will follow the marriage. Mr. and Mrs. Wyckoff will take up their residence in Watsonville.

Some time next month at a date yet to be announced, Frederick Wyckoff, U.C. '97, will wed Miss Girlie Elston, '99, of Berkeley. The young man is in the insurance business with his father in San Francisco. He, like his brother, was a favorite at college and a member also of the Delta Upsilon Fraternity. Miss Elston was a member of the Gamma Phi Beta Sorority. She is the daughter of Rev. A. M. Elston of Berkeley. — Oakland Enquirer. Source: Santa Cruz Surf 1899 Jun 9 4:2 Matrimonial Activity.]

----- End of Transcriber's Insert -----

-----oOo-----

MR. LINDSAY. I notice Mr. Wyatt of Salinas present.

-----oOo-----

**TESTIMONY
OF
JOHN J. WYATT**

Sworn.

MR. LINDSAY. Where do you reside Mr. Wyatt?

A. Salinas, Monterey County.

Q. Monterey County, in this State?

A. Yes sir.

Q. How long have you been a resident of Monterey County?

A. Well, I lived there the last time for about fifteen or sixteen years.

Q. What is your occupation?

A. I am an attorney at law.

Q. How long have you practiced your profession?

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A. 15 years.

Q. All the time in Monterey County?

A. All the time in Monterey County.

Q. Do you hold any official position over there?

A. Well, I am city attorney of Salinas City.

Q. You are city attorney of Salinas City?

A. Yes sir.

Q. Do you know the Honorable Lucas F. Smith, Judge of the Superior Court of this State and County?

A. Yes sir, I have known Judge Smith for a number of years.

Q. You at one time represented a defendant who was accused of a crime in this court, I believe one Lewis [sic] Buelna?

A. That is a firm of which I am a member represented Mr. Buelna.

Q. And the firm is?

A. Zabala and Wyatt.

Q. Do you remember of an occasion, I think in November of last year, of being summoned over here to appear in court in reference to this Buelna matter?

A. Yes sir, I think on the 9th of November, the day after election, the day the case was set for trial I was cited to appear to show cause why I should not be punished for contempt for failing to appear then at the commencement of the trial.

A. You did appear did you?

A. I came over, yes, in response to the citation.

Q. Mr. Zabala came with you? A. Mr. Zabala came with me.

Q. Did you at that time state to the court your reasons for not appearing? A. Well, not that morning; the matter was continued when we came over here until evening and in the evening we stated our reasons for not appearing here, to the Judge.

Q. Did the judge at that time adjudge you guilty of contempt or discharge you?

A. That evening I understood from the Judge's

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remarks from the bench that he considered we were not guilty, but I do not know if there was a formal order made in the matter; we explained to him fully why it was we did not appear on the previous morning, and I understood from his remarks from the bench that he considered we were not guilty of contempt though I do not know as I say, I do not know about this, whether any formal order has been made in the matter or not.

Q. Subsequently he made another order in the matter did he not in reference to the contempt matter, and in reference to the case of Buelna about your appointment, that in other words he appointed you to defend him? A. Yes sir. He appointed Mr. Zabala and myself to defend, or to assist in the defense of Mr. Buelna that morning when we came over.

Q. He had already two lawyers of Santa Cruz to defend him?

A. Yes sir, so I understand.

Q. When you explained your reason as to being the attorneys retained you assisted in the defense did you?

A. No, we did not explain that that morning Mr. Lindsay; we did not explain how it was. When we arrived there Judge Smith said he hadn't time to listen to the matter at that time and continued it until evening and then it was he appointed us to assist the attorneys who had been appointed previously.

Q. Did you join in the defense at the trial?

A. No sir, we asked to be excused and the Judge insisted that we should take part, and believing that we had a right to refuse we refused to do so.

Q. What was done then? A. Judge Smith ordered us to be fined \$50 apiece.

Q. And you sued out a writ of habeas corpus in the Supreme Court?

A. Yes sir, we communicated with Mr. Lacy[sic], a friend and attorney in Salinas, to go to San Francisco and procure

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a writ for us.

Q. And you were discharged? A. We were discharged, the condition of the record was such that it was impossible to-- that it did not warrant holding us.

MR. SULLIVAN. That is you were dismissed by reason of a mistake of the Clerk? A. The record was in such shape the merits of the matter could not be presented, so we were discharged.

MR. LINDSAY. At the time you were appointed to defend by the Judge, you were as you stated, you and Mr. Zabala resided at Salinas and practiced law there? A. Yes, sir; that is our home, always has been.

CROSS EXAMINATION.

MR. SULLIVAN: Mr. Wyatt, when you appeared here in response to the citation of the Court, the jury was already impanelled, was it?

A. The jury was already impanelled; they were about to take testimony; the case was on trial.

Q. In this case you were appointed by the Judge to represent the defendant, as I understand it?

A. No, we were appointed shortly after we came to the court room.

Q. That morning? A. Yes, sir; that morning.

Q. You were appointed as counsel for the defendant?

A. Yes, sir.

Q. Prior to that morning you and Mr. Zabala had been the regular retained attorneys of the defendant, had you? A. Yes, sir; I can tell briefly the matter; we were employed in the Preliminary

Examination by Mrs. Buelna to defend to the defense of her son at that time and were paid, and after the Preliminary Examination we told her, named the fee for which we would attend the case here and we appeared, Mr. Zabala appeared at the arraignment and the case was set down for trial at the time that he was here.

Q. At the suggestion of one of your firm, either you or Mr. Zabala?

A. Mr. Zabala was here, I was satisfied to have it set

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down, and afterwards on account of the failure of Mrs. Buelna to pay us the fee, or any part of the fee which she had agreed to pay, we withdrew from the case, and we neglected to notify Judge Smith or the Clerk.

Q. There was a mistake in your not notifying Judge Smith or the Clerk?

A. I think so.

Q. Now then, Judge Smith supposing you and Mr. Zabala were still the attorneys for the defendant called the matter on for trial?

A. I understand so.

Q. He appeared quite incensed at the failure of counsel to appear and represent the defendant?

A. Yes, sir.

Q. It was an unfortunate mistake made by yourself and your counsel?

A. I think so.

Q. When Judge Smith directed you and your partner or associate to defend your former client, you refused to do so?

A. Yes, sir; we did at that time; we thought living outside of the County we were not obliged to take part in his defense with [sic] compensation.

Q. And as to legality of the question there was a difference of opinion between you and your partner and the Judge?

A. Yes, sir.

Q. You think it was an honest difference of opinion so far as the Judge was concerned?

A. I have no reason to doubt it.

Q. And if the Judge had made a mistake in citing you to appear to show cause why you should not be punished for contempt, if he made a mistake, you were satisfied it was an honest mistake?

A. I have no reason to doubt the Judge's good faith in the matter at all.

Q. You recognize him as an honest, upright Judge?

A. I have nothing to say against Judge Smith; I certainly have nothing against Judge Smith.

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Q. So if Judge Smith did wrong in this particular case, it was a mistake of the head and not of the heart, you are satisfied?

A. So far as I know, I do not think Judge Smith had any reason to dislike Mr. Zabala or myself.

Q. But you like everybody else, stood on what you considered your Constitutional rights?

A. Refused to act as attorney without compensation.

Q. And the constitutionality of the Court to appoint attorneys was not presented to the Supreme Court upon the hearing of the return of the writ of habeas corpus? A. No, sir; the condition of the records was such that it was not necessary; the matter never was passed upon its merits at all.

Q. You were discharged by the Supreme Court for the sole reason that the order prepared and entered by the Clerk was defective?

A. The order did not show jurisdiction.

Q. The order failed to show jurisdiction?

A. Yes, sir.

Q. After your discharge by the Supreme Court there was no further attempt made to punish you or Mr. Zabala?

A. No, sir; not that I know of; I know there was not.

Q. No attempt to collect the \$50 fine? A. None whatever.

MR. LINDSAY. At least you have not paid it? A. No, sir.

Q. You explained when you came over, when you got an opportunity to do so, you explained to Judge Smith your reasons for not appearing?

A. Yes, sir; that evening to Judge Smith. The trial was going on and a jury was in attendance and Judge Smith did not take the matter up until about 4 o'clock, he adjourned Court a little early in order to do so, and then we explained our reasons.

Q. When was it, before or after that he fined you for contempt?

A. That was in the morning when we first came, that was before any explanation took place.

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MR. LINDSAY. Mr. Chairman; I desire to offer in evidence in support of specification 9 the Judgment Roll in the case of Buelna, case No. 4169, in the Superior Court of the County of Santa Cruz, State of California, entitled the people of the State of California versus Louis Buelna, defendant. Filed November 18, 1904.

THE CHAIRMAN. It will be admitted if there is no objection.

The Judgement[sic] Roll is in the figures and words as follows:

----- Transcriber's Insert -----

[Transcriber's Note: The balance of the page is blank. The Judgment Roll "figures and words" do not appear elsewhere in this volume.]

----- End of Transcriber's Insert -----

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MR. LINDSAY. Also a document entitled No. 4169, In the Superior Court of the County of Santa Cruz, State of California, the People of the State of California against Louis Buelna, defendant, Notice of substitution of attorney, filed November 17th, 1904, in this Court, together with the endorsement thereon, and ask that it be admitted. That is Mr. Knight's signature?

MR. CASSIN. That is his signature.

COMMITTEEMAN BEARDSLEE. Is that the same paper that is in the memorial-- substitution of attorney?

MR. LINDSAY. Yes, the Notice of Substitution.

MR. SULLIVAN. We will admit the paper.

MR. LINDSAY. The substitution can not be found; I have not been able to put my hands on the original substitution.

MR. SULLIVAN. What became of that substitution that purports to have been signed by Mr. Buelna?

MR. LINDSAY. I have not the slightest idea.

MR. SULLIVAN. Do you know where it is?

MR. AYDELOTTE. I have not the slightest idea; I filed it among the papers.

THE CHAIRMAN. Does the Clerk's Register show it was filed, the Court Register?

MR. LINDSAY. The register does show and the paper was here dur-ing this investigation, but it has been misplaced. I want to offer this document which I have designated, that contains a copy of it.

MR. AYDELOTTE. That was not prepared by me.

(The substitution of Attorneys is in the words and figures as follows:

----- Transcriber's Insert -----

[Transcriber's Note: The balance of the page is blank. The Judgment Roll "words and figures" do not appear elsewhere in this volume.]

----- End of Transcriber's Insert -----

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MR. LINDSAY. There is one thing more, rather two things: it was agreed to day by counsel that there might be introduced in evidence and incorporated in the record a transcript of the proceedings held in the matter of the investigation of the alleged embracery [sic], the jury corruption, that is correct, is it not?

MR. SULLIVAN. Yes, sir.

MR. LINDSAY. I have not seen that transcript.

MR. SULLIVAN. We will have it written up, that is the stipulation.

MR. LINDSAY. I would also like to ask if the letter addressed by Judge Smith to the Assembly constitutes a part of the record here, we want it made a part of the record.

COMMITTEEMAN ATKINSON: Yes, it is a part of the record of the Assembly.

MR. LINDSAY. We offer that in evidence at this investigation. **MR. ATKINSON.** You ask it to be made a part of the record?

MR. LINDSAY. Yes. With that we rest.

MR. SULLIVAN. Of course it is put in as part of the case. We will be entitled to prove the averments of the statement, of course.

MR. LINDSAY. We offer it as evidence.

THE CHAIRMAN. We have a copy of it here.

MR. LINDSAY. It is part of the record.

COMMITTEEMAN BEARDSLEE. It is part of our authority.

MR. SULLIVAN. It is in the nature of a pleading. Proof must be regulated according to the pleadings.

MR. LINDSAY. It is admitted it is in the record?

MR. SULLIVAN. We consider it in the record.

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~~The letter of Judge Smith is in the words and figures as fol-~~

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MR. LINDSAY. WE REST.

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----- Transcriber's Insert -----

[Transcriber's Note: This page Ends Volume I of the Impeachment Hearing.]

----- End of Transcriber's Insert -----

The Attempted Impeachment of Judge Lucas Flattery Smith
by The Assembly of The State of California.
Feb. 3, 1905 - March 19, 1905

Compiled by

Stanley D. Stevens
2021

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Section 5

Volume 2 of the Impeachment Hearing
(transcribed from the original)

The Attempted Impeachment of Judge Lucas Flattery Smith

by The Assembly of The State of California.

Feb. 3, 1905 - March 19, 1905

**In the Matter of the Investigation of Charges Against
Honorable Lucas Flattery Smith
Judge of the Superior Court of the County of Santa Cruz,
State of California, praying for his Impeachment.**

**Before a Special Committee of Investigation
consisting of Assemblymen H. S. G. McCartney (Chairman),
Thomas E. Atkinson, R. L. Beardslee,
Aubrey M. Lumley and John J. Burke.**

In Three Volumes:

Volume I — Testimony on behalf of the Memorialists.

Volume II — Testimony on behalf of the Defendant.

Volume III — Testimony on behalf of Defense.

Ellsworth F. Duden, Reporter.

**The volumes from which this transcription was made are from
the Donald Younger Collection, MS59,
Special Collections, University Library, University of California, Santa Cruz.**

**They contain the Testimony of F. A. Hihn,
Charles B. Younger, Sr. and Charles B. Younger, Jr.,
and many other prominent citizens of Santa Cruz County,
including several Members of the Santa Cruz County Bar.
Each volume bears a notation that they were presented to Charles B. Younger Jr.,
with the Compliments of Assemblyman “Hon. R. L. Beardslee.”**

**Biographical Sketches of Persons Named in these Impeachment Transcripts
are Provided in a Separate Appendix**

An extensive biography of Lucas Flattery Smith and his family is in preparation.

Annotated, corrected, transcribed, and indexed by

**Stanley D. Stevens
Librarian Emeritus
University of California at Santa Cruz**

2021

Introduction

Volume II — TESTIMONY ON BEHALF OF THE DEFENDANT.

Transcriber's Notes:

Preservation of the data that appears in the original volumes has been a primary goal. In the following "Index," numbers on the left, in the original documents, are handwritten, on the right the numbers are typewritten. The page numbers do not necessarily correspond to the text. The spacing, the page content, and the seemingly inconsistent page-numbering have been reproduced as close to the original as possible so that users of the original documents have a reference page number. In order to reduce the printed pages, however, whenever possible the content of more than one page has been combined with the next page. The actual, physical pages are numbered in square brackets at the left.

To avoid the confusion of the numbering schemes, all references in the Transcriber's Index will refer to the Page Numbers that appear in the Footer; e.g. II:56

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TESTIMONY
OF
HON. LUCAS FLATTERY SMITH, (Sworn).

BY MR. SULLIVAN:- Judge, what is your full name?

A. Lucas Flattery Smith.

Q. Where were you born? A. In Wells County, State of Indiana.

Q. When? A. In 1845, November 3rd, 1845.

Q. 1845? A. Yes, sir.

Q. You are about sixty years old? A. Yes, sir, fifty nine my last birthday.

Q. What was your profession before your elevation to the bench?

A. Lawyer; practicing lawyer.

Q. Where did you study for the profession?

A. Well, in Indiana, and at the University of Michigan, at the law school.

Q. After your admission to practice, where did you first engage in practice? A. In Texas-- southern Texas.

Q. What was your age when admitted to practice?

A. Twenty two.

Q. Did you occupy any official position in Texas?

A. Yes, sir.

Q. What position? A. I was County Attorney of Fannin County, and District Attorney of a district composed of five counties.

Q. District Attorney. How long did you occupy those official positions? A. About four years.

Q. Did you occupy any other position there?

A. No, sir; not in Texas.

Q. How long did you continue the practice of your profession

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in Texas? A. I continued until I was appointed United States Attorney for New Mexico; I was out there for a while, then resigned, and then went back to Texas again and lived there until July, 1888, when I moved to California.

Q. Were you connected with others in the practice of your profession in Texas? A. Yes, sir; I was a member of the law firm of Throckmorton and Brown, and he was ex-Governor of the State and in Congress for a number of years.

Q. When you left Texas where did you take up your residence?

A. The other partner is now a Supreme Judge of the State of Illinois?

A. Yes, sir.

Q. When you left Texas where did you take up your residence?

A. Santa Cruz.

Q. How long ago? A. I came here in December, 1888.

Q. In December, 1888? A. The 12th day of December, 1888, but I came from Oakland down here in July, 1888, and concluded this was a good place to live, and moved down here.

Q. How long did you continue practicing your profession before you were elected to the bench?

A. Up to January 4th, 1897.

Q. That is in Santa Cruz County? A. Yes, sir.

----- Transcriber's Insert -----

[Transcriber's Note: The 12th Governor of Texas was James Webb Throckmorton, who served from August 9, 1866, to August 8, 1867; He was a Democrat. Although a successful doctor, Throckmorton found the practice of medicine personally distasteful. He dissolved his

medical practice and became a partner in the law firm of R. DeArmond and Thomas Jefferson Brown.

Thomas Jefferson Brown (1836-1915) — also known as Thomas J. Brown — of Sherman, Grayson County, Tex. was born in Jasper County, Ga., July 24, 1836. He was a lawyer and partner of James W. Throckmorton and Samuel A. Roberts; he served in the Confederate Army during the Civil War; he was a member of Texas state house of representatives, 1889-92; a district judge in Texas, 1892; justice of Texas state supreme court, 1893-1911; he was the chief justice of Texas state supreme court, 1911-15; he died in office of stomach cancer, in Greenville, Hunt County, Tex., May 26, 1915.]

----- End of Transcriber's Insert -----

Q. And in 1897 were you elected to the bench?

A. I was elected November, 1896, and took office on the 4th of January, 1897.

Q. You were elected Judge of the Superior Court of this County in 1896? A. Yes, sir.

Q. Served a full term? A. Yes, sir.

Q. You were re-elected in the year, 1902?

A. Yes, sir; November, 1902 re-elected.

Q. And you have occupied the bench ever since? A. Yes, sir.

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Q. As a young man you served in the War of the Rebellion, did you?

A. I did, the 101st Indiana.

Q. You are now a member of the Grand Army of the Republic, are you?

A. Yes, sir.

Q. When did you first become acquainted with Charles M. Cassin?

A. I think it was in 1892, if I remember correctly, '92 or '93, I think it was just about the time he was a candidate for District Attorney.

Q. In the year 1892 or '3? A. I think it was the year.

Q. He was then actively engaged in the practice of his profession in this county? A. Yes, sir.

Q. Had a large practice, had he? A. Well, I do not know.

Q. For a young man? A. I do not know about that at that time, but he soon built up a good practice.

Q. And he continued active in his profession up to the time you were elected to the bench?

A. Yes, sir.

Q. At the time you were elected Judge though, he had an extensive practice in this County?

A. He had.

Q. Did he stand at the head of the profession in the County at that time? A. He did; I regarded him as one of the brightest lawyers her for his age.

Q. After your election to the bench did he practice continuously in your court? A. He did, and has up to the present time.

Q. Up to the present time? A. Yes, sir.

Q. How did his practice compare with the practice of other members of the bar of this County when you were elected to the Bench?

A. Well, the older members, like Judge Skirm, Mr. Younger, Sr., Mr. Story and Mr. Jeter, I think he compared favorably with them, while possibly not as many cases as some of the older lawyers had at that time.

Q. Did his practice increase since that day. A. Yes, sir.

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Q. How does he stand now at the bar in Santa Cruz. A. I think he stands as good as any other lawyer in the County.

Q. Have you noticed the manner in which he conducts cases in Court.

A. Yes sir.

Q. Before the court and before a jury? A. Yes sir.

Q. Have you noticed the ability displayed by him in the trial of cases before juries and what ability does he display?

A. I think he is one of the best jury lawyers in this neighborhood.

Q. One of the best jury lawyers in this part of the state?

A. One of the best jury lawyers in Santa Cruz County, and in all adjoining Counties.

Q. And how has he, in the trial of cases before the Court, what ability does he display?

A. He always got up his cases well and presented authorities well and briefed them very well.

Q. Have you on any occasion showed him any partiality or favoritism in the trial of cases before you where he appeared as attorney for any of the parties litigant. A. I have not.

Q. Has he appeared in cases before you when other parties appeared, men like Mr. C. B. Younger and Judge Skirm? A. Yes sir.

Q. In the trial of cases before you when opposed by each gentlemen what degree of success has he had. A. Well, I think those older lawyers have been a little more successful; I think Mr. Skirm has beaten him in most of the trial cases he had.

Q. Was it so when Mr. Skirm opposed him? A. Yes sir.

Q. Mr. Skirm is -- A. I would not say every case, but still some of the cases, most of the cases.

Q. Mr. Skirm is the oldest member of the bar of this County?

A. The oldest member, and a fine lawyer.

Q. And one of the oldest members of the bar in this State, isn't he?

A. Yes sir.

Q. Have you noticed the success, or do you remember the success which he met with when being opposed by Mr. Younger also an old member of the bar? A. I think the record will show Mr. Younger

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won more cases than Mr. Cassin when they were opposed to each other.

Q. In the trial of cases before you? A. I think Mr. Younger- the record will show Mr. Younger gained more cases than Mr. Cassin.

Q. For the purpose of preparing the defense of this proceeding, have you examined the record to see in what number of cases Mr. Cassin has been successful and unsuccessful when opposed by men like Mr. Skirm and Mr. Younger? A. Yes sir.

Q. And does the record show that Mr. Cassin has been less successful than either of those two gentlemen before you?

A. It does show that.

Q. When you came to Santa Cruz County Judge Skirm and Mr. Younger were considered leaders of the bar of this County, were they not?

A. Judge Skirm and Mr. Younger and Judge Story and Mr. Jeter, Jere Burke and Mr. Goldsby and others, were all men who had a very fine business, the most business I think was done by Mr. Skirm, Mr. Younger, Mr. Story, Mr. Burke and Goldsby.

Q. In the trial of cases? A. And Mr. Jeter.

Q. In the trial of cases before juries in your Court with what success did Mr. Cassin meet?

A. He has had very good success.

Q. How does his success compare with the success of other practitioners in your Court before a jury? A. Well, I think he has won more cases than any other lawyer at the bar here before juries.

Q. Before juries? A. Yes sir.

Q. Have you in the trial of any case before you, intentionally given him the better of the controversy? A. I have not.

Q. As against the law or against the facts?

A. I have not, the law or facts, or in any other way.

Q. Have you treated him with the same consideration with which you treated other counsel at the bar? A. Just the same.

Q. When Mr. Cassin was opposed by lawyers of the standing of

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Mr. Aydelotte, what success has he met with in the trial of cases before you? A. Well, he has met with very good success.

Q. Did he display better knowledge of the law than men of his caliber, Mr. Aydelotte?

A. I think so; of course, Mr. Aydelotte was a newcomer here, not being very familiar with our practice, of course he has not been so successful as Mr. Cassin.

Q. Mr. Cassin at one time was a partner of Mr. Lindsay, was he not?

A. Yes sir.

Q. For how many years? A. Well, four or five years, possibly longer.

Q. Up to what time? A. Well, I believe up to the time that I was elected Judge, possibly after.

Q. And during the continuation of that partnership, Mr. Lindsay and Mr. Cassin always got along together amicably, did they not?

A. Yes sir.

Q. And they tried many cases before you? A. Yes sir.

Q. Is that true? A. I think so. For the first two years of my term, the first term, Mr. Lindsay was District Attorney, and they were partners, that is in civil cases, and tried a great many civil cases.

Q. While Mr. Lindsay was District Attorney of this County?

A. Yes sir.

Q. And while Mr. Lindsay and Mr. Cassin were acting as partners or practiced as partners for several years, did you ever show that partnership any favoritism? A. I never did. I did hear it reported around by a few members that I favored Mr. Lindsay, I heard a few reports like that, that I was favorable to Mr. Lindsay while he was District Attorney here.

Q. Because the District Attorney had considerable to do with the management of the criminal department of the Court?

A. Yes sir.

Q. Did you at any time unduly favor Mr. Lindsay or favor Mr. Cassin during the partnership that existed for many years between

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the two gentlemen. A. I in no way favored either one of them, I always tried to treat them fair and honorable.

Q. They were then comparatively young men and pretty active in the practice of their profession? A. Yes sir.

Q. And very generally successful in the trial of cases before a jury?

A. Yes sir.

Q. Do you remember when that partnership between Mr. Lindsay and Mr. Cassin was dissolved? A. Well, it was after I was Judge, I have not the year, it was after I became Judge my first term.

Q. To what do you attribute the success of Mr. Cassin at the bar of this court while you have

been on the bench? A. I contribute it to the fact he is very careful about taking cases; he will not take a case unless he is satisfied, knows his case, he wins most every case he brings in court, and he nearly always takes a jury.

Q. That is when he representatives[sic] the plaintiff?

A. Yes sir; I can say the same of Mr. Skirm, Mr. Story and Mr. Jeter, generally in cases where they represent the plaintiff they are nearly always successful because they are careful in selecting their cases, and won't bring a case unless they are satisfied there is something in it.

Q. And isn't that the secret of successful lawyers. A. Yes sir.

Q. They take only cases that are meritorious? A. Yes sir that is the secret of it.

Q. That is, where they represent the plaintiffs? A. Yes sir.

Q. I direct your attention to specification 2. You remember that specification? A. Yes sir.

Q. That is the specification in which it [is] charged you had a certain conversation with Mr. Peter Paul Hartman. A. Yes sir, I did have a conversation with Mr. Hartman.

----- Transcriber's Insert -----

[Transcriber's Note: Peter Paul Hartmann (in re Kohl Estate) (i.e., Estate of George Kohl, deceased); Frederick Augustus Hihn, Charles Bruce Younger, Sr.

The surname "Hartmann" is misspelled from time-to-time.]

----- End of Transcriber's Insert -----

[11]

Q. Do you know Mr. Peter P. Hartman. A. Yes sir.

Q. When did you have the conversation with him. A. Well, it was sometime after there was submitted to me the hearing of his petition for the revocation of the will of George Kohl.

George Kohl died over here and Mr. Hartman claimed to be a distant relative of his, and before the year had expired and after the will had been probated, Mr. Hartman through his attorney, George P. Burke, brought an action, filed a petition to have the probate of the will set aside. On the hearing of that petition I think about every business man and every banker in Santa Cruz was brought in to prove that Mr. Hartman was not in his right mind, they claimed that Mr. Hartman was not in his right mind when he made this -- Hartman claimed that Kohl was not in his right mind and subpoenaed every business man in this town that were here a number of years -- came in and testified he was not in his right mind, but I found in favor of the will.

Q. Who prepared the will, do you remember. A. I think Mr. Younger or Mr. Heene [i.e., F. A. Hihn], I am sure.

Q. C. B. Younger, was it not? A. I know he represented Mr. Heene [Hihn written over Heene] in the contest.

Q. Wasn't the will prepared and written by Mr. Younger for Mr. Kohl?

A. That is my recollection, I would not be positive.

Q. At that time Mr. Younger stood at the head of the bar here and enjoyed the reputation of being a leader in his profession, did he not? A. Yes sir.

Q. And he was one of the attorneys in support of the validity of the will? A. Yes sir.

Q. A large number of the business men of Santa Cruz County came in and they testified to the unsoundness of mind of the testator?

A. Yes sir, thirty or forty of them, all old citizens of this town.

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Q. Peter P. Hartman was represented by who? A. George P. Burke, an attorney of Watsonville.

Q. And that case was tried by whom, by you or by a jury?

Q. By me, yes.

Q. By you? A. Yes sir, without a jury.

Q. Without a jury? A. Yes sir.

Q. Well during the pendency of that contest you did have a conversation with Mr. Hartman, did you? A. I did.

Q. Where did the conversation take place? A. In my chambers.

Q. Who was present at the time? A. Nobody but myself and Hartman.

Q. State the conversation. A. After the matter had been submitted and I took it under advisement, I promised to pass on it at the earliest date; about three or four days after it had been submitted Mr. Hartman came into the chambers where I was and asked me if I decided that matter yet; I told him I had not; he asked me when I thought I would decide it; I told him that I had several matters ahead of it but that I would try to pass on it as soon as I possibly could, with that "Good day" and he walked out. That was the only conversation that we ever had about the matter of any kind or character, I never spoke to him from that day.

Q. The paper you have there in your hand is a copy of the specifications? A. Yes sir; and his affidavit, never anything of that kind occurred.

Q. And you have in your hand a copy of the specifications.

A. I had a copy made out.

Q. It is not a statement of the testimony you are giving?

A. Not a single word of it.

Q. Did you have any conversation with Mr. Hartman in which you said to him, "I am very busy at present, as there are quite a number of cases awaiting my decision. I think you are very unfortunate,

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Mr. Hartman, for having that drunken lawyer of yours (meaning George P. Burke), to represent you in this case. It was him who spread those lies about me during the last campaign. You should have had another lawyer-- Mr. Cassin, for instance; he is a friend of mine."

A. No sir. Nothing of the kind was said.

Q. Did you in that conversation that you had with Hartmann refer to Mr. Cassin? A. No sir, never mentioned Mr. Cassin or Mr. Burke, either one of them.

Q. In that conversation which you had with Mr. Hartmann did Mr. Hartmann say to you in substance or effect "You should not let your personal prejudice guide your decisions to the detriment of any party concerned in any case, but decide the matter before you solely upon the merits of the case involved?" A. No sir; He did not deliver any such a lecture as that to me.

Q. Did he say anything to you about deciding cases without regard to any prejudice which you might have? A. No sir, he never mentioned such a thing.

Q. Did you in that conversation, or in any conversation with Mr. Hartmann say "In such case I would be more than human; however, will see what I can do for you. Good day, Mr. Hartmann."

A. No sir.

Q. Then you deny the conversation as stated by Mr. Hartmann?

A. I deny every word of it, except that he came in there and asked me if I had decided the case; I told him I had not; He asked me how soon I thought I could decide it; I told him there was some other business ahead of it, but I would do it at the earliest date possible. He then walked out. He never sat down, anything of the kind, that is the only conversation I had with Mr. Hartmann excepting to speak to him on the street since.

Q. I direct your attention to Specification 3, relating to the incident which took place in which it was stated Mr. Cassin attacked

[14]

----- Transcriber's Insert -----

[Transcriber's Note: The surnames "Dakan" and "Forgeus" are occasionally misspelled.]

----- End of Transcriber's Insert -----

Thomas Dakin in your Court. A. Yes sir.

Q. Do you remember the incident? A. I remember it very well, indeed. During the trial of Fourges against Dakin -- I take full notes in all cases tried by me, and I was taking notes in this case -- and the first I noticed of the difficulty, I was writing there taking notes, and I think Governor Jeter was on the stand, I am not sure about that, I was writing down his testimony and the first I know I heard a noise, and I looked up, first Mr. Thomas Dakin attacked, struck Cassin, that was the first lick that I saw, and then after that happened Mr. Cassin struck at him, and then William Dakin struck Mr. Cassin on the side of the head and in the meantime, of course they were all kind of clinched, I could not tell, Mr. Knight jumped up and he joined in the fracas, I could not say that he was struck, I got the Sheriff in there as quick as I could and stopped the fuss.

Q. When the fracas was all over did the parties make an explanation to you of the occurrence?

A. Yes sir.

Q. Did Mr. Cassin explain the reason of his attack upon Mr. Dakin?

A. Yes sir; he said he called him a very foul name.

Q. What did Mr. Cassin say? A. He said he called him a foul name, he would not repeat the name, a very foul name, I think something reflecting on his mother, I understood what was meant from it.

Q. That was the language used by Mr. Cassin that led you to infer it was a name reflecting upon his mother? A. Yes sir.

Q. What did Thomas Dakin say? A. I find[sic] Thomas Dakin \$50.00 and I eliminated it; he run in this way, the only two I saw strike, and then Mr. Cassin struck at him, I did not see him hit either one of them, or Mr. Knight.

Q. Is it possible that Mr. Cassin got his back? A. I did not see it. Anyhow as I say I fined Mr. Dakin and Mr. Cassin, before I

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came around to make the fine, he got up and stated that his party had applied this epithet to him and apologized to the court, then Mr. Dakin got up and apologized, saying he was provoked and aggravated to it, and I reprimanded them and said if this thing was repeated I would fine all of them to the full penalty of the law.

Q. Did you on that occasion reprimand the parties to the fracas?

A. Every one of them, Mr. Cassin included.

Q. And the fine was remitted? A. Yes sir, that is my recollection, upon their apologizing, explaining that they were in a heat of passion.

Q. Did Mr. Cassin on that occasion, after you had imposed the fine on Dakin ask you to remit the fine? A. Yes sir, he did ask me to remit it and Mr. Knight also; I think Mr. Knight was in the case.

Q. On that occasion Mr. Dakin was pretty excited was he not?

A. Yes sir, they were excited.

Q. And Mr. Cassin was very much excited also was he not?

A. Yes sir.

Q. During your long acquaintance with Mr. Cassin was that the first time Mr. Cassin ever had an encounter in your Court.

A. I think so; I think that was the first and the last.

Q. The first and the last encounter? A. Yes sir; that was my recollection.

Q. Did you at that time impose a fine upon Thomas Dakin and refrain from fining Mr. Cassin because you believed Mr. Cassin was provoked by Mr. Dakin in making the assault? A. That was my understanding; the first lick I saw struck was from Tom Dakin.

Q. While they were engaged in the actual contest at that time?

A. The first lick I saw passed when I looked up from my notes Tom Dakin struck at Mr. Cassin's head, as he did that Mr. Cassin grabbed him by his throat and then William Dakin run up and struck

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----- Transcriber's Insert -----

[Transcriber's Note: "Alzeno" rather than "Alzina" is used occasionally.]

----- End of Transcriber's Insert -----

Mr. Cassin a lick on the side of the head, very heavy, then Mr. Knight was up, whether he struck at Dakin I could not say, and Mr. Alzeno went in there and separated them, was the way I looked at it; the first lick I saw struck was by Thomas Dakin and William Dakin; My recollection is Mr. Cassin had Thomas by the neck.

Q. When Mr. Cassin explained to you that Tom Dakin had called him a vile name and that the application of that name provoked the assault, you believed Mr. Cassin did you? A. Yes sir I did.

Q. You had reason to believe it from your knowledge of the man and his character, had you not? A. Yes sir, I believed what he told me; I never found him misrepresenting facts to me and he apologized for the assault upon Mr. Dakin, and both of the Dakins.

Q. There was a great deal of feeling displayed in that case by the parties weren't there, and by counsel on both sides was there not?

A. Yes sir, and very bitter.

Q. Very much feeling? A. Yes sir, there was.

Q. Governor Jeter was an[sic] witness on that trial was he not?

A. Yes sir.

Q. Didn't the counsel opposed to Mr. Jeter and Mr. Cassin threaten to impeach Governor Jeter? A. It was a very bitter contest, it was very bitter, indeed, a good deal of feeling shown on both sides by all the witnesses and attorneys.

Q. Now I come to specification 4, just look at that specification.

A. That is not sworn to by anybody.

Q. That is a case where quite a number of the citizens of Watsonville petitioned you to deal leniently with Nathan Smith.

A. Yes sir.

Q. Now state to the Committee here, the circumstances under which you received that petition.

A. Well, Nathan was a colored man, about half witted, that was arrested and prosecuted for cutting a fellow with a knife; he was a boot black down here at Watsonville

----- Transcriber's Insert -----

[Transcriber's Note: "Governor Jeter" refers to William Thomas Jeter (Santa Cruz attorney and banker): [he was]

Appointed Lieutenant-Governor.

Immediately after the announcement of the death [in Los Angeles, on October 24, 1895] of Lieutenant-Governor [Spencer G.] Millard, Governor [James H.] Budd [Democrat] summoned William T. Jeter, of Santa Cruz, to the capitol for a conference, the result of which was that Mr. Jeter immediately received his commission and took the oath of office of Lieutenant-Governor. Mr. Jeter was the Democratic candidate for the office at the last election, but was defeated by Millard [a Republican]. The constitutionality of Governor Budd's action in filling this vacancy

by appointment is questioned and the matter is likely to be made the subject of judicial determination. Source: *Paso Robles Record* 1895 Nov 2 1:7]

----- End of Transcriber's Insert -----

[17]

and it appears he had an old knife that he cleaned shoes with as a boot black, and some party there, I have forgotten his name, came along and commenced to tease him about something, said that he was a little ticklish and Nathan gave him a cut across the shoulder and he was arrested and prosecuted for assault with a deadly weapon and he was tried here, Mr. Knight prosecuted him and George P.[sic] Fletcher, an attorney of Watsonville, defended him, and the jury brought in a verdict of simple assault, I believe it was.

Q. Assault with a deadly weapon? A. Assault with a deadly weapon, and recommended him the mercy of the Court, so within a week or so, two or three weeks, I set the sentence, at the time the sentence Mr. Fletcher appeared here and when I asked if he had anything to say why the sentence should not be pronounced, Mr. Fletcher got up and presented this petition which has been used here in court and stated to me that about 100, he said a number of the leading citizens of Watsonville presented this and asked for a light punishment; I told him, very well, he could hand the petition over to the clerk and they called a lot of witnesses to the effect that the jury had recommended him to the extreme mercy of the Court, and while I state those things were never taken in consideration by me in passing sentence, yet from the testimony in this case I would let him off with a light sentence and thereupon sentenced him to six months in the County Jail, making it a misdemeanor charge instead of a felony; but I did not consider the verdict of the jury because I never have.

Q. You mean the petition? A. The petition; when a jury recommends the extreme mercy of the Court I pay no attention to that, but consider the testimony and circumstances surrounding the case and all those things in consideration. He went out and every lawyer will remember the language, he thanked me for my kindness to him.

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Q. That is when you sentenced him to six months in the County Jail?

A. Yes sir.

Q. That was the minimum penalty you could inflict upon him?

A. I believe it was, I am not sure about that; I thought it was a fair punishment for the offense he had committed.

Q. What was the maximum penalty? A. Two years in the penitentiary; I could fine him, I might have made it a felony, that is a crime, that is a misdemeanor or felony according to the sentence.

Q. He had no means or influence, had he, or relatives or friends outside of these people who signed the petition?

A. No sir.

Q. Did you state to Mr. Fletcher or anyone else that a petition should be circulated among the residents of Watsonville to be presented to you at the time you were about to impose sentence?

A. I never did, and I did not know that a petition had been signed by anybody at all until Mr. Fletcher produced it, I never knew anything about it.

Q. Did you at the time the petition was presented to you say either to Mr. Fletcher or anyone else that you would act upon that petition?

A. No sir; he never heard me say so.

Q. When did you first see that petition? A. When Mr. Fletcher pulled it out of his pocket; when the defendant appeared here for sentence, when Mr. Fletcher got up to argue the motion for a new trial and also asked me to be lenient; That is the first time I ever saw or heard of the petition; I did not know even that it was filed until this proceeding was commenced, Mr.

Leonard hunted it up.

Q. Now I direct your attention to Specification 5 in which it is charged you arbitrarily and upon your own motion and without notice

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struck from the files of the Court the complaint in the case of Helen Younger, Plaintiff, versus Charles Moore and others defendants.

A. Yes sir, I struck that complaint from the files.

Q. You were made party defendant, in that case? A. Yes sir.

Q. That was an action for a partition sale of certain land in this County and for an accounting, was it not? A. I think so; I think that was the object of the case.

Q. Did you have any interest whatever in the land in controversy described in the complaint in that motion? A. I did not; I never had claimed any, never have claimed any.

Q. Did you at that time, or do you now, reside within the limits of the City of Santa Cruz?

A. I do now, I did not at that time.

Q. At that time you lived without the limits of the City of Santa Cruz? A. Yes sir; I lived over in East Santa Cruz.

Q. Was there any ground that you knew of that justified the making of you a party defendant in that partition suit? A. Not a thing in the world; it was done absolutely for the purpose of, in my judgment, disqualifying me as Judge to try the case.

Q. That complaint in that action involved the lands left by Mr. Moore, Thomas Moore, did it not? A. Yes sir.

Q. William Moore. How long had that estate been pending in your Court?

A. It has been pending in Court here ever since 1871.

Q. Since 1871? A. Yes sir. It will be about 35 years now. Mr. Moore was killed in October, 1871, I understand it was, before I came to this State, I mean, before I was old enough to be mentioned but I understand he was killed here in October, 1871, and the estate has been in the Probate Court ever since, except, I will explain -- I had understood that when Judge McCann and Judge Logan

----- Transcriber's Insert -----

[Transcriber's Note: Source: *Santa Cruz Sentinel* 1871 Nov 4 3:1
Homicide—Death of Wm. H. Moore.

On Monday October 30th, 1871, William H. Moore, an old and well known resident of this town, was shot and instantly killed by George Dennison. The affair happened in Ed. Briody's saloon. The shooting was caused by a personal difficulty between the parties. The ball passed through the heart causing instantaneous death. Justice Wellington, acting Coroner, held an inquest, and the evidence before the Jury, in substance, was in accordance with the above statement, and the verdict rendered accordingly. The deceased was 37 years of age. The funeral took place, on Wednesday last, from the late residence of deceased, on the coast road, one mile West of Santa Cruz. Mr. George Dennison has the reputation of being a quiet and peaceable citizen. He was bound over, to appear for examination, in the sum of \$1,000, by Judge Wellington.

Source: *Santa Cruz Sentinel* 1880 Oct 16 3:6

Asserting Homestead Against the Husband's Separate Property.

In the matter of the estate of W. H. Moore, deceased, the Supreme Court ordered the judgment and order reversed, and remanded the cause for further proceedings. This was an appeal from an order denying the application of the widow of the deceased that a homestead be set aside to her out of the property of her late husband. The petition was filed August 2d, 1877, and Thomas W. Moore, as administrator, and the children of the deceased by a former marriage, filed their objections to the granting of the petition, alleging that on November 2d, 1871, the petitioner

executed a deed to said Fred W. Moore and Charles Moore, the deceased's son, of her right, title and interest in the real estate left by her husband, and consequently ought not to be permitted to assert a claim of homestead. It was upon this point that the Court below denied her petition. In doing so, Judge Myrick believed the Court erred. The deed of Mrs. Moore was silent upon the subject of homestead. Whatever its effect as a conveyance, it was no more than to convey the interest in the property of the deceased, which she received upon his death by succession. A homestead right, or the right to have a homestead, is not a right which rests under the law by succession; it is a right bestowed by the beneficence of the law of this State for the benefit of the family. It certainly could not be said her deed conveying her interest as successor would interfere with and defeat the purpose of the law in giving the family an abiding place. Judgment and order reversed.]

----- End of Transcriber's Insert -----

[20]

were on the Bench and this Moore came here -- about the first thing I did was to formulate a set of rules and one of them was that whenever the attorneys could not agree upon the day of trial of an action or any matter, that I would set it down for trial at the earliest date suggested by either party, and unless the other party could show some good reason why it should not be set at that time, in case he did, then I would set it down at the very earliest date that the Court had a vacancy on the calendar and in that way I brought all the old cases of this Court to trial; among other was these Moore cases and for that reason Mr. Younger did not like the way I was bringing it to trial. It was an old matter and had been on for 26 years, it was brought on for trial by Mr. Houghton of Los Angeles, then for the purpose of disqualifying me, I am just as well satisfied as I am here, although I do not know it, that this was brought by Mrs.[sic] Helen Younger, the daughter of C. B. Younger, Sr., who signed in her own proper person and she started and the very day the complaint was filed there was a telegram published in the papers saying she arrived in New York and would leave the next day for Europe.

MR. LINDSAY. Never mind about the telegram. I object to the reference about the telegram.

A. (continuing). I will leave that out; Anyhow she started on her trip to Europe about a month after the complaint, well, possibly not a month, or nearly so - after the complaint had been filed, I was served with a summons, that was the first knowledge I had that I had been made a party defendant. The time I was served I think, at the same time, I was in my chambers and Judge Budd of Stockton was then living, a Superior Judge, and Judge Bennett, of El Dorado County, happened to be here and visited me in my chambers and I looked at the complaint, I looked at it a while and found I was made a party defendant and I called their attention to the fact; I noticed the

----- Transcriber's Insert -----

[Transcriber's Note: "Mr. Houghton of Los Angeles" was undoubtedly, Sherman Otis Houghton, also of San Jose, and one of the Pioneers.

C. B. Younger Sr. knew him in San Jose. Houghton and his wife, Eliza Poor Donner Houghton, survivor of the ill-fated Donner Party, were among the invited guests for Coleman Younger's 25th Wedding Anniversary in 1878. Source: San Jose Pioneer 1878 Mar 23 2:3-5

In November 1886, the Houghton family relocated to Los Angeles (San Jose Daily Mercury 10/17/1886; Foote 1888). In Los Angeles, Sherman Houghton joined the law firm of Judge Alexander Campbell and Judge Charles D. Silent. Houghton handled many cases involving extensive riparian rights, a branch of law in which he was a recognized authority (McGroarty 1923; Fain 1968). He continued to involve himself in land speculation and railroad issues, serving as director of the Los Angeles, Utah and Atlantic Railroad Company. He and his business partners laid out the town of Redondo Beach, Houghton suggesting the name (Fain 1968). In 1896, Houghton bought a 78-acre ranch at Hynes where he retired in 1903. He served

as assistant district attorney of Los Angeles between 1899 and 1901 (Shuck 1901). Sherman Houghton died at Hynes, California on August 31, 1914 (Fain 1968). ... Houghton continued to study law during the 1850s, entering the law offices of William T. Wallace and Caius T. Ryland, the sons-in-law and previous partners of former Governor Peter Burnett. Houghton was admitted to the bar of the District Court of San José in 1857, the bar of the State Supreme Court in 1859 and the Supreme Court of the United States in 1871. He specialized in litigation arriving out of Spanish and Mexican land grants. Several of the cases he carried to the Supreme Court of the United States and thus perfected the title to vast areas (McGroarty 1923). In 1859, Ryland had left the law firm; and in 1864, Wallace relocated to San Francisco. In the early 1870s, Houghton's law practice was joined by John Reynolds, a partnership that lasted until 1886 (Fain 1968; Munro-Fraser 1881; Foote 1888). Source: HISTORICAL AND ARCHITECTURAL EVALUATION For the Allen Apartment Building (a.k.a. Historic Houghton Residence) 156 East St. John Street San José, California Written by: Charlene Duval, Franklin Espinosa, Maggi Leslie, A.G. Dill. October 16, 2000 Revised: November 17, 2000]

----- End of Transcriber's Insert -----

[21]

complaint attached to the summons that had been made and I asked Judge Budd --
MR. SULLIVAN. - I want the circumstances by which you struck, concluded to strike the
complaint from the files of that action.

MR. LINDSAY. I understand - I object as hearsay.

A. I advised with them as to what the proper course to do; we agreed the proper course to do
was just what I did do.

MR. SULLIVAN. As a result of this conference with Judge Budd and the other Judge you
concluded to strike it from the files, this complaint?

A. Yes sir; for this reason. The summons served did not have any attorney's mark upon the
back of here as all our summons do, that it was a correct copy; I went and asked the clerk if the
original was filed, he said it was not; If it was I would not have served notice on that attorney to
show cause why he should not be punished for contempt, because I know it was in direct
contempt of Court, it was done for the sole and only purpose of disqualifying me and trying to
prevent that Moore litigation from going on through my Court, as I had been pushing it to go
on; The summons had not been returned of any attorney, where the attorney's name should be
on the back of it.

Q. The plaintiff was absent from the State? A. The plaintiff was absent from the State; there
was nobody to serve notice on or I would only have been too glad to have done so.

Q. You consider the plaintiff so far as you were concerned to have made a fraudulent
complaint? A. Yes sir; it was a fraudulent complaint.

Q. That was your honest belief was it not? A. That is my belief now.

Q. You have not changed your belief since? A. Not a particle.

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Q. I will ask you in connection with that Judge, did you ever refuse to transfer from your Court
any action where the attorney expressed to you dissatisfaction in the trial of a case by you.

A. Never; There is not a single lawyer in this County or elsewhere in this State when they have
come to me and have expressed that they would like to have another Judge brought in that I
would not have done so; I have done so for Mr. Younger, Jr., in a case he had with Mr. Lindsay,
while I was not disqualified, I believe Mr. Lindsay and Mr. Younger came to me and said for
certain reasons they would like to have another Judge, I asked them what Judge they would like
to have, I believe they agreed on Judge Dooling, I claim in every case I have done that, every
time.

Q. Is there a single attorney practicing at the bar of this Court who has come to you and expressed dissatisfaction with the trial of a case by you when you did not at the request of that attorney bring in another Judge to try? A. No sir, not a single instance where I did not do it, and the record here will bear witness.

Q. Do you remember the case of Duke against Evans tried in your Court?

A. Yes sir.

Q. Mr. Cassin was in that case was he not? A. Yes sir.

Q. Acted as attorney for the plaintiff did he? A. And Mr. Knight on one side, and Judge Skirm on the other.

Q. Judge Skirm expressed a desire to have some other Judge preside in this Court and try the case? A. Yes sir.

Q. You readily consented did you not? A. Yes sir.

Q. You have always readily consented have you not, to bring in another Judge, where another attorney has expressed himself as dissatisfied?

A. Yes sir, I have always done so.

Q. Is there an attorney at the bar of the Court who can point

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to an exception to that rule? A. Not a single one, and tell the truth.

Q. So whenever an attorney came to you and expressed such dissatisfaction with you as a Judge in a trial of any particular case, you were always willing to send and bring in another Judge?

A. Yes sir, I did that universally, without a single exception, a single lawyer, in this County.

Q. Now in the Forgus[sic] case, Mr. Younger, that is Younger, Jr., testified that he asked Mr. Cassin to consent to the trial of that case by another Judge. Did Younger, Jr., ask you to bring in another Judge to try the case? A. He did not, or I would have done so.

Q. If he had requested you to bring in another Judge to try that case would you have brought in another Judge? A. I would. I would not have tried his case if he had asked me to have another Judge, whether I was qualified or not.

Q. Judge, after the Supreme Court struck, or at least issued the certiorari relating to your order striking the complaint in the case of Younger against Moore from the files, did you make an order to show cause requiring Mr. Leonard and Younger, Sr., and Younger, Jr., why they should not be punished for contempt? A. Yes sir.

Q. Why did you do it? A. Well, because I believed every one was guilty of contempt of court.

Q. That order to show cause was served upon Mr. Leonard. A. Yes sir.

Q. Younger, Jr., and Younger, Sr.? A. Yes sir.

Q. You voluntarily refrained from hearing that order to show cause didn't you? A. I did. I think Younger filed an affidavit asking me to and I told him at the time it was not necessary for him to go to that trouble, if he had just come [sic] and told me he did not want me to hear it.

Q. But the legal proposition, - as a legal proposition, you had

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the right to sit and determine the question whether or not these gentlemen had committed a contempt of court? A. Yes sir, I did have the right.

Q. But you did have that right to determine that question?

A. In order that they might have a Judge that was not ---

Q. You consented that another Judge from an adjoining County should come here and hear the order to show cause? A. Yes sir I did, and he discharged them upon some technicality.

Q. Judge Dooling, he discharged them upon some technicality, some technical ground? A. And I never had another one issued as I could have done and I wished to.

Q. You never did attempt to punish them after that? A. No sir.

Q. You still have the legal right, you know as a lawyer, to punish them for contempt? A. Yes sir.

Q. Now, Judge, had you any motive whatever for striking the pleading from the files of that case other than to uphold the dignity of this Court?

MR. LINDSAY. I object to that.

MR. SULLIVAN. I will withdraw the question.

A. That was my idea and the Supreme Court on Page 684.

Q. That is the 136 Cal. 684. A. 136 Cal. 684, clearly expresses my view.

Q. And it was for, - it was by reason of the opinion of the Court in that case that you issued the order to show cause?

A. Yes sir.

Q. And attempted to punish these parties for contempt of Court?

A. Yes sir. I do not know whether it was that decision, but I had about the same opinion about the matter that the Supreme Court announced, in other words I seemed to agree with the Supreme Court upon the law of the case, I thought it was contempt of court and

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still think so.

Q. Now, Judge, I will call your attention to Specification 6.

A. In this Moore case I want to state before we leave it that after the Supreme Court set the order aside and reinstated the complaint that I called in another Judge to try the case, I would not try it.

Q. After the contempt proceeding had been disposed of? A. Yes sir.

Q. You refused to try the main case? A. Yes sir, notwithstanding I was not disqualified, and upon that trial here the fact was never mentioned, there was not a word that I ever claimed any interest or ever pretended to claim any either directly or indirectly whatever, during the trial in fact it was abandoned showing it was put in there for the sole purpose of disqualifying me as a Judge, but I called in another Judge to try it, although I was not disqualified.

Q. I now direct your attention to Specification 6, signed by Mr. Leonard and supported by the affidavit of Mr. Leonard. A. Yes sir.

Q. That is the case of Sambuck against the Southern Pacific Co?

A. Yes sir.

Q. Now before calling your attention to that case, I will ask you what were your relations, friendly or otherwise, between you and Mr. Leonard after you had struck from the files the complaint in the case of Younger against Moore? A. Not friendly, we barely spoke and that is all.

Q. Barely spoke? A. Yes sir.

Q. You remember the case of Sambuck against the Southern Pacific Company? A. When he comes to transact business of Court I treat him just the same as other lawyers; when we meet we just speak.

----- Transcriber's Insert -----

[Transcriber's Note: Sambuck v. Southern Pac. Co., 7 Cal. Unrep. 104, [71 Pac. 174]: The University Library, University of California at Santa Cruz, holds, in the Hihn-Younger Archive, a set of Briefs: A collection of briefs of cases, by Charles B. Younger and Charles B. Younger, Jr., that were argued chiefly in the California State Supreme Court, but also includes briefs of cases, also by Charles B. Younger and Charles B. Younger, Jr. that were argued in the District Court of Appeal, State of California, First Appellate District. ... Index edited by Stanley D. Stevens; Vol. 20, Items #8-12 are Appellant & Respondent's briefs in Nicholas Sambuck vs. Southern Pacific Company, Case #2554, Dec. 6, 1900 - January 7, 1903, in which Attorneys

Charles Bruce Younger Sr. and Forshay Walker represented Southern Pacific, John H. Leonard represented Nicholas Sambuck.]

----- End of Transcriber's Insert -----

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Q. Do you treat your worst enemies in just the same manner in Court here? A. That is the way, the worst enemies I have got, I have not got many, I am glad to say, I can treat them and do treat them in Court just the same as I do the best friend I have.

Q. During the trial of Sambuck against the Southern Pacific Company I understand that there was a motion made by the defendant for an order requiring the plaintiff to submit himself to an examination by the doctors of the Railroad Company? A. Yes sir; I denied the motion.

Q. You denied the motion? A. Yes sir; Upon the ground that I did not think there was any law that would authorize a Court to compel a man to subject his person to a medical examination, but at the same time while I denied the motion I stated to Mr. Leonard and the plaintiff, that in view of the fact as he claimed injuries in connection with the Railroad it would be eminently proper for him to submit to an examination by the Company's physicians, having his own family physician present at the same time, I thought it would be eminently proper, and Mr. Leonard declined to do that and the case went on for trial. This idea is not original, I would like to say, with Mr. Leonard; This idea is not original with him. After this case had been tried and the jury returned a verdict of \$6,000.00, if I recollect, in favor of the plaintiff, and after the bill of exceptions had been fixed up by me, --- it was afterwards affirmed by the Supreme Court --- Mr. Leonard came in to my chambers to get some paper signed, this case had been appealed then to the Supreme Court and he says "Well, Judge, that was a nice question we have up in the Sambuck case"; I says "Yes" "Leonard says "What do you think the Supreme Court will do with it?" I says "I don't know, that depends upon what view they take of the law, that is the only point in the case, if they sustain me in the ruling in holding that a party cannot be compelled to subject his person to a medical

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examination, they will affirm it; on the other hand if they hold, I was in error, they will reverse it, because this is an important point; Well he said he thought so too, he says, "I cannot find any authority on the point", I says, "Mr. Leonard, I never heard of but one case similar to that, and that was in Texas many years ago where the same request was made in a damage suit" I says, "In that case the plaintiff there readily consented to it, and when the Doctors were out examining him he yelled and hollered so that they soon dropped him"; Mr. Leonard kind of laughed; I says "That case went to the Supreme Court of Texas, but not upon that point, hence it would be no particular authority for you in this case because the lawyers there consented, and it went up on other points" I told him I did not know where he would find any authority for it. That is where he got the idea and this thing about that conversation occurring during the trial is false and he knew it was false when he put it in there.

Q. Did you have any other conversation with him at all?

A. I want to state right in this connection to the Committee at that time Mr. Leonard and I was on just fairly--- I just fairly spoke to him, from the time that I cited him to appear for this gross contempt of Court in filing that that complaint for the purpose of disqualifying me; he had been an enemy of mine from that time on; he was never friendly and we were never very friendly, he never sat down in my chambers; when he came in there I never invited him to sit down; I did not invite him to sit down on this occasion; When I told him about this Texas case is where he gets the idea and put this falsehood in here about me, it was not original with him.

Q. This conversation in which you referred to the Texas

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case took place long after the verdict had been rendered?

A. Yes sir; It was a long time after the case had been appealed and the bill of exceptions had been settled and the motion for a new trial had been denied. I want to state to the Committee this: During the Campaign of 1902, two years after this case was tried that Mr. Leonard went all over this County and falsely slandered me in every way he could think of, slandered me in every he could think of, and yet in all his vile slanders he never concocted that thing.

Q. That was in the election?

A. If it had been true we all know he would have had this printed in the newspapers like he had ever one of his other vile slanders; He commenced that, after that, two years afterwards, when he was trumping up these false charges against me in the Legislature.

Q. Did you ever, in any conversation you had with him say that he had a good damage suit but had ruined it by not permitting the Doctors in the employ of the Southern Pacific Company to examine the plaintiff.

A. I did not; I think I told him when he was in there, when we were talking, he would have a good damage suit, that I thought he would have a good case from it.

Q. In case of appeal?

A. If he had permitted the Doctors to examine the plaintiff because that would remove any question in the record; I did say that. It was talked of in the Chambers after them motion for the new trial; that is the only conversation I had with him about the case.

Q. Mr. Leonard represented the plaintiff in the case, and prepared the bill of exceptions to be used on appeal? A. Yes sir.

Q. I mean, Mr. Younger did, the attorney for the defense?

A. Yes sir.

Q. Mr. Leonard proposed the amendments for it?

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A. Yes sir.

Q. You settled the bill of exceptions yourself?

A. Yes sir.

Q. That was after you settled the bill of exceptions?

A. Well, Mr. Younger Sr. and Mr. Leonard came to my chambers together one day and said they had agreed upon the bill, and wanted me to settle it as they had agreed. Knowing Mr. Leonard was deficient in his knowledge of the law, I felt satisfied that Mr. Younger had over-run him, and I says, "I will take this bill and look at it and see if it is all right, I understand that you have agreed upon it, if it is not all right, I will correct it and make it speak the truth, then after I get through you can have it engrossed and filed as a bill.

Q. You examined the proposed bill?

A. Yes sir.

Q. Presented by Mr. Younger?

A. Yes sir.

Q. And the amendments presented by Mr. Leonard?

A. Yes sir.

Q. So, if Mr. Younger had over-run Mr. Leonard you would cause to be inserted in the bill of exceptions the matter which Mr. Leonard had left out.

A. Yes sir; which he had unintentionally left out.

Q. Had unintentionally left out.

A. Yes sir.

Q. That is you helped him to perfect the bill of exceptions?

A. That is what I did.

Q. You went out side of the province of the Judge of the Court, did you?

A. Yes sir. Well, the Statutes says that when the lawyers have agreed

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upon the bill, it is the duty of the Judge to examine it and make it speak the truth, and following that section of the Code I wanted to protect Mr. Leonard, and I examined the bill of exceptions; I found so many defects in it which I corrected-- certainly it would have been reversed-- I had two or three days of very hard work, during the idle time in my chambers correcting his bill of exceptions so he got the case affirmed.

Q. Do you remember the vital parts omitted by Mr. Leonard in preparing these amendments to the bill.

A. I think one of them was that he did not qualify his expert witnesses, he did not in giving the expert testimony qualify them that they were practicing physicians and graduates from the College; I do not remember exactly what the other ones were, I know I corrected it in that particular, I took my notes and corrected it to make it speak the truth.

Q. In other words you did work which Mr. Leonard himself should have done for the protection of his own client?

A. Yes sir; Knowing he was a young lawyer and unexperienced in the law I felt kindly towards him, in fact I had to refer to my notes to make the bill speak to the truth.

Q. Now the motion for a new trial was subsequently argued before you?

A. Yes sir.

Q. In which this same point was raised by the attorney for the Southern Pacific Company.

A. Yes sir.

Q. That an alleged error was committed by you in not requiring the plaintiff to submit to an examination by the Doctors of the railroad Company.

A. Yes sir; that was the only point.

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A. Yes sir, that was the only point argued and urged by the parties on that motion for a new trial.

Q. Mr. Younger argued that question? A. Yes sir.

Q. And Mr. Leonard opposed the motion? A. Yes sir.

Q. He opposed Mr. Younger. You decided in favor of Mr. Leonard?

A. Yes sir.

Q. And the judgment so far as this Court is concerned is final?

A. Yes sir.

A. An appeal was taken to the Supreme Court from the judgment, from the order denying a new trial, and the Supreme Court subsequently affirmed the judgment.

A. Yes sir.

Q. Affirmed you[sic] order denying the motion for a new trial.

A. Yes sir.

**The hour having arrived, the further hearing was continued until
to-morrow morning at nine O'clock.**

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SATURDAY, FEBRUARY 18th, 1905.

The further hearing was resumed, all members of the Committee being present, whereupon the following additional testimony was given, and proceedings had.

MR. SULLIVAN. ----- There is one of our witnesses, Mr. Forgues wants to leave the City on the 12 o'clock train, and I would like to put him on the stand out of order.

THE CHAIRMAN. --- Very well.

THE CHAIRMAN. --- That is satisfactory to you?

MR. LINDSAY. --- O, yes.

T e s t i m o n y
of
J. W. FORGEUS, Sworn.

MR. SULLIVAN. What is your business, Mr. Forgeus?

A. All around business, general business.

Q. Are you connected with any Corporation? A. Yes sir.

Q. Carrying on business in this County? A. Yes sir.

Q. What Corporations?

A. The Union Traction Company of Santa Cruz, and View Company, those are the only two that I am an active member of.

Q. You are a member of the Board of Trade of Santa Cruz, are you? A. Yes sir.

Q. Are you a Director of the Board of Trade? A. Yes sir.

Q. How long have you resided in Santa Cruz County.

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A. Fourteen years I think.

Q. How long in the City?

A. Well, just outside of the City, and in the City all the time.

Q. Always actively engaged in business?

A. No sir; rested about -- that is I was an invalid when I came here.

Q. Do you know Judge Smith? A. I do.

Q. How long have you known him? A. Well since before he was a Judge here.

Q. You knew him as a practitioner[sic] at the bar? A. Well, hardly.

Q. When he became a Judge you became acquainted with him?

A. Yes sir.

Q. And you watched his course on the bench from the time of his first election up to the present time?

A. I have.

Q. What have you noticed in the management of his Court affairs?

MR. LINDSAY. I object as incompetent testimony, irrelevant and immaterial; as to a matter concerning which he cannot be qualified to testify, even if his opinion were admissable.[sic]

MR. SULLIVAN. These specifications charges Judge Smith with undue favoritism[sic] towards Mr. Cassin, and that charge is based upon five or six affidavits which run as follows: -- "That affiant knows it is common rumor and common talk among the citizens of said County that Judge Lucas F. Smith unduly favors one Charles M. Cassin, a practicing lawyer in the Superior Court of said County, and shows said Cassin great partiality and favoritism in cases in which said Cassin represents one of the litigants; That affiant knows that said partiality and favoritism of said Judge Smith toward and for said Cassin, is and has become so well known that

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it has created a general impression that to succeed in that Court before said Judge Smith it is necessary to retain said Cassin.”

THE CHAIRMAN. I do not think we will receive any evidence on the facts stated in those affidavits.

MR. SULLIVAN. You received evidence to the effect that the Judge did show favoritism to Mr. Cassin.

MR. LINDSAY. Particular acts and facts but not common rumor; We offered evidence to that effect but the Committee had come to the conclusion and did decide it was not admissible[sic]; If it was not admissible[sic] in the form of an allegation, of course similiar[sic] evidence cannot be admitted to deny the allegation.

MR. SULLIVAN. I am asking him what he has noticed.

MR. SULLIVAN. Q. Have you been in the Court Room, in this Court on many occasions.

A. Well on several occasions.

Q. Have you been present during the trial of cases when Judge Smith presided? A. That is, some.

Q. Have you noticed his treatment of Counsel appearing before him?

A. Yes sir.

Q. What have you observed in his conduct?

A. Why, I thought straightforward and fair to all parties concerned.

Q. Have you yourself been interested in litigation that has been tried by him. A. I have.

Q. Has he decided adversely to you at any time.

A. Well, in the Big Creek case he decided an injunction which I did not like very much.

Q. You are interested in the Big Creek Corporation?

A. No sir-- at that time.

Q. At that time you say he granted an injunction which displeased you very much?

A. Well, I am not criticizing the Judge but I did not want the injunction.

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Q. In any litigation you have been interested in, has he acted fairly and honestly? A. Yes sir.

Q. Do you know his reputation in this community as a Judicial officer?

A. I think I do.

Q. What is his reputation?

MR. LINDSAY. I object.

MR. SULLIVAN. We submit we have a right to show his reputation.

MR. LINDSAY. I submit you have not.

THE CHAIRMAN. All you expect to do is to introduce evidence, and dispose of these specific acts?

MR. SULLIVAN. We want to prove his reputation is as a fair and partial judge since these charges are made his personal character, since they effect his standing as a Judge, we submit under the rules of evidence we have the right to show his reputation as an upright, honest and impartial judge, and I desire to bring here representatives of this Community, people engaged in every walk of life to show the standing of Judge Smith as a Judicial officer, of course, you have a right to limit the number of witnesses.

THE CHAIRMAN. I think the Committee will receive the evidence.

MR. SULLIVAN. These charges, charge him with conduct which is equivalent to moral turpitude; if a person is charge with a crime his reputation for integrity is always permitted; if a woman is charged with unchastity[sic] her reputation for chastity is admissible [sic].

MR. LINDSAY. While I understand the investigation is to be conducted under the rules of

evidence I do not want to sit still and concede that Mr. Sullivan has stated the rule correctly, for he has not, it is not and never was the law that reputation for truth, honesty and integrity, or for any other trait of char-

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acter is admissable [*sic*] when a person is accused of crime, or accused of anything involving moral turpitude[*sic*]; it is and always has been the rule of law that a person's reputation is considered to be ordinarily fair until it is attacked by evidence, and then of course evidence as to his good reputation, evidence in support of his good reputation can be produced, and all we ask is that the investigation be limited within the scope of inquiry subject to the rules of evidence.

THE CHAIRMAN. The Committee has decided to receive the evidence, a certain amount of this evidence, as to the Judge's reputation while in office as a Judge, not otherwise.

(The Reporter read the question as follows: — "What is his reputation").

A. Why, I think him to be a fair and honorable Judge.

COMMITTEEMAN BURKE: How do you arrive at that opinion Mr. Forgeus?

A. Well I have been interested here in several different cases, litigation, and I employed Mr. Lindsay right after the election when the feeling was very bitter between them and Mr. Lindsay won out for us before the Court, and Judge Skirm I employed in a litigation, and we got the fairest kind of treatment; I employed Mr. Cassin; I could not say that we received more courteous or better treatment from him by employing one attorney instead of another.

Q. At the time of the election of Judge Smith you say there was a feeling of bitterness existed between Judge Smith and Mr. Lindsay.

A. I only speak in a general way.

Q. A good deal of hostility, was there?

A. The contest before the election was bitter, I do not know about personal feeling.

Q. After this election you and your Corporation employed

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Mr. Lindsay to represent you, did you?

A. Yes sir we did.

Q. And Judge Smith accorded to Mr. Lindsay, the gentleman who had fought him the same treatment and courtesy which he accorded to the other gentleman. **A.** We were successful in our litigation; I think we were well satisfied.

Q. Were you the plaintiff in the case of Forgeus against Dakin?

A. I was.

Q. Were you present in Court during the trial of that case; were you present at the time the litigation took place, between Mr. Cassin and Mr. Dakin. **A.** Yes sir.

Q. Where were you sitting at the time?

A. There were five of us sitting right along as you gentlemen sit there; I sat about where the Judge is sitting; Mr. Knight was next to me, Mr. Cassin where you are; Mr. Younger where Mr. Cassin is, and Mr. Dakin where Mr. Leonard is.

Q. Mr. Dakin had been on the stand under a severe cross-examination, had he? **A.** Yes sir.

Q. He was cross examined by Mr. Cassin, was he?

A. I believe, yes, by Mr. Cassin and Mr. Knight both.

Q. After Mr. Dakin had left the stand did you observe his conduct.

A. Yes sir.

Q. What did you observe him do or say.

A. Well I was sitting side ways to the table looking so, at Mr. Knight and Mr. Cassin, as Mr.

Dakin came down he sat beside Younger and reached around, turned like, towards Mr. Cassin and applied, called him a son of a bitch. I was looking straight at him when he called him a son of a bitch.

Q. As near as you can recollect —

A. I recollect it, I know he did that; the whole thing was very warm here for awhile, every body was excited; I believe I was per-

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[per]fectly cool though for I was absolutely sure, I felt absolutely sure nothing could go wrong with my litigation because I had everybody beat and they could not take it away from me.

Q. You say you heard Mr. Dakin apply that epitept [*sic*] to Mr. Cassin?

A. And Mr. Knight was sitting there; Mr. Knight was sitting next to me.

Q. What did Mr. Cassin state to him then.

A. He told him not to speak to him.

Q. Then what did Mr. Dakin say? A. Well I did not pay attention right there, I understood there was something that had happened, as I say, I looked around Mr. Cassin was up and Mr. Knight and caught him by the coat tail, hanging on to him.

Q. What did Mr. Cassin do when Mr. Knight held on to his coat tail?

A. There was a table I think standing here and Mr. Dakin ran around the table here, and Bill Dakin jumped and came running through the gate and grabbed Cassin around the back of the neck and pushed him his head under the table, and while his head was down under the table Tom gave him three or four digs on the head like that, hit him once back of the head and just then Noke Alzona [i.e., Enoch Alzina] came in and pulled Bill Dakin off, and then he struck Bill once and knocked him back several feet from him.

COMMITTEEMAN BURKE: Q. How many blows did Cassin strike all together.

A. I only saw him strike one blow when he first jumped up. I know he did not hit him.

MR. SULLIVAN. After the fracas was over what did Mr. Cassin do and say?

A. He got up and apologized very profusely to the Court and attorneys

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and every body present.

Q. And what did the Judge do?

A. I do not recollect just what he said, but he talked rather severely to them all and imposed a fine on some, and Mr. Dakin asked him to remit the fines —

Q. On Tom Dakin and Bill Dakin?

A. Yes sir, he remitted the fines.

COMMITTEEMAN BURKE: Q. Did Mr. Cassin apologize after the fracas or during the argument?

A. At once, as soon as things got straightened out on their side.

MR. SULLIVAN. As soon as he cooled off.

A. Well he did not stop to cool off, he apologized right away and said why he had done this.

Q. Did he explain to the Court the provocation of the assault which he made?

A. I think the language he used was that Dakin that supplied a vile epithet that reflected on his mother.

Q. Upon his, Cassin's mother?

A. Yes sir.

Q. And he gave that to the Court as an excuse for the assault.

A. He did; I know he was very much humiliated.

Q. What is that.

A. He acted very much humiliated by his actions.

MR. SULLIVAN. That is all.

Cross Examination

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MR. LINDSAY. Mr. Forgeus, you say that Judge Smith decided one matter against you.

A. In that Injunction Suit; he allowed the injunction, that is the only — I have only had that and one other case personally here.

Q. There has been some litigation connected with the Corporation which you are interested in; that is true is it not?

A. Well, you represented me, the time you represented me.

Q. Not now? A. The Big Creek litigation is all the litigation pending, the Corporation I was interested in.

Q. Simply one action in which the Big Creek was interested in.

A. Yes sir.

Q. The injunction you speak of was a demurrer to the injunction was it not? A. Yes sir.

Q. A motion filed. A. Yes Sir.

Q. When the matter finally came on for hearing the case was decided in favor of the Big Creek Company.

A. Mr. Lindsay you represented me and told me it was a good ground I think for the Injunction.

Q. Of course my advice was good, but the injunction was dissolved was it not? A. Yes sir, it was granted.

Q. But the demurrer to the injunction was granted, the demurrer to the complaint. A. Yes Sir, it was embarrassing [sic] too at the time.

Q. Certainly all those cases are embarrassing [sic]. Now Mr. Forgeus there is no reason for including me in the evidence of this case but I am going to ask you a question that I otherwise would not have asked. I am going to call your attention to a case to which you have referred which was tried subsequently to the election of Judge Smith, that is the case of —

A. That is, Billing against the Big Creek.

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Q. Mr. F. W. Billing was the plaintiff — Of course we are not going into the case. Isn't it not a fact Mr. Forgeus since you have referred to the matter yourself that Judge Smith expressed great satisfaction that I was employed as your attorney in that case?

A. I do not recollect that, Mr. Lindsay.

Q. You do not recollect it?

A. No sir, I do not recollect it; I think the Judge said something one time about you, but it did not cut any figure with our litigation. That did not win the litigation. We succeeded.

Q. Undoubtedly we ought to have succeeded, but that is the fact is it not?

A. Yes sir; I do not recollect just what he spoke of you.

MR. LINDSAY. That is all.

MR. SULLIVAN. That is all.

T e s t i m o n y
of
HONORABLE LUCAS F. SMITH
Resumed.

MR. SULLIVAN. We will now take up Specification Seven wherein it is charged the Judge “has been guilty of great oppression, and tyranny and mal-administration in the affairs of the conduct of his office.” Judge, you rendered a decision in the case of Trafton vs. Quinn, did you?

A. Yes sir.

Q. That was an election contest, was it not?

A. Yes Sir. Over the office of Mayor of the City of Watsonville.

Q. At the time that Contest was tried, was the amended law in force.

A. Yes Sir.

Q. Relating to the Ballots. **A.** Yes sir it was.

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Q. And distinguishing marks upon ballots? **A.** Yes sir.

Q. Eliminating, or at least overruling or setting aside the law as declared by the Supreme Court in many decision prior to the amendment.

A. Yes sir: in other words the new law provides that no marks or grease spots upon a ballot should be regarded as distinguishing marks unless it is affirmatively shown they were placed there for a purpose; that is a new law.

Q. And that is the law in force the time you tried the contest?

A. That is the law in force the time I tried the contest.

Q. And did you consider that law as one declaring a rule of evidence?

A. Yes sir and still think so.

Q. And so by reason of that law then in force you rendered your decision in the case of Trafton vs. Quinn. Did you know the plaintiff and defendant in that action?

A. Both of them.

Q. Were they both friends of yours?

A. Mr. Quinn was a particular friend, and Mr. Trafton, the plaintiff, I did not know so well, and Mr. Quinn was a friend, both of them were friendly to me.

Q. Both of them Democrats?

A. Both of them Democrats, and both good friends of mine.

Q. Mr. Trafton is the Brother of the Sheriff of this County.

A. Yes sir, another good friend of mine.

Q. And during the progress of the trial of that case, did Mr. Cassin argue before you that the ballots should not be received in evidence, because they had not been kept by the proper custodian?

A. Yes sir he did. He made quite a strong

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showing in that regard.

Q. And that they had not been kept in the proper manner?

A. Yes Sir, and had been kept so they were accessible.

Q. Mr. Cassin argued vigorously in favor of the contention, and Mr. Wyckoff argued vigorously against him.

A. Yes sir.

Q. You decided that contention in favor of Mr. Wyckoff, did you not?

A. Yes sir.

Q. Did Mr. Wyckoff’s threat during the trial on that day, during the argument affect your judgment in the least.

A. Not a particle.

Q. If those ballots had not been received and if you had not decided the contention as to the

admissability [*sic*] of those ballots in favor of Mr. Wyckoff's side, could the decision have been rendered in favor of the appellant in that case.

A. No sir, it could not.

Q. The decision went on the point that the old law governed that contest, isn't that so?

A. Yes Sir.

Q. That may [many?] of the ballots [*sic*] that had been voted in favor of Quinn were invalid because they contained distinguishing marks.

A. That was the idea exactly.

Q. Which, under the new law, did not invalidate the ballots.

A. Yes Sir.

Q. I notice there is another case referred to here, the case of the People against Buelna.

THE WITNESS: Before you read that case, if I had

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sustained Mr. Cassin's theory that the ballots had not been properly kept, if I had sustained this theory and taken no evidence -- the case went in favor of Mr. Quinn, Mr. Cassin's client, but I allowed the ballots to be counted and therefore allowed Mr. Wyckoff the benefit of the count and also of appeal.

Q. You gave Mr. Wyckoff the benefit of a fair statement, did you?

A. Yes, sir.

Q. And he got one? A. Yes, sir.

Q. Expedited the settlement of the statement on appeal, did you?

A. Yes, sir; waived other business in order to accommodate him.

Q. And Mr. Quinn went out of office long before his term expired, didn't he? A. Yes, sir.

MR. LINDSAY. Do not lead the witness so much.

MR. SULLIVAN. Now direct your testimony, your attention to the case of the People against Buelna, that is that particular incident referred to where you insisted upon trying the case with open doors?

A. Yes, sir.

Q. How did you come to try the case with open doors, and not in public? A. Well, because the Supreme Court decided, they held in a very late decision that all criminal trials must be public, and the District and I examined the authorities upon that and we were fully satisfied it could not be held with closed doors without the case being reversed by the Supreme Court, and so for that reason I denied the defendant's attorney's request to have it tried with closed doors, but we did provide that when the lady witness was on the stand that she would be placed here so she would not face the audience and her testimony was said so they could not hear her testimony, she spoke in a low tone, but so the court and jurors could hear her, we had her facing this way instead of taking the witness stand here, in other words the District Attorney and I favored her all we could.

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Q. The only reason? A. The only reason was because the Supreme Court said in the case of the People against [Horace G.] Hartmann, 103 Cal. [242] [1894] — have held straight out that the word "public" in the Constitution, article 3, section 1, I believe, means a public trial, that is it must be taken, everything taken into consideration, the size of the court room, the proper parties to be there, the court has no right to exclude the public, the Supreme Court having held that way and reversed that case, because the Superior Judge did exclude the public - and upon that point alone.

Q. Now Judge, in the case of the people against Buelna, by whom was the defendant first

represented? By Mr. Wyatt and Mr. Zabala, of Salinas.

Q. Of Salinas? A. Yes, sir.

Q. They represented the defendant upon the arraignment, did they?

A. Yes, sir; and preliminary trial, and also upon the arraignment, and also had the case set down for trial, I left it to them to select their own date, which was three or four weeks ahead in order to suit their convenience. Their names were entered here as attorneys of record, and the case was set down for trial at their request and their time selected, and also the forty jurors called for, a drawn jury at their request made returnable at that date. Then, on the morning of the trial — the case was set down for trial — the jurors were present, the witnesses and the District Attorney and everything ready for trial, excepting Mr. Wyatt and Mr. Zabala did not appear. I continued the case from 10 o'clock over to 2, thinking they had missed the train, knowing they lived at Salinas. At 2 o'clock I went in to the clerk — in the meantime I requested the clerk to communicate with them by telephone to see whether they were coming, what was the matter, and they informed him that they had withdrawn from the case, and they never had informed him nor the District Attorney, nor the sheriff, or anybody else, not even the defendant that they had withdrawn. I therefore appointed Mr. Mc-

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[Mc]Pherson and Mr. C. C. Houck — two young members at the bar — to defend Mr. Buelna, and then had a citation issued to these gentlemen to appear here and show cause why they deserted this defendant on the morning of the trial after the mother had informed me she had paid them a portion of their fee and had the money here present to pay the balance according to contract. On that information I cited them to appear and show cause why they should not be punished. The next morning they did appear in court here and I informed them what had occurred, they had represented the defendant all in the preliminary trial, that they had represented him in this court room when he was arraigned, when he entered his plea, that they had represented him when the trial was set, that it had been set down at their request at a time selected by them, four or five weeks ahead, jurors had been summoned, drawn and summoned at their request, and all that, and I asked them what they had to say about it — well, I did not have the time to hear the matter, because the case — the jurors were here — I told them under those circumstances that I would appoint them to assist these two young lawyers in defending the case; and after I made that order, they each one said they would not, absolutely said they would not obey the order, thereupon, of course, I had to confine them for contempt of court for disobeying the order of appointment. Then that evening after the jury — I adjourned early in order to give Mr. Houck and Mr. McPherson time to go over their testimony and consult with their witnesses — the contempt matter was tried; they admitted that they had been derelict in their duty in not notifying the sheriff, nor the District Attorney, nor me, of their withdrawing from the case so I could appoint other attorneys in time to go on with the trial and save this court the useless expense of over \$100 a day that it would cost the county. So that matter of fifty dollars fine — they were remanded to the custody of the sheriff and with instructions if they deposited the money they could go. So it was habeas corpus in the Supreme Court and

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they were out of jail; being remanded they were released by putting up the money to the sheriff, so that evening the other matter was heard. Mrs. Buelna, as the record here will show, testified that she had employed them at a stipulated fee for specified contract, and that she had had paid them \$55, and was to have the balance of the money here in court the morning of the trial; she testified she did have the money tied up in a handkerchief that very morning and that these parties had simply gone back on her and disappointed her. They testified that a few days before

the day of the trial they had written Mrs. Buelna a letter and informed her it was a worse case than they thought it to be and they would have to charge \$500, I understood, or \$200, I forget now, and unless that was paid they would not be here, they had written a letter; Mrs. Buelna testified she never received the letter; the defendant testified he never received notice of their withdrawing from the case, so that matter I allowed to pass, and abided the action of the Supreme Court on the other habeas corpus business. After the proceedings were heard, Mr. Wyatt and Mr. Zabala both came to my chambers and told me, at any rate apologized for what occurred, that they believed that they had done wrong in not notifying me or the District Attorney or the Sheriff or the Clerk of their withdrawal from the case so other attorneys could be appointed to act, and the county not to be put to the useless expense of having nobody here on the morning of the trial, that they regretted it very much, and I must say, I think as they say, it was an oversight, because they are highly respected, honorable and upright attorneys, and I do not think they would do such a thing as that intentionally, but they said it was simply an oversight that they did not notify somebody of their withdrawal from the case on the morning of the trial.

Q. When you appointed McPherson and Houck to represent the defendant in that case, was a motion made for a continuance?

A. Yes. Mr. Houck got up and said that he and Mr. McPherson were

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not familiar with the facts, and I informed him that we would organize and select the jury, as the jurors were all present here, and then I would give them all the time they desired during the trial to subpoena witnesses and to examine them, even if it was necessary after they had put on what witnesses they had; if there were any other witnesses they desired to be had, that I would postpone the case long enough for them, they could have all the time, they would have ample time — at their request during the trial, quite a number of times, I adjourned court two or three hours earlier than I would otherwise do in order to give the young gentlemen time to consult with any witnesses, or anything of that kind.

Q. Was any complaint made of their failure to get other witnesses at the end of the testimony?

A. Not a particle; they got all their witnesses introduced; they conducted the case just about as well as any attorney would conduct it — I think they did remarkably well.

BY COMMITTEEMAN BURKE: Did they willingly accord to the going on with the trial?

A. O, yes; Mr. Houck said that they would like to have a continuance at first, at 2 o'clock in the afternoon, because they were not familiar with the testimony taken on the preliminary examination, had not consulted the witnesses; I told them we had forty jurors here present, and that we would get a jury and they would have time to consult witnesses, and after the evidence of the people, and after their testimony was all in, if they heard or knew of any witnesses, I would postpone the trial long enough for those parties to be subpoenaed.

Q. Did they express satisfaction to that statement?

A. Perfectly satisfactory, and I did extend the time; the next day we introduced some testimony and I adjourned early in the afternoon for them to consult the witnesses; I gave them numerous adjournments during the trial; I think the trial lasted four or five days when it should have been tried in two. Then when the testimony was all in,

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----- Transcriber's Insert -----

[Transcriber's Note: The surname "Labish" is frequently reported as "Lavish".]

----- End of Transcriber's Insert -----

and before it was closed, I asked them if they wished any additional time now in order to get any other witnesses they saw fit, and they said no they introduced all the witnesses they had.

Q. You know Mr. Gardner, do you? A. I do.

Q. W. M. Gardner? A. Yes, sir.

Q. How long has he been practicing in your court?

A. Practicing in my Court?

Q. Yes, sir. A. Well, he has been here a few times since I have been here.

Q. Has he had much practice here? A. Well, not so very much; he has appeared here a few times; he and Mr. Gardner has done some business in my Court.

Q. He represented the defendant in the case of the People against Lavish? A. Yes, sir; I appointed Mr. Gardner and Mr. Martin.

Q. Do you remember the circumstances under which you appointed Mr. Gardner and his partner in the case? A. Yes, sir.

Q. State of circumstances. A. On the morning of the trial, or before, I am not sure, I think the defendant was in jail, and Mr. Burke and the other lawyer that was employed to defend him they did not appear in the case, possibly the morning of the trial, and I appointed Mr. Martin and Mr. Gardner to defend him the same as I did in the case of Mr. Houck, as I do in all cases of this kind; I said to them that they would go on and get the jury, and then I would give them all the time they desired to get additional witnesses, which I did. In that case the trial took four or five days when it should have been tried in one, simply an assault to commit murder, very few witnesses, in order to give them all the time, I gave them all the time they wanted, all they asked for, both to prepare their instructions and get their testimony; at the end of the trial I asked them if they wanted any additional time I

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would adjourn the case over for a day or so in order to procure any other witness, they had none, they were perfectly satisfied; they introduced all the testimony and everything - - -

Q. The case was one for an assault with a deadly weapon, was it not?

A. Yes, sir; and the Jury I think convicted him of an assault with a deadly weapon.

Q. Or simple assault? A. Well, I am not sure what the conviction was.

Q. What was the sentence? A. Six months in the County Jail. I will state I would be glad to have him come in and give his testimony in this case; he came and thanked me for letting him off as light as I did; was satisfied; he was pleased with his treatment; he came in court and thanked me before he went out; I have seen him numerous times. I know I would be glad to have him come up and testify before this commission. Now, I want to state that Mr. Gardner and Mr. Martin, they had but little criminal business, and under my rules the instructions are required to be handed up before the argument, and I never insist upon that rule in a criminal cases — lawyers and attorneys to send up instructions any time up to the time of the commencement of the argument. In this case Mr. Gardner, just about the time I commenced reading the instructions asked for by the District Attorney, Mr. Gardner had just before that brought in quite a number of typewritten instructions and says “Judge, here are instructions given in the case of the People against Plyler,” he says, [”]they have a bearing on this case, I would be glad to have you give them”. I says to Mr. Gardner I did not have time to read them over, “I am just about commencing to instruct the Jury now, it will take me some time to examine them, if you will assure me they are the same instructions I gave in that case” — I know I went over them very carefully with them, I examined them with great care and knew that

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the law was correct - so with the understanding, with the assurance they were the same, a correct copy, I started to give the instructions and read them to the jury, and after I had read this one he refers to in the Plyler case, that I knew was not the law, I found I had been deceived;

I do not say he intentionally did it, but I found I had been misled, deceived.

Q. You believed at the time he intentionally deceived you?

A. I believed so; I believed it was a trick by him to deceive me. After the jury went out I did state, call his attention to the fact of this deception and said to him “I do not like to be treated in that way. On Mr. Gardner apologizing he did not intent it, there was not anything more to do, I never fined him or anything else, he apologized to me, assuring me it was an honest mistake of his; there was nothing more said about it. The jury convicted the defendant, and I left him off with a county jail sentence instead of the penitentiary and Otto [Labish] was more than please [*sic*] with it. I remember the second day of the trial, Mr. Martin, he said, he called my attention to the fact that Mr. Gardner was sick and I asked him whether he felt like going on with the trial; he consented, said he would go on with it; he did very well indeed with it, and Mr. Otto [Labish] was pleased with his defense in that case; I think he will tell you so.

Q. Did Mr. Martin, the associate of Mr. Gardner, ask for a continuance on the day Mr. Gardner was sick?

A. No sir; he said he did not desire a continuance; he said he was perfectly willing to go on; he put in the testimony as well as any other man could have done at the trial.

COMMITTEEMAN BURKE. How many days was Mr. Gardner absent?

A. Only one day.

MR. SULLIVAN. What is that. A. That is my recollection, that Mr. Gardner was absent one day, and I think that was the second day, but I would have continued it if Mr. Martin desired; he said

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he would go on with the testimony.

MR. SULLIVAN. Judge, you heard Mr. Wyckoff’s testimony concerning what he observed between you and Mr. Cassin in the case of Reanda [*sic*] against the Watsonville Light and Water Company?

A. Yes, sir. I do ask lawyers to go in my chambers and beckon them in there since I have been Judge. I would do it now. I ask lawyers, if I want to see lawyers in my chambers, if I am holding Court I would request them I would like to see them in my chambers after adjournment; if the court is not in session I would go and speak to them that I would like to see them in my chambers. I never adjourned court for Mr. Wyckoff or anybody else, or Mr. Cassin there, to go and sit in my chambers. I would like to explain in connection with that, that Reando [i.e., Reanda] case was tried before a Jury and Mr. Wyckoff lost it, he seemed to be very much disappointed, of course I could not help the verdict of the Jury. I gave all the instructions, my impression — allowed some of Mr. Dickerman, Mr. Torchiana and Mr. Cassin — and after the case was over, I adopted the findings of the jury because I believed they were correct, I believed it then and I believe it now, and the matter went up to the Supreme Court to determine whether I am correct. Mr. Wyckoff — Mr. Dickerman and Mr. Cassin prepared the findings in that case, they were quite lengthy — Mr. Wyckoff asked me if I would allow them long enough to file amendments; I says “how long do you want”? He says “I would like to have ten days”, I says “Very well, I will allow that”. I gave him the others to examine, invited him in the chambers to examine them.

Q. How soon after he got them? A. Yes, sir; the very next time I saw him. He waited for nearly thirty days for Mr. Wyckoff to file those — in fact it was almost thirty days. He did not offer any, I called his attention to it once, he said he did not think they had anything to do with it, simply thought they were going

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to take it to the Supreme Court. So I filed those findings, judgment and conclusions of law and they were filed here, and sometime afterwards Mr. Torchiana, the attorney for the plaintiff, moved to have them set aside for the reason, because notice had not been given, without his request, without any opposition from Mr. Wyckoff the findings and judgment were set aside; then they prepared another set of findings; and I had the lawyers from both sides in my chambers — Mr. Wyckoff, Mr. Dickerman and Mr. Torchiana — to settle the second set, finally we got those settled, and I filed those, they were final.

Q. Were they the same, substantially the same as the original?

A. I think so; I would not be positive about that whether they were or not.

Q. What did you do with the original findings?

A. Well, the others had been withdrawn at the request of Mr. Torchiana who won the case.

Q. Isn't this the fact, after the original findings were filed, in order to have the record straight, the original findings were withdrawn and the same findings were filed? A. Yes, sir; I think that is the fact. I think that is exactly correct, it slipped my memory because I have so many cases, I cannot remember all. Mr. Wyckoff, I might mention, is honest in the honest. It was myself, I asked him to come in. I do sometimes step to the door and say "Mr. Wyckoff" or whoever I want, "I want to see you in here about some business;" outside of that I never, never, invite any lawyer in my chambers; it keeps me very busy to keep up with the business of this county, the way I attend to it. I have to work on Saturday, try cases on Saturday sometime to keep up with the law business of this county.

Q. During the last trial of the case of Rameriz [*sic*] against the Big Creek Power Company, Mr. Leonard and Professor Montgomery testified to a certain incident which occurred, in which one of the jurors was charged with corruption. State what you remember about that incident.

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A. The case went along very nicely, Mr. Leonard representing the plaintiff Rameriz [*sic*] and Governor Jeter and Mr. Cassin representing the Big Creek Power Company; they got along very nicely with the case until the argument commenced; when Mr. Leonard got up to argue his case, after a very few remarks, why he stated in a very, I thought a very forcible way that he had been informed there was a traitor upon the jury, I think he called him a Judas Iscariot, something of that kind, a traitor had been trying to get money, or had received money to render a verdict in that case, he made a very severe accusation against one of the jurors without naming him; he did not ask me to stop and investigate the corruption of this juror, but he went on with his argument, and Mr. Cassin says "name your man"; he did not do so and went on with his argument. While he was making this accusation it passed over my mind as to what course I should take in the matter, whether I should then stop and investigate this charge made by Mr. Leonard, or whether I should allow the trial to go on and consider that matter on motion for a new trial; I knew if any juror had been corrupt, that I should set aside the verdict on a motion for a new trial, which is just to both parties. So as Mr. Leonard did not request me to stop the trial, nor nobody else requested me to investigate the charge of corruption against this juror, I permitted the trial to go on. They went on until it was concluded, and the jury went out and in a few moments brought in a verdict for the defendant company. After the verdict had been rendered and recorded, I was just about speaking to the jury and to counsel, all being present, that this charge of corruption had been made and I was going to have ———

MR. LINDSAY. You say you did it.

A. I was just about to speak to them, when Mr. Wagner, one of the jurors arose and said "If your Honor please, there has been a very serious charge of corruption made against one member of the jury, and

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we now demand in protection of the rest of the jurors that that charge be fully investigated and the guilty one punished, if there is a guilty one on this jury". I says "Mr. Wagner, I was just going to speak about that matter myself, I think that suggestion is eminently good, and I am going to investigate that matter thoroughly and find out exactly the truth before I let up in this matter". Then Mr. Leonard was sitting in the front of the bar here, I says "Mr. Leonard, you made this charge openly to this jury, now I would ask to have you sworn and give us the source of your information"; Mr. Leonard says "I will not be sworn". I then says, "Mr. Leonard, you made this charge, as an officer of this court, and as an attorney of this court you have accused one of these jurors with open and notorious corruption, it is as little as you or any other honest man could do, you ought to be glad to be sworn, and state all you know about the accusation that you yourself have made", well, he says "Sir, I will not be sworn." I says, "I want you to distinctly understand that this matter is going to be investigated, you may refuse to be sworn here, but I am going to have you called before the Grand Jury, and have your conduct in connection with this matter thoroughly investigated, I want you to remember that, you will have to testify about this matter before I get through with this investigation.

Q. How long ago was that? A. This was on the same day.

Q. It was some time before these charges were formulated against you?

A. Yes, sir, a short time — in November.

Q. Last November? A. I think so. It was when the case was tried, I believe it was November, was it not, Governor Jeter? November?

The charges were, some of them were sworn to in December, and some of them afterwards.

Then I says — I will go on, shall I go on?

Q. Go on. When Mr. Leonard refused to be sworn, I turned to the jurors, I says "gentlemen, the accusation has been made against all of you, but if you wish to be sworn, if anybody has ap-

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[ap]proached you, or has made any improper proposition to you of any kind, and you wish to be sworn, I will give you an opportunity to do it. As Mr. Leonard refuses to be sworn and give us the source of his information". Upon this, Mr. Leonard arose, he said if Your Honor please, I must tell you I do not know the name of the juror who was approached," he says further "but if you honor will give me", he says, "I am not at liberty to give the name of my — the one who furnished me the information, but if your Honor will give me a few moments time I will go out and get his promise to divulge his name and inform you the name of the juror and the name of my informant". I says "very well, Mr. Leonard, go right along, we will wait for you". Mr. Leonard went out, he was gone 15 or 20 minutes, and he came back in Court. He says "the name of my informant is Harry [sic] W. Rich, the juror referred to is J. D. [sic] Gregory", and thereupon I asked the Clerk to issue a subpoena for Harry [sic] W. Rich; I turned to Mr. Gregory, I says "Mr. Gregory, that is a very serious charge made against you, if you wish to be sworn, I will hear your testimony", he says "If your Honor please, I would be more than pleased to be sworn and testify". Thereupon I had juror Gregory — while the sheriff was hunting for Rich — I had him sworn here and he testified.

Q. Was that the same day the jury came in or the next morning?

A. No; this was the same day; the same day Gregory testified; and Mr. Rich testified the next morning; he did not get Rich that evening, the sheriff could not find him, but we got him the [next] morning. This was the same time, right immediately after the verdict was rendered, before the Jury had abandoned, I requested the jurors to remain here and assist in the investigation. Mr. Gregory testified as the record here will show. That Rich was sitting here in the Court, and had been sitting here watching the progress of this case because he had a case against the Big Creek Company himself, and he heard me admonish the Jury not to converse

among themselves or anybody else about the case, or to permit anybody to talk to them in their presence.

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MR. LINDSAY. We will suggest, in order to avoid objection and to save time, as the record of this going in, that it is hardly necessary.

A. In view of my friend Professor Montgomery's testimony, I would like if he was here, then if I do not tell it correctly — I remember it so well, I never will forget it, and I would be glad if this committee see that I am telling it correctly instead of — I would be glad to have it transcribed and then have the committee read it and see whether I am correct or if Mr. Montgomery is correct in his testimony. Mr. Gregory testified, as the committee will see from the official notes, that as soon as he went out Mr. Rich called him in the middle of the street here and walked up to him, he says "look here, Gregory," he says "this case is all one sided, you will have to decide in favor of the Big Creek Company", and he says "You are a big fool if you do, not make a thousand, two or three or four or five thousand dollars for your verdict", he says "You are a fool if you do not do it", he says "If you will go and see Forgeus down here, he is the secretary of the company, you can make the arrangement with him", Mr. Gregory said that that reminded him that he had two boys out of employment, young men, and he would go and see Mr. Forgeus for the purpose of getting his boys work on the Big Creek line, and he said he did go down in Mr. Forgeus' office and asked him if he could not get his sons work of some kind upon this company's line, and employment. Mr. Forgeus informed Mr. Gregory, as he testified, that he was not secretary of the company, not a director, had no interest in it, he would have to go and see somebody else, and thereupon Gregory walked out and started to the court room, that he got about to the court room door, he met Rich again and he said "Did you get any money or make any arrangement for it", Gregory said "no; Forgeus says he has no connection with the company". Then he says "Go and see Governor Jeter, he is connected with in in some way, make them pay

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you the money", then they came in court together; that was about Gregory's testimony. I tried to find Mr. Rich that night.

Q. Had he any interest in the case? **A.** Except that jury Gregory testified in reference to his statement, he had another suit that was pending against the same company.

COMMITTEEMAN BURKE. Was he employed by anybody as a detective?

A. I think so; I think he was in the employ of Mr. Adyelotte; I am satisfied, I think he testified himself; I think he testified that he was sent here by him not to spy, but simply to watch.

MR. SULLIVAN. He was sent by Adyelotte?

A. I think he testified —

MR. AYDELOTTE. He did not testify anything of the kind.

A. He said he was watching the progress of the case. The next morning Mr. Rich came in, I says "Mr. Rich, you have been charged with very gross, improper conduct by a juror in this case and stating to him to go and try to get money for his verdict and advising him to do that," I says, "I have sent for you for the purpose of having you sworn and testify concerning your connection with this matter" and I says "hold up your hand and be sworn". The clerk was here and all the lawyers, I had requested them to come that morning, and the jurors also. Mr. Rich held up his hand and Mr. Leonard, who was sitting about where Mr. Torchiana is, jumped up and says "Mr. Rich, I advise you not to be sworn in this matter, I advise you, as your attorney, not to be sworn". I says "Mr. Rich be sworn", and the clerk administered the oath, thereupon he was sworn and took his seat over there and the first question that was asked, Mr. Leonard

pounced up, he says “I object to that question, I am Mr. Rich’s lawyer, I advise him not to answer on the ground that this Court has no jurisdiction to investigate the matter.

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Q. Was Rich sworn? A. Yes, sir; but not with Mr. Leonard’s sanction. I says “Mr. Leonard your objection is overruled, go on and answer, Mr. Rich “and so I informed also every lawyer interested in this case, and any other person or any other member of the bar, that felt an interest in investigating this charge of corruption — I invited them to some in and assist me, I sent for Mr. Knight, our worthy District Attorney and requested him to take part in it, which he did, and then the next question that was asked of Mr. Rich, Mr. Leonard got up and he says “as your attorney, Mr. Rich, I advise you not to answer the question, the Court has no jurisdiction here, I advise you as your attorney”. That thing occurred for three or four or more time, Mr. Leonard advising him not to answer the question. I finally noticed and became satisfied that it was a pure — the only purpose of Mr. Leonard was to try and block the investigation of this matter. I says “Mr. Leonard, the reporter will take it down, you will have an exception for every question that is asked this witness, you will have an objection to every single answer he makes and any kind of an exception you can write out, with that understanding you will not interfere with this matter any more, “I says to him, “I am going to have this matter go on” and it did go on. All the lawyers came in the court room, which I appreciated, and assisted me to investigate that matter. Mr. Rich in his testimony implicated Gregory, he said in answer to Cassin’s question, after the adjournment of Court Mr. Gregory came over there to his office — he had employment in an office across the street, and says “look here, Rich, this is a one sided case,” he says “there ought to be some money in it” talking to Gregory, to Rich he says “I would rather ---

Q. Gregory - that was Rich’s testimony? A. Yes, sir, Rich’s testimony. That as soon as court adjourned Gregory came to his office, and Gregory said “Rich, this is a one sided case, there ought to be

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some money in it for me, “he was going to see somebody if he could not get some money in the matter, Rich made some reply to that and that was about the circumstances, I think. In his testimony Rich implicated Gregory and Gregory implicated Rich. I could not, on investigating the matter as to the main facts, find who was to blame in this matter, as between Rich and Gregory was a direct conflict, I did not find it was either one of them because I did not believe, I could not find directly upon the testimony of either one of them for that reason, I made that order I had introduced yesterday, their testimony was so unworthy and so uncertain that I could not base a verdict. Then a few days afterwards I got a copy of that circular that was introduced in evidence here yesterday.

MR. SULLIVAN. It did not go in.

A. Excuse me.

Q. That is enough of that incident.

MR. BURKE. Who wrote that order? A. I wrote it myself, I dictated it, I think I prepared it myself, and least if I did not dictate it.

MR. SULLIVAN. That is the order.

A. In regard to both of these people.

GOVERNOR JETER. You asked me a while ago if that case did not occur in November, I find it was in September, 1904.

A. In September.

MR. SULLIVAN. We will offer in evidence the findings, the decision in the case of Reanda

against the Watsonville Water and Light Company, which were filed the 28th day of September, 1904, and the findings that were filed under an amendment made to the complaint to make the complaint conform to the proof, on the 21st day of December, 1904; and the findings filed on the 21st day of December, 1904, is an exact copy of the decision filed on the 28th day of September, 1904.

----- Transcriber's Insert -----

[Transcriber's Note: The case was not inserted; therefore, I do so:]

[61]

No. 3971.

In the Superior Court of the County of Santa Cruz,
State of California

ELLEN RIANDA, Administratrix of the)
Estate of Carmen Amesti de McKinlay,)
Deceased, Plaintiff,)
Findings and Decision)
-vs-)
WATSONVILLE WATER AND LIGHT COMPANY,)
(a corporation),)
FRANCIS SMITH and W. W. MONTAGUE,)
Defendants.)

----- End of Transcriber's Insert -----

This action came on regularly for trial on the fourteenth day of June 1904, and continued on the fifteenth, sixteenth, seventeenth, eighteenth and nineteenth days of June, 1904, before the court, with a jury regularly impaneled, Geo. P. Burke, Dickerman & Torchiana, and Chas. M. Cassin, appearing for Plaintiff, and Chas. A. Shurtleff and Wyckoff & Gardner, appearing as attorneys for Defendants.

Evidence, oral and documentary, was introduced by both parties, and received, and the cause having been argued by respective counsel for the respective parties, special issues were submitted to the jury, who viewed the premises, and who retired and deliberated, and having returned into Court with their verdict upon said special issues, the Court now finds the following facts, and as to all other facts not herein found, the Court rejects the findings of the jury:

-I-

That heretofore, to-wit, on the sixth day of October, 1901, Carmen Amesti de McKinley died intestate in the county of Monterey and State of California, and at the time of her death was a resident of the City of Monterey, in said County of Monterey, and left estate in the County of Monterey and in the County of Santa Cruz, in the State of California, leaving her surviving Flora McKinley Duckworth and Ellen Rianda, her only

[62] children and heirs at law.

-II-

That thereafter, to-wit, on the twenty-first day of October, 1901, said Flora McKinlay Duckworth filed in the Superior Court of said county of Monterey her petition for Letters of Administration of the estate of said Carmen Amesti de McKinlay, and said petition coming on regularly for hearing before said Court, and after due proceedings has in said matter, said Court, on the eighteenth day of November 1901, by its order duly given and made, appointed Flora McKinlay Duckworth, administrator of the estate of said deceased, and she thereafter, to-

wit: on the twentieth day of November, 1901, duly qualified as such administratrix, and Letters of Administration were duly issued to her on said last mentioned date, and she continued such administratrix up to the time of her death on the nineteenth day of October 1903; that on the [blank] day of November, 1903, this plaintiff, as the only surviving heir at law and next of kin of the said Carmen Amesti de McKinlay, deceased, filed her petition for Letters of Administration of the estate of said deceased, as successor to the said Flora McKinlay Duckworth, deceased, and said petition coming on regularly to be heard on the twenty-fifth day of January 1904, the Superior Court of said County of Monterey duly made its order appointing this plaintiff administratrix of the estate of said deceased, Carmen Amesti de McKinlay, and having qualified, Letters of Administration on the sixth day of February, 1904, duly issued out of and under the seal of said court to this plaintiff, and she ever since has been, and now is the duly appointed, qualified, and acting Administratrix of the estate of said Carmen Amesti de McKinlay, deceased.

-III-

That on the twenty-seventh day of September 1884, Carmen Amesti de McKinlay was, and for a long time previously had been, the owner in fee, and in possession of Lot one (1) of the Rancho Los Corralitos, in the County of Santa Cruz and State of California, according to the survey of said rancho made by Jas. T. Stratton in January 1866, containing eight

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hundred and fifty-five (855) acres, more or less, which said survey is exemplified by a certain map made by said Jas. T. Stratton, and which map is designated as "Map of a part of the Rancho of Corralitos, Santa Cruz Co. Surveyed by Jas. T. Stratton in 1866," and is on file in the office of the County Recorder of the County of Santa Cruz in Volume 8 of deeds page 187, to which reference is hereby made for a more particular description, and continued to be the owner in fee and in possession on of said land and premises until the month of August 1901.

-IV-

That the boundaries of the said land as described in the foregoing paragraph, at the time and during all the time mentioned herein, were such as to take in and include part of a certain lake known as "Pinto Lake" and part of a certain creek known as "Corralitos Creek", and that said Carmen Amesti McKinlay, at all times during her ownership and possession of said described land, had riparian rights appurtenant to said described land and in and to the waters of said Pinto Lake and of said Corralitos Creek; that at and during of the times mentioned in said foregoing finding III, there were certain springs and smaller water courses on said premises, Lot one, and that said Carmen de McKinlay was in possession of, had, used, and enjoyed riparian rights and other water rights in and to said water of said springs and said smaller water courses all of which riparian rights and other water rights at all times gave said Carmen Amesti de McKinlay, and she possessed, took and enjoyed the use of abundant water for the purpose of watering a large number of cattle, stock and for household purposes, on said described premises; all of which riparian and other water rights were and are of great value to said land and to the owner thereof.

-V-

That said riparian rights and the said other water rights, in and to the waters of said Pinto Lake, and in and to the waters of said Corralitos

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Creek, and in and to the waters of said springs and smaller water courses and appurtenant to said tract of land as therein described, have, and each of the, has always been, since the twenty-

seventh day of September 1884, and are yet, of the same kind, nature and description and as described in the last finding (IV).

-VI-

That on the twenty-seventh day of September 1884, the said Carmen Amesti de McKinlay signed an instrument purported to be a deed whereby she purported to grant and convey to the said defendants, Francis Smith and W. W. Montague, certain water rights and privileges pertaining to said Lot One of said Rancho Los Corralitos, and on the fourteenth day of January, 1901, said deed was filed for record in the office of the County Recorder of the County of Santa Cruz, and State of California, and was duly recorded in said office in Volume 135 of Deeds at page 450, a copy of which deed, marked "Exhibit A" is annexed to and made a part of the complaint herein.

-VII-

That on the twenty-seventh day of June 1885, the said Carmen Amesti de McKinlay signed an instrument which purported to be a deed, whereby she purported to convey to the said defendants, Francis Smith and W. W. Montague, certain water rights and privileges pertaining to said Lot One of said Rancho Los Corralitos; that said deed was, on the tenth day of July, 1885, filed for record in the office of the County Recorder of the County of Santa Cruz, State of California, and was recorded in Volume 47 of deeds, at page 302, a copy of which deed, marked "Exhibit B" is annexed to and made a part of the complaint herein.

-VIII-

That on the twenty-first day of January 1897 the said defendants, Francis Smith and W. W. Montague, made and executed to the defendant Watsonville Water and Light Company, their certain deed, purporting to convey to said Watsonville Water and Light Company all of the riparian

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rights and privileges of every kind and description belonging or appertaining to said lot One of said Rancho Los Corralitos, theretofore conveyed to them by the said Carmen Amesti de McKinlay, as aforesaid, and that said Watsonville Water and Light Company claims under said pretended conveyances to have rights in said land and in said waters, which claim is without right.

-IX-

That when the said Carmen Amesti de McKinlay signed the deeds referred to in findings VI and VII, and marked "Exhibits A and B", and attached to and made a part of the complaint herein, she was about sixty-one years of age, and was ignorant of, unacquainted with, and could not read or understand the English language, and was entirely dependent upon other people to read and explain to her anything that was in the English language, and that the said defendants Francis Smith and W. W. Montague, well knew at the time when said Carmen Amesti de McKinlay signed said pretended deeds that she was ignorant of and could not speak, read or write the English language, and that both said deeds were written in the English language; that previous to the signing by said Carmen Amesti de McKinlay of said pretended deeds of conveyance of said water rights, it was represented and stated to her by the agent of the said Francis Smith and W. W. Montague, that if she signed the same, and as a consideration therefor, they, the said Smith and Montague, would lay and construct along, adjacent and contiguous to her said premises a flume or water pipe, to which flume or water pipe she would have the right to attach at three different places to be selected and designated by her, a three inch pipe, to be tapped by said Montague or Smith, and to take and use therefrom at all times, when water should be flowing in the said pipe or flume to be so constructed and laid by the said Smith and Montague, sufficient water for all necessary and convenient household, culinary and

domestic purposes, including the watering of stock to be used on said premises, the said Carmen Amesti de McKinlay supplying the pipe for the purpose; that relying upon and induced

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by such statements and representation, the said Carmen Amesti de McKinlay did sign said deeds; that no money or other consideration, good or valid, whatever was paid, given or passed by said Smith and Montague, or either of them, or by any person in their behalf, to the said Carmen Amesti de McKinlay, or to anyone in her behalf, for said deeds, or the property therein purported to be conveyed; that at the time of the signing of said deeds, respectively, the said Smith and Montague, or either of them, had no intention of performing the promises, representations and statements made by them or their agent to the said Carmen Amesti de McKinlay, at the time of her signing, and that induced her to sign, said respective deeds; that the said Carmen Amesti de McKinlay would not have signed said deeds but that she believed the said Smith and Montague would have fulfilled, carried out, and performed their said promises, representations and statements; that at no time since the signing of said respective deeds has the said Smith and Montague, or either of them, intended to carry out, perform or fulfill said premises, representations or statements; that said representations and statements were and are false, and fraudulent, and at the time when the same were made, were false and fraudulent, and were well known to said Smith and Montague, and their said agent, to be false and fraudulent, and were made with the intention to deceive, and did deceive, the said Carmen Amesti de McKinlay; and relying thereupon, and not otherwise, the said Carmen de McKinlay was induced to and did sign said respective deeds; that the defendants have not, nor have either of them nor has any one in their behalf, laid or constructed a pipe or flume along, adjacent, or contiguous to said premises; but that said defendants did construct a flume or pipe line at such a distance and in such a position from said premises as to make it unavailable to the said Carmen Amesti de McKinlay; and that the said Carmen Amesti de McKinlay could not attach a conducting pipe to said pipe or flume of defendants without going over and committing a trespass upon lands owned by and in the possession of other parties. That at all times in

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the complaint herein mentioned, the said Carmen Amesti de McKinlay, her heirs, successors and assigns, had and enjoyed the open, notorious, hostile and adverse possession of the property purported to be conveyed by said respective deed, and, at all times in said complaint mentioned, paid the taxes thereon; that said defendants have not, nor has either or any of them, at any time, exercised or attempted to exercise any right antagonistic to or in any manner to interfere with the said Carmen Amesti de McKinlay's use, possession and enjoyment of the property purported to be conveyed by said respective deeds. That said Carmen Amesti de McKinlay never knew or had any knowledge, notice or information that there was anything in said deeds referred to in these findings and attached to the complaint, or in either of them, purporting to convey water, water rights or privileges of any kind or description, except her riparian rights in and to the Corralitos Creek, until in the month of December in the year 1900, when she then learned it for the first time.

-X-

That at the time of the signing of said two deeds, Exhibit "A" and "B", attached to and made a part of said complaint, and referred to in these findings, and at all times since, there was, and has been, an entire absence and want of consideration; nor have said defendants, or either of them, at any time, performed, or offered or intended to perform any of the promises, covenants, conditions or agreements on their part is agreed to be done, fulfilled and performed, in said respective deeds.

-XI-

That at an immediately before the signing by the said Carmen Amesti de McKinlay of the said two deeds of Francis Smith and W. W. Montague, the said Carmen Amesti de McKinlay was informed and told by the agent of the said Francis Smith and W. W. Montague that said two deeds only affected the riparian rights of the said Carmen Amesti de McKinlay in and to the waters of the Corralitos Creek; that said representation was false and fraudulent, and was known by said Francis Smith and W. W. Montague to be

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false and fraudulent, and was made for the purpose of deceiving, and it did deceive, the said Carmen Amesti de McKinlay; and that believing in, and induced in, by said false and fraudulent representation, the said Carmen Amesti de McKinlay signed said deeds, and but for said representation would not have signed the same or either of them. That said agent, at the time when he made such false and fraudulent representations, well knew that the same was false and fraudulent, and the said Carmen Amesti de McKinlay never at any time discovered the falsity of said representation until in the month of December, 1900, nor did she at any time have any knowledge, information or belief that said deeds or either of them in any manner affected or conveyed her riparian, and other rights, in the waters of the Pinto Lake until the month of December, 1900. And that said Smith and Montague, and each of them, well knew at the time when they received said deeds and each of them, that said Carmen Amesti de McKinlay did not intent to convey and had no knowledge, information or belief that she was conveying to them, or either of them, by said deeds, or either of them, any of her right, riparian or otherwise, in the waters of the Pinto Lake, or any other waters, except the waters of the Corralitos Creek.

-XII-

That all the facts stated in Plaintiff's complaint are true.

And as conclusions of law from the foregoing facts, the Court decides as follows:

ONE.

That the estate of Carmen Amesti de McKinlay is the owner and entitled to and in the possession of all the water, water rights and riparian rights and privileges of every kind and description, connected with, and pertaining or belonging to that certain tract or parcel of land described in said complaint; that said Carmen Amesti de McKinlay at all times has had open, adverse, notorious and hostile possession of said water rights and riparian rights and privileges of every kind and description, connected

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with, pertaining or belonging to said land and every part and parcel thereof, as said water, water rights and riparian rights and privileges are described in the said two deeds, marked Exhibit "A" and "B" referred to in and annexed to and made a part of Plaintiff's complaint.

TWO.

That the said two deeds, marked Exhibit "A" and "B" are, and each of them is, fraudulent, and void; that the promises, comments and agreements therein contained on the part of said Francis Smith and W. W. Montague, were, at the time of signing said deeds, and at all times, fraudulent and were made and entered into without any intention of performing them or any of them, and said deeds are, and each of them, is, hereby vacated, rescinded and set aside, and declared to be null and void.

THREE.

That the title of the said Plaintiff, as administratrix of the estate of said Carmen Amesti de McKinlay, deceased, and the title of the estate of said Carmen Amesti de McKinlay, to the said water, water rights and riparian rights and privileges of every kind and description connected with, pertaining or belonging to said lands and every part and parcel thereof, as the same are described in the said two deeds, is hereby quieted and confirmed forever, and the said defendants are, and each of them is, hereby declared to have no estate, right, title or interest whatever in the property described in said two deeds or in either of them, and they are hereby enjoined and restrained from any further interference, or exercising any claim of ownership or possession in or to the property described in said two deeds or any part thereof. Let judgment be entered accordingly.

Done in open Court this 28th day of September, A. D. 1904.

Lucas F. Smith,

Judge of said Superior Court.

----- Transcriber's Insert -----

[Note: following the 9 pages of Case No. 3971, there are 10 pages of a different version of Case No. 3971, with a different final statement: "Done in open Court this 21st day of December A. D. 1904.]

----- End of Transcriber's Insert -----

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----- Transcriber's Insert -----

[Transcriber's Note: After the insertion of the above Case No. 3971, the testimony of Judge Lucas Flattery Smith continued.]

----- End of Transcriber's Insert -----

A. Before I forget it in reference to these charges —

Q. We will come to that. A. Somebody named Majors, it was said I told him in connection with these Gregory charges. J. L. Majors came into my chambers, it was said I told him Mr. Gregory —

Q. There is no evidence to that effect.

A. I want to clear myself, there was nothing of that kind occurred. Majors did come in there, he never mentioned this case, he came in and sat down to have a cigar, as I generally gave him a cigar when he comes; he sits down and smokes and talks a little while. He never mentioned Gregory's case or any other case, but just simply came up to get a cigar, I kept them in there as I do my old Spanish friends, or any of the rest.

COMMITTEEMAN BURKE: Are they political cigars?

A. No, these are better than political cigars, for my own use, some-times give them away to friends, sometimes friends gives them to me.

MR. SULLIVAN. I want to refer again to this Buelna case, and direct your attention to the testimony given by Mrs. Buelna, the mother of the defendant? A. Very well now.

Q. While you were practicing at the bar, were you her attorney?

A. In one case, Mr. Cassin and I defended her brother at Hollister.

Q. How long ago? A. 1875 or 1874, I think the first trial was.

Q. It could not be that long ago, 1873 or 4.

A. I mean 1893 or 4 — about 10 or 12 years ago.

Q. About ten or twelve years ago. A. Yes, sir; and he was charged with murder, brought up from Fresno, he had been gone for four years, and they brought him back from Fresno.

MR. LINDSAY. That was the case where the man was shot in the back and acquitted on the ground of self defense? A. I think so.

MR. SULLIVAN. You and Mr. Cassin tried that case and argued it

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before a jury, did you? A. Yes, sir; I was a great friend of the old lady's ever since; that was the only case I had for her as a lawyer.

Q. Well, after that trial you were elected to the bench; after your election did you meet her? A. Well, very seldom indeed; I did not know what became of her.

Q. Do you remember the time she had the breach of promise suit tried in this court? A. Yes, sir.

Q. Before the commencement of that suit did you have any conversation with her? A. Never, never; I never heard tell of John Ryan, or Johnnie Ryan, as they called him, in my life, until that suit was brought against him.

Q. Did you recommend her to Mr. Cassin to bring that suit?

A. No, sir; I did not. I had not seen her for a long time until she came in court and testified in that case, never — she says I recommended her and sent her to Cassin, and also recommended her to go and live with Ryan.

Q. She said that? A. Yes, she testified to that; I never knew Johnnie Ryan, I never heard of him; she testified that I recommended her to go and live with Ryan.

THE CHAIRMAN. Before this committee?

MR. SULLIVAN. Not before this committee — no, I think you are mistaken. A. She said I recommended her to go to Mr. Cassin to bring the suit.

Q. She said you recommended her to Mr. Cassin to bring the suit, that was said? A. I never did.

Q. She did not say in her testimony you recommended her to go and live with Ryan? A. No, sir; I was mistaken.

Q. There is no such testimony, her testimony was to the effect —

A. I never heard of, never heard of this suit, never mentioned the suit, never sent her to Mr. Cassin for any purpose in my life.

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Q. Now, during the trial of this case against her son, did she call at the Court's chambers? A. Yes, sir.

Q. When? A. The first time she was in my chambers was on the morning of the trial, after the case was called, the District Attorney announced he was ready, and her attorneys, for the defendant, did not appear; the old lady was sitting back with her son like this, and she was crying, and I adjourned court until 2 o'clock — thinking that those attorneys had missed the train — to wait for them. I went in my chambers and the old lady came in with me, I says "What's the matter, Mrs. Buelna". She says those lawyers deserted her, been paid, and did not let her know about it; she seemed to be greatly distressed. I says "Mrs. Buelna, I do not like that. The law provides that I can appoint for you if you are not able to employ an attorney". She says "Judge I have got the money, he has been paid part of it". I says "If the attorneys do not come at 2 o'clock, you may rest assured I will appoint a couple of, two young men". She walked out of the chambers, that was all that was said at that time.

Q. She testified that after the conviction, and before the sentence, she came here one day and had a conversation with you in the hall-way near your chambers? A. She is mistaken about that; nothing of that kind.

Q. Did you have a conversation with her? A. Yes, sir.

Q. After the conviction and before the sentence?

A. Yes, sir.

Q. And where did that conversation take place? A. In my chambers.

Q. Who was there? A. Judge Skirm was there when she came in. I only want to say, I got to talking to the Judge the other day, he told me that he went out of the door as she came here, that he heard a portion of the conversation; she came in my chambers; it did not occur out in the hall as she testified; I never spoke to her out in

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the hall only to say “how do you do, Mrs. Buelna” as I passed her.

Q. Was anybody else present? A. No, sir; nobody else except Judge Skirm; he went out as she went in, the Judge informed me [that he] heard part of what I said to her just the same as I remember it.

She came in my office 2 or 3 days after the jury had convicted her boy and she also had trouble with another daughter, she was in great distress and she came in my chambers, and I says “how do you do, Mrs. Buelna”, she says “how do you do”, she was also crying. And she says “Judge, I want you to do all you can for my poor boy”; I says “Mrs. Buelna, you have my deep sympathy, I do sympathy for you and feel sad for you, but I cannot talk to you about your son’s case, you must go and see your lawyers, Mr. Houck and Mr. McPherson, because I will not talk to you about it”. I had my mind quite well made up that he should have a very severe punishment; she at that time went right out of my office; I told her where Mr. Houck’s office was across the street, and she started right over and I saw her go up the stairs, and Mr. Houck will state what occurred when she went up there, but he informed me —

MR. LINDSAY. I object as hearsay.

A. He will tell whether she went there and repeated my language, so will Judge Skirm — he did not hear me tell her that, I am mistaken about that.

Q. Did you in that conversation, or in any conversation, with her tell her that you would treat the boy lightly? A. No, sir.

Q. Be kind to the boy? A. No, sir — “let him off with a light sentence”, I never thought of such a thing because —

Q. Because it was a very aggravated case of rape, wasn’t it?

A. Yes, sir, very.

COMMITTEEMAN BURKE. What was the sentence? A. 90 years.

Q. Don’t you consider that a very sever sentence?

A. No, sir; I do not; I think it was a very light sentence.

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Q. That is about the same as life.

A. If there had been any death penalty provided, I would have inflicted the death penalty.

Q. Have you any legal precedent for that?

A. Yes, sir.

Q. Did you ever know of such a case?

A. Oh, yes; I have known them to be sentenced for life; it is intended to be a life sentence under our law.

Q. Is there any state in which it is punishable by death?

A. I have known several men to be convicted and hung, in my experience in the south, for crimes not as bad as that.

THE CHAIRMAN. Was the case appealed? A. You can call the District Attorney; she [Mrs. Buelna] says I advised her not to appeal the case; that is not true. I want to say that defendant had as fair a trial as anybody in this court; he was well defended; as I told you the old lady came in there — I never spoke to her about a new trial.

MR. SULLIVAN. Who was it first told you about that, that the boy waived the appeal? A. The

first time was on the morning of the sentence; the first time it was set for Friday morning, which happened to be my Probate day. I think it was District Attorney Knight informed me, or Mrs. Buelna, had agreed with Mr. Adyelotte to put the matter over to Monday, he wanted to go to the city, I told him it was agreeable to me instead of having the sentence Friday at the time it was set. On Friday morning I came in and heard our probate calendar, and then our District Attorney got up and stated that Mr. Buelna announced he wished to be sentenced. I stated I had agreed with Mr. Adyelotte to put the matter over until Monday; then somebody, or his mother, raised up and said they did not want Mr. Adyelotte as attorney; I says "I think you had better advise with your attorneys who defended you here, or some attorney, if you do not want Mr. Adyelotte, before you have this sentence passed, as to what you want, and Mr. McPherson and Mr. Houck there were in court, or were

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sent for; I says "you advise with these lawyers and see what you are going to do, when you want to pass sentence, and not waive any of your rights on a motion for a new trial". I told him before you do that you consult because it will, you will have waived your right to appeal if you waive those things, and before you do that you ought to know what you are doing, you want the advice of counsel, and he did — I will let the lawyers who advised him speak for themselves, Mr. Houck and Mr. McPherson.

THE CHAIRMAN. They were not his attorneys? A. Yes, they were attorneys appointed by the Court when he said he would not have Mr. Adyelotte, did not want him as an attorney, I requested them to again represent him, when he renounced his employment and did not want Mr. Adyelotte as his attorney, then I had Mr. Houck and Mr. Adyelotte recalled to represent him and advise him in the matter; and Mr. Knight also advised him, he says "now, do you know the consequence of this"? he says, "if you waive your motion for a new trial it will cut off your right of appeal", and all those things so far as my saying to Mrs. Buelna that I would let him off light and waive this motion for a new trial, that was simply a dream of hers, all lies, — it is put here in this affidavit — no such thing ever occurred, or never will occur, and I will never permit anybody as long as I am judge, or even as attorney, to suggest any such a thing to me, in my life.

COMMITTEEMAN BURKE. Did Mr. Adyelotte inform you he had been substituted as attorney? A. Yes, sir; they came in the room together, Mr. Houck and Mr. McPherson and Mr. Adyelotte. Mr. Adyelotte said I seemed to be very much dissatisfied. That is not a fact.

Q. Did you agree, though, to continue it until Monday?

A. Not at that time. I says "very well, gentlemen, I have appointed you attorneys, if he wants to employ anybody else, very well".

Q. You had sufficient information to believe Mr. Adyelotte was

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his attorney? A. He told me that he was going to be away; I would have put it over until Monday if the defendant had not said he did not want Mr. Adyelotte as a lawyer, or would not have him, I would have put it over.

Q. On the morning of the sentence you were informed — he told you he did want it to go over?

A. Yes, sir.

Q. Don't you know it was a matter of professional ethics to put it over until Monday, where the punishment of ninety years was to be inflicted?

A. He had advise [*sic*]; he said he did not want that attorney, he wanted to be sentenced then, Mr. Adyelotte was not his attorney-, it was stated he had given him two or three weeks time.

MR. SULLIVAN. We have the transcript of the proceedings which took place.

A. I would have put it over, there was no reason for it, he said he did not want Mr. Adyelotte.

THE CHAIRMAN. Do you think he was qualified to know what he did want?

A. Oh, perfectly, he knew what he was doing, but this conversation was never thought of until these charges were preferred against me.

(Mr. Sullivan here read from the record as follows:)

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THE CHAIRMAN. Excuse me, what this all before the sentence?

MR. SULLIVAN. Yes, sir.

A. Yes, sir; before the sentence.

MR. LINDSAY. Is that what purports to be a transcript of what occurred?

MR. SULLIVAN. Yes, part of it.

MR. LINDSAY. What occurred before the sentence. Let it be in evidence.

MR. BEARDSLEE. Let it be considered as read.

MR. SULLIVAN. During your incumbency as a judge of the Superior Court, have you held Court in other counties?

A. Yes, sir.

COMMITTEEMAN BURKE. Just before you go on that. In the Buelna case, do you remember Mrs. Buelna kneeling down on the floor and praying?

A. No, sir, I did not notice that, if she did it.

Q. Did you see her in the court room at all?

A. Yes, sir; I think she was in the court room; my recollection is she was in the court room. She says in this affidavit, the first time I ever heard about this matter about my making any such a promise was this affidavit, she says here "I had a conversation with said Hon. Lucas Flattery Smith, at his chambers, in the Court House in the city of Santa Cruz, in which said Hon. Lucas Flattery Smith made the following statement, 'Mrs. Buelna, I pity you very much, and I promise you I will do all within my power for your boy, keep very quiet, don't say a word to any one, and tell your boy not to ask for a new trial, and I will sentence him very lightly'". That is what she swore to in this affidavit. I told her in the chambers, she is correct about the conversation taking place in the chambers — no, she said I told her this out in the hall. The conversation was in the chambers, when she came in there I told her I sympathized with her in her trouble, I know she has had a lot of trouble, I did sympathize with her. but so far as promising her anything about her

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son — she says "I wish you would let my poor boy off as light as you can". I know she was asking a thing I did not to talk to her about, because my mind was fully made up he deserved the extreme penalty of the law, and I intended to inflict it, and for that reason, I says, "I will not talk to you, it is not proper for us to talk about this case, you must go to your lawyers, Mr. McPherson and Houck, and tell them what you want to tell me."

THE CHAIRMAN. Did you have any conversation with the prisoner's lawyers about the case?

A. No, sir.

Q. Or the prisoner's mother? **A.** No, sir; never intimated what the sentence was to be imposed, until it was imposed.

Q. Is it not possible that the prisoner was under the impression or that it had been represented to him that he was to receive a light sentence?

A. No, sir.

Q. And for that reason he waived that? A. No, sir.

Q. Would the prisoner and his mother, believing that he was to receive a light sentence, would waive his rights?

A. Still, they had no intimation from me, or from the District Attorney, or anybody else, that he was going to get a light sentence, because he knew himself he deserved the very sentence he got. He does not complaint [sic] against the sentence he got.

MR. AYDELOTTE. You say he did not complaint? A. I have not heard of any. When I got their affidavits — it is a wonder they did not get an affidavit from him and put [it] in here. I never heard of this until these charges were got up against me.

MR. SULLIVAN. Wait a moment. Now in what counties have you held Court?

A. Well, I have held Court up in San Francisco, in Placer County, in San Mateo County, San Benito County, Santa Clara County, Monterey County, San Luis Obispo County; I do not remember.

Q. How have you got along with the attorneys of the bar in those counties? A. I would be pleased to have them all here and tes-

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testify, and would send for them if the committee makes the demand. I have been invited to hold court in different counties. I would be glad to send for them.

MR. SULLIVAN. Mr. Lindsay, I understand you abandoned specification 8.

MR. LINDSAY. No evidence introduced in support of it.

(Mr. Sullivan here read specification 8 as follows: "That said Smith has openly expressed himself in open court in such manner as to show great disrespect for the Supreme Court of California, and calculated to bring said Supreme Court into disrepute.")

A. I want to deny that; I have great respect for the Supreme Court; that is not true.

MR. LINDSAY. No evidence at all, except what was mentioned on the subject this morning on the witness stand in reference to the decision in the case of Trafton against Quinn.

A. I think, I still think I have the right — in making that remark I did not mean by that for the Supreme Court, no disrespect to the Supreme Court, I meant that the Supreme Court and I differed on that proposition.

MR. LINDSAY. You thought you were right and the Supreme Court was wrong? A. No, I do not say they are wrong, I think I am right on the law.

MR. SULLIVAN. That fully covers specification 7, in relation to the Buelna case.

A. Well, in relation to another affidavit here about Marquis versus H. E. Gardner.

Q. That is not referred to at all.

A. I would like to explain that.

THE CHAIRMAN. There is no evidence on that.

MR. SULLIVAN. They did not attempt to introduce any evidence in support of that.

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A. I would like just to explain that.

MR. LINDSAY. I do not think it is necessary. I object to it.

A. It has been published in the newspapers all over this State

MR. SULLIVAN. Judge, it will take up the time, unless the committee desire to hear it.

THE CHAIRMAN. We do not desire to hear it.

MR. SULLIVAN. We have covered specification 10, that is the Wyatt and Zabala matter. Now, I come to specification 10.[sic]

Q. How many cases have you tried during your incumbency?

A. Including all told, 2105.

Q. What does that include, contested cases?

A. That shows everything, contested and everything; I have tried and disposed of 2105, includes criminal, civil, probate and habeas corpus cases.

Q. How many cases have you tried before a jury?

A. I did not separate them, I am satisfied though —

MR. LINDSAY. If you do not know, I would not testify.

MR. SULLIVAN. Were there hundreds of contested cases during that period? A. Yes, sir; hundreds of them.

Q. Now, how many contested cases have been appealed to the Supreme Court? A. About one hundred, including habeas corpus, I remanded them here, where I refused to discharge them, and they sued out habeas corpus on appeals to the Supreme Court and they sustained my decision, I think would be about eighty, outside of that.

Q. Including cases that went to the Supreme Court on habeas corpus, about one hundred cases in the Supreme Court?

A. Yes, sir; about one hundred.

Q. Now, how many cases have been reversed?

A. I have been reversed in civil cases nine times; I have heard and disposed of 1218 civil cases during my eight years, from the 4th —

Q. How many civil? A. 1218, from the 4th of January 1897.

MR. LEONARD. You include everything in that?

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A. From the 4th of January, 1897, the day I went in office until January 4th, that is this past January, 1905, I have tried and disposed of 1218 civil cases.

MR. SULLIVAN. How many?

A. Well, there has been nine reversed.

Q. Nine new trials granted by the Supreme Court?

A. Yes, sir; Criminal cases; I got this from Mr. Knight, it may not be exactly correct, 175.

Q. 175 criminal cases? A. Yes, sir. And the Supreme Court out of all this granted six new trials.

Q. Six new trials? A. Probate estates, I heard and disposed of 682. No reversals in the Supreme Court, except one estate, it was by consent of the attorneys it should be reversed and sent back here and dismissed, the estate of Cox. There was another matter involved.

Q. Do I understand they all consented? A. Every one consented to granting the reversal. Then the habeas corpus cases, there has been one, that was McDonald, whom Mr. Leonard represented, they released him upon my order in open court, but it was not properly before me, that the sheriff's return was not full enough to show the court had jurisdiction. Then, out of 2105 cases disposed of, the Supreme Court has granted 15 new trials, and two habeas corpus cases, and the Cox case was one.

Q. Where they granted new trials, they also reversed the judgment, did they? A. Yes, sir.

Q. Fifteen cases the Supreme Court reversed the judgment and granted new trials? A. Yes, sir.

Q. That is your record as the judge of this Court?

A. There may be one or two cases that went to the Supreme Court that I have overlooked.

Q. So far as you have been able to learn from your records,

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that is the actual record of this court, that is a correct statement of your experience on the bench?

A. Yes, sir; I can give you the cases if you wish.

Q. Among the reversals is the Ziegler case? A. Yes, sir.

Q. In the case of Mr. Leonard's client he was found guilty of murder in the first degree and a life sentence imposed?

A. Yes, sir.

Q. He was justified in taking an appeal to the Supreme Court and the Supreme Court reversed it and he was found guilty of murder in the first degree? A. Yes, sir; and sentenced to be hung.

Q. And the judgment of the lower court was affirmed?

A. But the Lord helped Mr. Leonard out a few days before the time, he died.

MR. LINDSAY. He helped the defendant out.

A. I felt satisfied in that Ziegler case. I appointed Mr. Leonard to defend him. I appointed Mr. Leonard to defend Ziegler when he was arrested here, he stated he had no means, I appointed Mr. Leonard and Mr. J. D. Wanser.[sic] I understand they got a fee from his brother in Philadelphia of \$500. I also appointed Mr. Leonard in another case, also reversed, the case of Rodriquez, in which the sheriff volunteered some testimony here, and the Court thought it might be prejudicial, and granted a new trial. Mr. Leonard was appointed by me to defend that case. And the Plyler case was reversed. Rodriquez, Sharra, Schoddi and Ziegler, six criminal cases in which I was reversed, all told.

Q. In which cases of reversals Mr. Lindsay was acting as District Attorney, was he not?

A. In some of them; he prosecuted the Plyler case in both instances, also the Schoddi and Sharra. In that Schoddi case the Supreme Court said they did not think the testimony was sufficient. In the second Plyler case, Mr. Leonard and I agreed that they proved that one of the witnesses whose deposition had been taken in the examination

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court was dead. Upon testimony I admitted the deposition of a witness who had run away in the meantime, and the Supreme Court held that we ought to have this witness present in Court to be examined in person. In the Rodriquez case the sheriff volunteered some testimony.

MR. LINDSAY. In that case of Sharra(?) he got ninety years?

A. Yes, sir; gave him ninety years.

Q. You gave him ninety years? A. Yes, sir; and that was affirmed.

MR. BEARDSLEE. I would like to ask a question: This question of heavy sentences. Judge, what is your theory of imposing sentences upon criminals? A. My theory is to impose sentences that is strictly justified by the law and the testimony; if the testimony shows it is an aggravated case, that a severe sentence should be imposed, I impose a severe sentence. In that Schoddi[sic] case he went over there and deliberately planned to murder an old woman without cause or provocation, except possibly robbery — no mitigating circumstances. It is very seldom I impose severe sentences.

MR. SULLIVAN. Do you believe in imposing severe sentences?

A. Yes, in certain cases I believe in severe sentences where there is a young man who is convicted for his first offence under no mitigating circumstances. I have always tempered justice with mercy, let them off with a light sentence. Where they deserve a very heavy punishment I punish them according to the character of the crime. In fact I do not know of any lawyer in this town who complains of my sentences being either too extreme or too light. If a boy is under the age of eighteen I send him to the reform school, never the penitentiary. I never send a young man to the penitentiary.

MR. SULLIVAN. Coming back to this matter of favoritism again, before the amendment to the law which authorized courts in probate matters to appoint attorneys to represent absent heirs. Did you appoint attorneys to represent absent heirs? A. I did.

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Q. When was that law repealed? A. It was repealed two or three years ago.

Q. Four years ago? A. Yes, sir. Four years ago.

Q. Up to the time the law was repealed, did you make appointments among the members of the bar here? A. Yes, sir; I divided it up around among the different members of the bar.

Q. Whom did you appoint? A. I appointed Mr. Leonard; I have appointed Mr. Younger, appointed Mr. Skirm, I believe I appointed Ed. Story[sic], and I have appointed Governor Jeter, I think Mr. Cassin one or two times; I appointed Cassin once or twice. I think I appointed him possibly, during the eight years I have been on the bench, once or twice, may be three times.

Q. How much in fees has he collected by virtue of these appointments?

A. Not very much; I never allowed him very large fees.

Q. Who had most of the fat appointments?

A. Mr. Younger, Mr. C. B. Younger got those.

Q. You recognized him as being one of the leaders of the bar here?

A. Yes, sir. He is a good lawyer.

Q. He got the fat appointments, did he?

A. Yes, sir; I tried to be fair to all the members of the bar.

Q. There was never any complaint made by the attorneys, among the members of the bar on that score?

A. No, sir; I never heard it, I certainly would have heard it if there had been.

(A recess was here taken).

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RECESS.

Reputation of witnesses.

MR. SULLIVAN: If the Committee has no objection, we would like to put on the stand several witnesses from Watsonville, who desire to return this afternoon.

THE CHAIRMAN. We have none whatever Mr. Sullivan. What do you propose to prove?

MR. SULLIVAN. The reputation of the Judge of this County. We intend to prove by these witnesses the reputation and standing of Judge Smith in the County of Santa Cruz, by prominent citizens of the County.

MR. LINDSAY. I don't think that is involved.

THE CHAIRMAN. Now do we understand the prosecution concedes that his reputation as to veracity &c. is not attacked?

MR. LINDSAY. The prosecution confines itself absolutely to the specifications on our charges made against the Judge in those specifications, and your proposition is that of general evidence as to the general reputation is not admissible.

MR. BEARDSLEE. Is this evidence that you seek to introduce at this time going to the Judge's reputation as a jurist, not as a man of integrity?

THE CHAIRMAN. How many witnesses have you of that character?

MR. SULLIVAN. We have a couple of hundred men.

THE CHAIRMAN. The Committee will admit that evidence until it is satisfied. We should prefer this evidence to be direct in answer to some specific charge. We prefer witnesses to have been here in Court and witnessed his conduct.

MR. LINDSAY. There is no allegation in any specification affecting the reputation of Judge Smith as a jurist, whatever. We have particular and specific charges and we have introduced

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evidence in support of those particular specific charges, and the defense ought not to be permitted to introduce evidence concerning that which is not involved in the proceedings, and concerning that which we have not introduced any evidence. And I desire also to call the attention of the Committee to the fact that in the first specification there is an allegation in reference to partiality and favoritism, that it has been manifest in this Court, that it has the reputation and general impression that to succeed in this Court it is necessary to do so and so. We had witnesses here to testify in reference to that matter and the Committee decided, and we bowed to the decision of the Committee, that the evidence would not be received. Now the defense asked to introduce evidence upon a matter which is not allowed to us, and I submit that it is not proper.

THE CHAIRMAN. Mr. Sullivan, we will admit the testimony of a few witnesses as to what they know of their own knowledge — not as to what they have heard of — from their own knowledge.

MR. SULLIVAN. Here is the point in a nutshell, if it please the Committee, in brief. If a person is charged with robbery, that is a crime involving moral turpitude, and the prosecution cannot introduce evidence of bad reputation, but the defense may produce evidence of good reputation. We had asked permission to put a few of these representatives on the stand, and give the lie to these false charges against Judge Smith.

THE CHAIRMAN. Can the witnesses say whether or not these charges are false?

MR. SULLIVAN. They can say they know Judge Smith, and they know his record as an officer - as a jurist -, and his reputation as public officer of this County, from their own knowledge.

THE CHAIRMAN. That is all we want.

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MR. LINDSAY. Do I understand what they know of their own knowledge?

MR. SULLIVAN. Yes they will testify of their own knowledge that the reputation of Judge Smith is good.

TESTIMONY OF
H. S. FLETCHER, Sworn.

MR. SULLIVAN. Q. Mr. Fletcher, what is your business?

A. Cashier of the Bank of Watsonville.

Q. How long have you been connected with that bank? **A.** Since 1884.

Q. You have property interests there haven't you? **A.** I have.

Q. And you are interested more or less in politics?

MR. LINDSAY. That does not qualify him particularly.

MR. SULLIVAN. Q. What are your politics?

A. I am a Republican - from Missouri —.

Q. I think everyone is Republican now.

MR. LINDSAY. Now I submit he is qualified.

THE WITNESS: A. You will have to show me, Mr. Sullivan.

MR. SULLIVAN. Q. Do you know Judge Smith? **A.** I do.

Q. How long have you known him?

A. I have known him ever since he has been Judge — perhaps before.

Q. And have you appeared in his Court at any time? **A.** I have.

Q. Often? **A.** Quite often.

Q. As representative of your bank and in other capacities?

A. I don't know I was ever as representative of the Bank, but as a witness.

Q. And other capacities? **A.** Yes sir.

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Q. Do you know the reputation of Judge Smith as a judicial officer.

A. I do.

Q. In the County of Santa Cruz, what is his reputation?

MR. LINDSAY. I wish to make the formal objection that this is irrelevant, immaterial and incompetent and not properly within the issue; not tending to prove or disprove any specification charged against Judge Smith.

THE CHAIRMAN. The witness says he knows of his own knowledge.

MR. LINDSAY. “Knows his reputation” refers to what people say about him.

MR. SULLIVAN. He knows that reputation.

(Objection overruled.)

MR. SULLIVAN. Q. What is his reputation?

A. His reputation is that of an upright, honest judge.

Q. Fair and impartial?

A. Fair and impartial.

Q. During your visits to this Court have you noticed the manner in which he treated counsel and litigants? A. I have.

Q. How has he treated them?

A. Very courteously - fairly.

CROSS-EXAMINATION.

MR. LINDSAY. Mr. Fletcher, during Judge Smith’s incumbency of the office of Superior Judge, how many times have you acted as appraiser of estates?

A. I have no idea.

Q. Well about how many times?

A. Well we will say about ten or twelve times — that will cover it surely.

Q. How much have you received in fees?

A. Frequently it was love, and sometimes when we had a fat

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goose we plucked him, to the extent of thirty dollars, to my recollection.

Q. When you had a fat goose you plucked him? A. Yes sir.

Q. In other words, as I remember, it was one estate of nine acres, or to something like that, you were appointed appraiser and that you got thirty dollars, is that so?

A. What estate was it?

Q. That is true, you got it? A. No sir it is not true.

Q. What was the estate you received the thirty dollars, what did it consist of?

A. Thirty dollars? I don’t remember — I received thirty dollars in an estate — the Silvera estate, and there were three or four ranches in that we made personal investigation of.

Q. Who have you heard discuss Judge Smith’s reputation as a judicial officer? A. By his friends and enemies.

Q. And did they all agree that he was a good Judge?

A. The majority was in favor of the Judge that I heard.

Q. Then it appears from that that there were some dissenting were they?

A. I never heard anything specific against his reputation even by his enemies.

Q. The proposition is, here you have testified his reputation is good. What do you mean by that any way?

A. I mean that is my opinion.

Q. Your opinion? A. And from what I have heard the majority of the people that I have heard discuss him, say, and his reputation.

Q. Name one person who said he was a good judge.

A. W. B. Gathy that I remember at present.

Q. Who else? A. Who else?

Q. Yes. A. That I don't know as — nobody in particular — I cannot

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call to my mind any particular person. Mr. White, and Otto Stoesser, Speckens, R. W. Herbert.

Q. People who have had litigation in the Court?

A. They might have.

Q. R. W. Herbert had, hadn't he?

A. Yes; most everybody is unfortunate to run up against the Court once in a while.

Q. These are all the people that you remember?

A. These are all the people I remember discussing his reputation.

REDIRECT EXAMINATION.

MR. SULLIVAN. Q. And Mr. Herbert lost that case did he not?

A. I am sure I don't know; I think he did.

Q. Mr. Cassin was his attorney was he not?

A. I believe he was.

MR. BURKE. How many times about, were you in Court during the sessions of the court?

A. I have been here about ten or fifteen times.

Q. During the sessions of the Court? A. Yes sir.

Q. Are those all you have discussed the reputation of Judge Smith as a jurist?

A. That is all I can remember of.

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**TESTIMONY
OF
WARREN PORTER, Sworn.**

MR. SULLIVAN. Q. Mr. Porter, where do you reside?

A. In Watsonville.

Q. What is your occupation? A. Banker.

Q. Are you a member of the Republican State Central Committee?

A. No sir.

Q. Have you ever been? A. Yes sir.

Q. You take interest in Republican politics don't you, take an active part? A. Yes sir.

Q. And have done so for many years? A. Yes sir.

Q. In the County of Santa Cruz? A. Yes sir.

Q. Do you know Lucas Flattery Smith, Judge of the Superior Court of this County? A. Yes sir.

Q. Do you know the reputation of Lucas Flattery Smith as a Judicial Officer in the County of Santa Cruz? A. Yes sir.

Q. What is that reputation? A. Good.

Q. Do you know his reputation for fairness and impartiality?

A. Yes sir.

Q. What is it? A. It is good.

Q. By-the-way are you connected with the Loma Prieta Lumber Company?

A. Yes sir.

Q. Secretary of the Company? A. No sir.

Q. In what manner are you connected with the Company?

A. I am a Director.

Q. And stockholder in the Company? A. Yes sir.

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Q. You were connected with that Company at the time Mrs. Houghton and her children sued the Company for damages? A. Yes sir.

Q. And Mr. Cassin represented the plaintiff in that case, and the case was tried before a jury?

A. Yes sir.

Q. In that case the verdict was for twenty six thousand dollars.

And the other case against the Company was for fourteen thousand dollars wasn't it?

A. Yes sir.

Q. And Judge Smith denied the motion for a new trial in both of these cases didn't he?

A. Yes sir.

Q. So the Company was mulcted to the extent of these verdicts — to the extent of forty thousand dollars? A. Yes sir.

Q. Subsequently Judge Smith cut the twenty six thousand dollars down to eighteen thousand dollars? A. Yes sir.

Q. Giving the total amount of damages against your Company — the total amount of thirty two thousand dollars? A. About that, yes sir.

Q. Judge Smith denied the motion for a new trial in both cases?

A. Yes sir.

Q. The case is now on trial in the Supreme Court? A. Yes sir.

Q. Notwithstanding the conduct of Judge Smith in these cases, you still think he is an upright and fair Judge do you?

A. Yes sir.

CROSS EXAMINATION.

MR. LINDSAY. Q. Have you always thought so?

A. So far as I know, yes.

Q. Have you ever had a different opinion? A. No sir.

Q. Have you ever expressed your opinion in reference to Judge Smith?

A. No sir.

Q. You never have? A. No sir.

Q. Have you ever heard anyone express the opinion that he was not an upright Judge?

A. Yes sir.

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Q. Have you ever heard anyone that expressed the opinion that he was an unfair and partial judge? A. Yes sir.

Q. We offered that by Mr. Adylotte.

MR. LINDSAY. If you are through with your play to the gallery, I will go on. Q. Have you ever heard anyone express the opinion that he was a fair judge? A. Yes sir.

Q. That opinion also goes as to his partiality — you heard some people say he was partial, and other that he was impartial?

A. Yes sir.

Q. Did you ever hear anyone say he was an impartial judge?

A. Yes sir.

Q. You heard people say that he was partial? A. Yes sir.

Q. You still have large interests in this County? A. Yes sir.

Q. Notwithstanding the verdict that these gentlemen obtained against the Loma Prieta Lumber Co.? A. Yes sir.

Q. Which has not yet been paid, by-the-way? A. No sir.

MR. SULLIVAN. We object.

MR. LINDSAY. Q. Do you know Mr. Ricks [sic] of the firm of Bishop Wheeler and Hoffler? A. Yes sir.

Q. Do you know Mr. Thomas B. Bishop of that firm? A. Yes sir.

Q. Do you know Mr. Hoffler [sic] of that firm? A. Yes sir.

Q. Did you ever hear either of them express an opinion as to the fairness, and uprightness, or integrity of Judge Smith?

A. I have heard Mr. Ricks [sic; i.e., Rix, William].

Q. Was that in favor of Judge Smith or against him?

MR. SULLIVAN. We object to specific instances. Of course Mr. Ricks lost the case and he damned the Judge.

(Objection overruled.)

MR. LINDSAY. Q. What was his opinion?

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A. That he was partial.

Q. And in these particular cases that you refer to, that Judge Smith presided here, by every act of his possible — that was possible, he tried to influence the jury in favor of the plaintiff represented by Mr. Cassin and Mr. Sullivan isn't that true?

A. He said the rulings were against—that the Judge ruled against him.

Q. And that he was partial? A. That is what he said.

Q. That he was partial in favor of Mr. Cassin and Mr. Sullivan in that case, wasn't that true?

A. Well he just said the Judge ruled against him.

Q. Well didn't he go further than that, didn't he go further than that and say those rulings were partial, made in favor of the other side, and that they were unrighteous and unjust rulings?

A. I don't know as I heard him say it as strong as that. It is very hard to remember exactly what he said, only that the Judge had ruled against him, and that it was contrary in his opinion to law.

Q. He was ruling against him all the time; and then did he not say he was the worst Judge he ever knew to sit on the Bench anywhere?

A. I did not hear him say that.

Q. Or words to that effect? A. I don't recollect that.

Q. You don't recollect. That is all.

[95]

REDIRECT EXAMINATION.

MR. SULLIVAN. Q. During the trial of this case of Mrs. Houghton you were present in Court weren't you Mr. Porter? A. Yes sir.

Q. You were examined as a witness? A. Yes sir.

Q. You were here on several occasions during the trial. A. Yes sir.

Q. And the trial in each case lasted quite a while didn't it?

A. Yes sir.

Q. I think in one instance, I think it lasted about two weeks?

A. Yes sir.

Q. And in the other case about two weeks? A. Yes sir.

Q. You were present in Court and observed the rulings of the Judge, the conduct, and manner of the Court? A. Yes sir.

Q. After the verdict in the case — one of the cases — didn't you compliment the Judge upon the fairness of his rulings and conduct during the trial? A. I did.

Q. Which time was that? After the twenty six thousand dollar verdict has been made?

A. It was after the judgement has been cut down — that is the verdict of the jury.

Q. It was cut from twentysix [*sic*] to eighteen thousand dollars wasn't it?

A. Yes sir. I told him I appreciated it.

Q. Did you compliment the Judge upon the fairness of his rulings and the fairness of his conduct in the management of that trial of that case?

A. Yes sir; you must remember Mr. Sullivan I am not a lawyer.

Q. Didn't Mr. Ricks [*sic*], who is also a lawyer —

MR. LINDSAY. (interrupting) Do you deny that?

MR. SULLIVAN. No sir. Q. Didn't he go with you and also compliment him and thank him — compliment him —?

A. That I don't remember.

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Q. Didn't he compliment the Judge for the fairness of the Judge in trying the case against the Company?

A. I believe he did. Ricks[*sic*] came to me in here — I think Ricks [*sic*] told me that he was going before the Judge, that he had been exceedingly courteous to him, very nice to him and treated him very nicely.

Q. When he cut down the verdict? A. Yes sir.

MR. LINDSAY. Q. By-the-way Mr. Porter, did I understand you to say you are a politician?

A. I take a hand in politics; I don't profess to be a politician other than in a business way, the same as any man takes an interest in politics who has an interest in his country.

Q. You are recognised [*sic*] throughout the State as being the Republican leader in this part of the State aren't you?

A. Well I don't know as I am recognised [*sic*] as the Republican leader; I am recognized as a Republican.

Q. As being really a prominent man in politics — Republican politics — at any rate in Santa Cruz County?

A. I don't know; there are many prominent Republicans in this County that I have the pleasure of knowing, who take an active part in politics as I do.

Q. As a politician you have long learnt that it is a fundamental principle to be politic, haven't you?

A. Well I have found in all walks of life that it is more profitable to be courteous always, than otherwise.

MR. SULLIVAN. You are a member of the Republican Central Committee of Santa Cruz County aren't you? A. Yes sir.

MR. BEARDSLEE. Q. Will you, if you can, give the names of one or two of those who expressed the view that Judge Smith was fair and impartial.

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A. I will mention one that had a case before him, I saw him this morning. Mr. Edward White. You can go out here in the rural districts and ask any of these farmers, and they will all tell you he is fair.

Q. Can you name anybody else? A. Yes sir, Mr. Fletcher, who testified here this morning. He is a prominent resident in our part of the County, and of good reputation, and has large interests, and has been before the Court.

MR. LINDSAY. Q. It is true, is it not, Mr. Porter, that in Judge Smith's relations with individuals whom he meets, whether they be of the highest or of the lowest, or whether they be bankers like yourself, or wood-choppers from the forest, that he is extremely kind and courteous on all occasions? **A.** Yes sir.

Q. I refer to his daily mingling in the usual walks of life, he is affable, and courteous, and pleasant, and kind isn't he?

A. Yes sir.

MR. SULLIVAN. Q. Who have you heard say that Judge Smith was a bad judge, an unjust judge? **A.** Mr. Adylotte. [sic]

Q. Who else? **A.** Mr. Leonard.

Q. Nobody else? **A.** Not that I can call to mind now.

Q. That is all Mr. Porter.

MR. BURKE. Q. Did you hear Mr. Cleveland say whether he was fair or unfair?

A. I heard him express an opinion that one time that he had a case before him he did not think he got a square deal.

Q. He thought he did?

A. He thought he did not. He cut down some of his fees — something of that kind.

--ooOOOoo--

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TESTIMONY

OF

A. W. SAMS,

Sworn.

[i.e., Alvin W. Sans]

MR. SULLIVAN: Q. What is your name please? **A.** A. W. Sams. [sic]

Q. What is your occupation? **A.** I am an attorney-at-law.

Q. Are you Police Judge of the City of Watsonville? **A.** Yes sir.

Q. How long have you been Police Judge of the City of Watsonville?

A. Two years.

Q. As attorney-at-law, have you much experience in the Superior Court of Santa Cruz County?

A. I have had some, yes.

Q. You have been in Court frequently, haven't you?

A. Quite frequently yes.

Q. Do you know the reputation of Lucas F. Smith as a Judicial Officer in Santa Cruz County?

A. My own personal experience?

Q. Do you know his reputation, that is the reputation among the people in the community?

A. Yes sir.

Q. What is the reputation, good or bad? **A.** Good, I think.

Q. In your experience in Court here as attorney-at-law, have you observed his conduct in the treatment of litigants and counsel?

A. In my own experience, yes.

Q. What did you observe? **A.** That he was courteous.

Q. Have you observed him in his conduct and relations to others while you were present?

A. Very courteous.

Q. To counsel, litigants, witnesses, jurors, everybody?

A. Yes sir.

CROSS-EXAMINATION.

Mr. Lindsay: Q. Have you heard much discussion concerning the reputation of Judge Smith as a Judicial Officer?

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A. Oh, I have heard some discussion.

Q. Was that before this investigation commenced, or since it commenced?

A. Well before and after too.

Q. You've heard it discussed pro and con have you? A. Yes sir.

Q. There were two sets again were there?

A. Well apparently from the discussion; I did not pay a great deal of attention to it.

Q. There were people of the opinion that he was a bad judge and people who thought he was a good judge? A. Yes sir.

Mr. Burke: Did Mr. Smith ever favor you by placing you in a position of obtaining legal fees you otherwise could not obtain?

A. No sir, I think not - I think not; Judge Smith has always treated me fair, I don't think he ever gave me any the worst of it or any the best of it.

Q. Did he ever appoint you an appraiser or anything like that?

A. No sir, I never was appointed appraiser.

Mr. Lindsay: Q. Did you ever hear discussed Judge Smith's reputation as to his relations with Charles M. Cassin?

A. Oh I heard it stated that he was partial to Mr. Cassin, yes; I never gave it a great deal of consideration though.

Q. I did not ask you how much consideration you have given it, but you heard such statements made? A. Yes sir.

Mr. Sullivan: Q. Did you ever hear Mr. Adylotte [*sic*] say that?

A. No sir, I have not; I don't know the gentleman.

Q. Or George P. Burke? A. Yes sir, I have.

Q. He is the man who made campaign speeches against Judge Smith?

A. Yes sir.

Q. Did you ever get any unfair treatment in your business before Judge Smith?

A. No sir, none whatever.

Q. In any business that Mr. Cassin was opposed to you, did you

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ever get the worst of it?

A. No sir; I never had a case against Mr. Cassin that I remember.

Mr. Lindsay: Q. You don't mean to say that George P. Burke was the only man who ever made such a statement to you?

A. No; I have been associated with Mr. Burke a great deal; I have heard him more than anybody else.

Q. But you have heard others as well? A. A few yes sir.

Mr. Sullivan: Q. Wasn't it people - the people who complained against the Judge were people whom Mr. Cassin had defeated in jury cases, wasn't that so?

A. Well perhaps so; I guess they were disappointed litigants; may be.

Mr. Lindsay: Q. You mean to say they were disappointed litigants?

A. I think they were mainly. I never paid a great deal of attention to them - it is rumor on the street -.

Q. It is general rumor throughout the County isn't it?

A. I don't know whether it is general or not.

Q. Have you ever heard any other rumor in connection with this matter?

Mr. Sullivan: I object to this as not cross-examination.

A. I don't know just what you mean.

Mr. Sullivan: Q. Last campaign, Judge Smith, a Democrat, beat his opponent in a Republican County isn't that so? A. Yes sir.

Q. Judge Smith was elected by a large majority?

A. I supported Judge Smith.

Q. The people supported him?

A. Yes sir.

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**TESTIMONY
OF
OTTO D. [Dominic] STOESSER, Sworn.**

Mr. Sullivan: Q. What is your occupation Mr. Stoesser?

A. Merchant.

Q. Where do you reside? A. Watsonville.

Q. What business are you engaged in? A. Mercantile business.

Q. General merchandise? A. Yes sir.

Q. Do you own considerable property in Santa Cruz County?

A. I am interested in considerable, yes.

Q. Interested in considerable property? A. Yes sir.

Q. How long have you resided in the County of Santa Cruz?

A. About 36 or 37 years, more or less.

Q. All your life time? A. Yes sir.

Q. Do you know Judge Lucas F. Smith? A. Yes I know him.

Q. How long have you known him? A. I have known him probably four, five, or six years.

Q. Do you know his reputation in the County of Santa Cruz as a Judicial Officer?

A. It is good so far as I know it.

CROSS-EXAMINATION.

Mr. Lindsay: Q. You don't pretend to know what his general reputation is for this do you?

A. So far as I know it -- I have not discussed it -- so far as I know it is good.

Q. You have not discussed the matter much have you Mr. Stoesser?

A. No sir. Not much.

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Q. You don't make it your business to go around discussing such matters as that with people do you? A. No sir.

Q. Have you had litigation in this Court?

A. Well my father had. I guess, about two years ago. That is the only case I had.

Q. Mr. Cassin was your father's attorney?

A. No sir Mr. Cassin was associated with Julius Lee in the case.

Q. The case was decided in your father's favor? A. It was non-suited.

----- Transcriber's Insert -----

[Transcriber's Note: In the United States, a voluntary nonsuit is a motion taken by the plaintiff to release one or more of the defendants from liability. A compulsory nonsuit is a decision by a court that a case cannot proceed to trial, either on substantive or procedural grounds. Depending on which grounds the nonsuit is entered, the plaintiff may or may not be able to file his case again.]

----- End of Transcriber's Insert -----

Q. The plaintiff was non-suited? A. And never appealed.

Q. Never appealed? A. No sir.

Mr. Sullivan: Q. That is the plaintiff never appealed the case?

A. No sir.

Q. But the non-suit was granted?

A. Yes sir.

Mr. Lindsay: Q. I don't suppose you could call - recall - the names of anyone who had discussed with you Judge Smith's reputation?

A. No sir, no, I could not; I could not remember any of them.

Mr. Burke: Have you sufficient personal knowledge of the Judge's judicial acts and rulings, to warrant you in saying that he is fair and impartial?

A. I say that I don't know very much about his judicial acts; so far as I know it is good.

Mr. Burke: That is all.

Mr. Sullivan: That is all.

--ooOOOoo--

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TESTIMONY
OF
THOMAS BECK, Sworn.

Mr. Sullivan: Mr. Beck where do you reside? A. Watsonville.

Q. How long have you resided there? A. About half a century.

Q. About half a century? A. Yes sir.

Q. Were you Secretary of State of the State of California at one time? A. Yes sir.

Q. How long ago? A. It was during Governor Irwin's administration.

Q. You were elected on the same ticket with Governor Irwin?

A. Yes sir.

Q. Way back in 1872? A. Yes sir, 1874-1875.

Q. Were you ever a State Senator from the District?

A. State Senator from Santa Cruz and Monterey.

Q. Have you held any other public position?

A. I was United States Appraiser appointed by Grover Cleveland.

Q. You were United States Appraiser appointed by Grover Cleveland?

A. Yes sir.

Q. During his second term? A. His first term.

Q. And you have a family in Santa Cruz have you? A. Yes sir.

Q. Do you know Judge Lucas F. Smith? A. Yes sir.

Q. How long have you known him? A. Ever since he has been in the County.

Q. Ever since he has been in the County? A. Yes sir.

Q. Do you know his general reputation in the County of Santa Cruz as a Judicial Officer?

A. Yes sir.

Q. Do you know his reputation for fairness and impartiality?

A. Yes sir.

Q. What is that reputation? A. It is excellent.

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Q. You had a suit tried in his Court at one time didn't you?

A. Unfortunately yes.

Q. You lost it? A. Yes sir I did.

- Q. You did you say? A. I was unfortunate, I had a case.
Q. And lost it? A. Yes sir.
Q. You unfortunately lost it. Did you move for a new trial in that case? A. No sir.
Q. You did not take any appeal, at all? A. No sir.
Q. It was tried before a jury wasn't it?
A. It was tried before a jury, yes sir.
Q. And Mr. Cassin demanded a jury for his client didn't he?
A. He did.
Q. It could have been tried before the Court and Mr. Cassin demanded a trial before a jury?
A. Yes sir.
Q. And the jury decided against you? A. The jury decided against me.
Q. You didn't move for a new trial and didn't appeal? A. No sir.
Q. Now during your acquaintance with Judge Smith, you always recognized him as being a fair and impartial judge didn't you?
A. Very much so.
Mr. Sullivan: Notwithstanding the defeat you met in his Court.

CROSS-EXAMINATION.

- Mr. Lindsay: Q. How many times have you been in Court since this Mr. Beck?
A. Perhaps half a dozen times.
Q. As much as that? A. Yes sir.
Q. In how many years? A. Well I presume - you remember you were my attorney on that occasion.
Q. Yes; I don't remember when it was tried. I have tried several cases since that time, it may be fresher in your mind than in mine.
A. I can't recollect it.
Q. A good while ago? A. A good while ago.
Q. It must be six or seven years ago.
A. No, no; about five years ago - four or five -.

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- Q. You are away from Santa Cruz a great part of your time are you not Mr. Beck? A. Yes sir.
Q. What portion of your time is spent away from this County?
A. Oh well perhaps one third of my time.
Q. Away in other States, other Counties? A. Yes sir.
Q. I suppose you have not made it your business particularly to find out what people think about Judge Smith as a Judicial Officer?
A. Well I was present at my home in Watsonville during the canvass, and when a man is up for office, his character is generally discussed, and I heard Judge Smith's discussed pro and con.
Q. Both ways? A. Well I never heard it discussed unfavorably.
Q. You never have? A. Never have.
Q. Never heard anyone say anything unfavorable about Judge Smith?
A. No, well perhaps it is in a case where a man loses his suit he would speak harshly of the judge, and of the jury and of everybody else.
Q. We all know that Mr. Beck but will you please kindly --
A. (interrupting) I just wanted to say this --
Q. (interrupting) I know you are trying to --
A. (interrupting) I myself spoke rather harshly of the Judge because I though he confined me to certain questions, that if I had not leave to state them I could have one [i.e., won] my case.

Q. The Judge refused to allow you?

A. Certain questions that would have benefitted me, and of course that being the case, I felt pretty hard against the Judge and that he went out of his way in that case.

Q. You honestly thought so?

A. Like any mad man, when a man loses they say a good many things.

Q. At the time of the trial of that case, didn't you honestly

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think, whether you were mad or sick, didn't you honestly think that Mr. Cassin did go out of his way to win the case and that he was favored by the Judge in so doing?

Q. Well I think Mr. Cassin went out of his way, but like any other lawyer who will risk everything to gain the case.

Q. At that time you honestly thought that is that so? A. Of course.

Q. And that Judge Smith favored him?

A. Because of the just rulings I said afterwards this was my conclusion the Judge understood the law and rules of evidence and I guess that was about right.

Q. In other words you had a change of heart. A. Well perhaps.

Mr. Burke: The greater portion of the people you heard discuss the Judge's reputation reside in Watsonville do they?

A. Well yes mostly.

Q. Is Mr. Cassin well known in Watsonville?

A. Very well; he was raised there I think.

Q. Have you ever heard anybody make a statement in the following words to the effect that Cassin runs a Court - do you ever hear such statements? A. No sir.

Q. Never heard that? A. I never heard that.

Mr. Beardslee: Mr. Beck you have been present in a great many counties where are held have you?[sic] A. Yes very often.

Q. Have you known a great many people in these counties?

A. Yes sir. In San Jose and Santa Clara County and Monterey County.

Q. Is it not a fact in most communities that there is some lawyer who is said to have the favoritism of the court?

A. Well yes I think that is generally true, especially by unfortunate attorneys who lose a great many cases, they feel very harsh to the Judge.

Q. I wanted to ask you these questions. We have all heard of you and know you are a man of wide experience. That is all.

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----- Transcriber's Insert -----

[Transcriber's Note: The surname Wyckoff is frequently misspelled.]

----- End of Transcriber's Insert -----

Mr. Sullivan: Q. Do you know the reputation of Mr. Cassin as a practitioner? A. I do.

Q. What is that reputation? A. Good - excellent.

Q. Is he an honorable upright attorney? A. That is my opinion.

Mr. Lindsay: Q. Do you know the reputation of H. C. Wickoff in this County for truth, honesty and integrity, both socially and as a lawyer?

Mr. Sullivan: That is not cross-examination. There is no charge made against Mr. Wickoff. You cannot prove the reputation of all the witnesses. (Objection sustained.)

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TESTIMONY
OF
F. A. SPECKENS,
[i.e., William Alfred Speckens]

Sworn.

Mr. Sullivan: Q. Mr. Speckens, where do you reside? A. Watsonville.

Q. How long have you resided there? What is your business?

A. Merchant.

Q. How long have you resided there? A. About fifteen years.

Q. Do you know Judge Lucas F. Smith? A. Yes sir.

Q. How long have you known him? A. Well not before his first election.

Q. Do you know his general reputation in the County of Santa Cruz as a Judicial Officer? A. Yes sir.

Q. What is that reputation? A. Good.

Q. Do you know his reputation for being fair and impartial and upright? A. Yes sir.

Q. What is that reputation? A. Good.

CROSS-EXAMINATION.

Mr. Lindsay: Q. Did you ever receive any favors at the hands of Judge Smith? A. Not that I know of, no sir.

Q. He has appointed you as appraiser on estates for many years?

A. Perhaps five or six, yes.

Q. How many people have you discussed Judge Smith's reputation with here? A. Quite a good many.

Q. Who are they?

A. I can give you the names of a few of them, I can't give you the names of all of them.

Q. Name those you can.

A. I discussed it with Mr. Porter and Mr. Torchiana.

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Q. Mr. Torchiana counsel for the defense of Judge Smith here now?

A. Yes sir; Mr. Fletcher, Mr. Radcliff, and Mr. Ed. White I can call to memory now.

Q. When did you discuss Judge Smith with Mr. Porter?

A. I could not tell you exactly I think it was along about last election.

Q. When did you discuss that reputation with Mr. Torchiana?

A. Perhaps about two or three months ago.

Q. When with Mr. Fletcher?

A. I could not tell you; I think along about election time.

Q. You think along about election time?

A. Yes sir most of those things are or ought up.

Q. That is all you can remember of - you can recollect is it?

A. Yes sir.

Q. And from that you state that his reputation throughout the County as a Judicial Officer is good? A. Yes sir.

Q. That is the basis of your judgement on that question? A. Yes sir.

Q. That is all.

Mr. Burke: Q. Have you been in Court here at the trial of cases?

A. On one occasion.

Q. Were you a party to the action?

A. Well I was and I was not; I was at the start of the case but not afterwards. There was a note concerned and I afterwards sold the note to my partner, and when the case was decided I was not interested.

Q. Was it a case where there was much of a contest?

A. No sir not a great deal.

Mr. Burke: Mr. Speckens have you any interest in the outcome of these proceedings?

A. No sir, none whatever.

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TESTIMONY
OF
JAMES A. HALL, Sworn.

Mr. Sullivan: Q. Mr. Hall what is your business or profession?

A. Attorney-at-law.

Q. How long have you been engaged in the practice of that profession?

A. About twenty five years.

Q. Did you ever practice in the Superior Court of this County?

A. Yes sir.

Q. Ever hold any official position?

A. I was District Attorney in this County, elected in November 1882; a member of the Legislature from this County of the Session of 1889.

Mr. Lindsay: We have not held that up against you.

Q. You have practised [*sic*] more or less in the Superior Court of Santa Cruz County?

A. Yes twenty odd years.

Q. And before Judge Smith? A. Yes sir.

Q. Practised [*sic*] quite extensively before this Court? A. Yes sir.

Q. During the incumbency of Judge Smith? A. Yes sir.

Q. Have you observed the manner in which Judge Smith conducts cases?

A. Yes sir.

Q. You have won and lost cases of course like any lawyer?

A. Yes sir.

Q. And have you observed particularly the conduct of the Judge on the bench as to his rulings?

A. Always seemed very fair in cases to me. I have always been treated well so far as I am concerned; I never had any fault to find.

Q. As far as you have observed his rulings were fair and im-

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partial? A. Yes sir.

Q. Ever tried any cases against Mr. Cassin?

A. I think we have mixed up in a few cases. I don't know exactly now whether I have any cases against him.

Q. The Marinovitch [*sic*] case? A. Yes sir.

Q. Did you observe the manner in which Mr. Cassin conducted himself as a lawyer in the conduct of that case?

(Question withdrawn.)

Q. What is the reputation of Judge Smith in the County of Santa Cruz as a Judicial Officer?

A. Up in the Watsonville end of the County it is good among the people; I have heard some

criticism of course, but his general reputation is good.

Q. His reputation as a fair and impartial Judge is good is it?

A. Yes sir.

Q. Did you ever get any unfair treatment on account of the Judge's leaning towards Mr. Cassin?

A. No sir; of course in that Marinovitch [*sic*] case you speak of I was not an active attorney, I had an interest for certain parties in the case, I did not take an active part in the case.

Q. It was a jury case was it? A. Yes sir.

Q. Mr. Cassin demanded a jury? A. Yes sir.

Q. And the case could have been tried by the Court if Mr. Cassin had not demanded a jury?

A. Yes sir.

CROSS-EXAMINATION.

Mr. Lindsay: Q. You have heard expressions both ways? A. Yes sir.

Q. You have heard people say that Judge Smith was a good Judge?

A. Yes sir.

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Q. You heard people say he was a bad Judge?

A. I heard people say that, yes sir.

Q. And you heard people say that he was partial to Mr. Cassin?

A. I heard that, yes sir.

Q. You have? A. I heard it, yes sir.

Q. You heard it stated in effect "Mr. Cassin runs a Court"?

A. I don't remember I ever heard that exact language.

Q. But to that effect? A. I heard some criticism to that effect.

Q. So far as you are concerned you had no complaint to make?

A. None so far.

Q. Judge Smith has always treated you courteously?

A. Yes sir, thoroughly so far as I know.

Q. You were away for a matter of two years weren't you Mr. Hall?

A. Yes sir.

Q. Since your return you have been here how long?

A. About four years -- only four years.

Mr. Burke: Q. Mr. Hall, what is the Judge's reputation, if you know, in Watsonville, as confined to attorneys in Watsonville?

A. Well I think the majority of attorneys in Watsonville seem to think Judge Smith is fair.

Mr. Lindsay: You think that is the reputation --

A. (Interrupting.) What is that?

Q. You really believe that that is his reputation down there?

A. I think the majority of attorneys think -- I never heard any complaint; with the exception of one or two I suppose.

Mr. Sullivan: Q. George P. Burke is one?

A. I believe he is one.

Q. He is the one who electioneered against him? A. Yes sir.

Q. And Mr. Wickoff who ran against the Judge for office?

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A. I might say I never heard Mr. Wickoff criticise [*sic*] Judge Smith for partiality.

Mr. Lindsay: Q. You yourself have criticised [*sic*] the Judge?

A. I have when I lost cases.

Q. In this case, this Marinovitch [sic] case, you expressed your terms quite harshly?

A. No sir, not harshly, but with considerable energy and force. Like as I said a while ago, I suppose when a matter is decided against a person, they have a little kick coming.

Q. Oh some people do? A. Yes sir.

Q. But you with your wide experience and knowledge and education, you don't mean to tell this Committee, simply because you lost a lawsuit, you are going to kick? You don't mean anything of that kind because you lose? A. I never did it.

Q. You never would do it?

A. No sir.

--ooOOOoo--

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**TESTIMONY
OF
EDWARD WHITE, Sworn.**

Mr. Sullivan: Q. Where do you reside? A. Watsonville.

Q. How long have you resided in Watsonville? A. Fifty years.

Q. Do you know Judge Smith? A. I do.

Q. By-the-way have you occupied any official positions?

A. Yes sir, a few.

Q. What positions? A. Well I was Supervisor of this County, and at present I am one of the managers of Agnews Asylum.

Q. You take more or less interest in public affairs? A. I do.

Q. Always have, isn't that a fact? A. Yes sir.

Q. How long have you known Judge Smith? A. About fifteen years.

Q. Do you know his general reputation in the County of Santa Cruz as a Judicial Officer? A. I do.

Q. What is it? A. Excellent.

Q. Do you know his reputation so far as being an impartial judge?

A. I think I do.

Q. What is his reputation? A. Good.

Q. Have you had experience in court? A. A good deal.

Q. Have you often come here in the Court Room in this Court?

A. Very often.

Q. During the incumbency of Judge Smith? A. Yes sir.

Q. Have you noticed the manner in which he treated counsel, clients, jurors, and witnesses?

A. I have.

Q. What have you observed in his conduct?

A. Very courteous in all occasions.

Q. Have you observed him in his rulings? A. I have.

Q. How did he act in his rulings so far as you observed?

A. Well fairly so far as I could observe.

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CROSS-EXAMINATION.

Mr. Lindsay: Q. You had some litigation before him?

A. Yes sir.

Q. Any cause to complain?

A. No sir -- on his rulings I have.

Q. But not with his decisions?

A. No sir.

Mr. Lindsay: That is all.

Mr. Sullivan: Q. The Supreme Court filed the judgement [sic] of this Court?

A. Yes sir.

Mr. Burke: Q. Did you know the Judge before he came to this County?

A. No sir.

Mr. Burke: The reason I asked that question was, I was under the impression that he came here in 1892.

Mr. Sullivan: In 1888.

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TESTIMONY

OF

Dr. B. C. ROGERS, Sworn.
[i.e., Spencer C. Rodgers]

Mr. Sullivan: Q. What is your profession?

A. Practising [sic] medicine and surgery.

Q. How long have you been engaged in the practise [sic] of medicine and surgery?

A. More than twenty five years.

Q. Where do you reside? A. Watsonville.

Q. How long have you resided there? A. Fourteen years.

Q. Do you know Judge Lucas F. Smith? A. I do.

Q. Do you know his general reputation in the County of Santa Cruz as a Judicial Officer? A. I do I think.

Q. And his reputation as a fair and impartial judge? A. Yes sir.

Q. What is his reputation? A. Excellent.

CROSS-EXAMINATION.

Mr. Lindsay: Q. What do you mean by excellent?

A. Well I think a man's reputation is what people say he is.

Q. Who has told you he was an excellent Judge?

A. Well I get my knowledge from observation and reading and studying, the same as anybody else.

Q. But who has told you he is an excellent Judge?

A. Well the character of his work as I read it and heard it discussed, and seen it, has convinced me of that.

Q. No one has told you? A. I have heard it practically stated, but I could not give you the time or place or persons.

Q. Nor the name of a single individual?

A. No sir I have never taken any particular pains to discuss the question with persons, but I have heard it discussed quite frequently.

Q. Can't you recollect the name of a single man with whom you

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have discussed Judge Smith's reputation?

A. Well the gentlemen who preceded me here to-day are my neighbors. I have frequently spoken to three or four of them, or they have to me or I have heard the discussion between them and other people. I could not recollect it. I am speaking in a general way.

Q. I know you are speaking in a very general way, and it is for that reason I want to ask you

this question. You were questioned in a very general way as to his reputation? A. Yes sir.

Q. And with emphasis you say it is excellent? A. Yes sir.

Q. And do you mean to say you come here to testify his general reputation is excellent without being able to tell this Committee the name of one man that you discussed it with?

A. Oh I could mention the names of George F. Martin for one - mention the name of Mr. Speckens, Mr. Edward White, Mr. Charles Peckman [*sic*, i.e., Peckham], and quite a number of others.

Q. A moment ago you said you could not think of anyone. How did these names come to your memory?

A. As I stated I never entered into a discussion with people; these gentlemen are neighbors, and I drop in occasionally, just as anyone; that is the consensus of opinion.

Q. You say consensus of opinion? A. Yes sir.

Q. You mean to say the consensus of opinion of these men you have described, you mean of what you have heard from the gentlemen you have named.

A. The discussion I have heard.

Q. But what I mean is Doctor, so far as you know, as far as your conversation has extended, that you had not heard anything against his reputation.

A. I never heard anything against his reputation until the publication of the charges.

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Q. You are a physician and surgeon? A. Yes sir.

Q. In active practice? A. Yes sir.

Q. A personal friend of Judge Smith? A. Well I know the gentleman, and I am friendly to him.

Q. A personal friend? A. Well not an intimate friend.

Q. And of course personally you like him very much.

A. Well I esteem him as a gentleman, as I would you or anybody else.

Mr. Lindsay: Certainly that is all right.

Mr. Sullivan: That is all.

Mr. Atkinson: Q. In reference to the Judge's reputation you refer particularly to Watsonville don't you?

A. Yes sir, I live there.

Mr. Burke: Q. Were you subpoenaed here? A. Yes sir.

Q. Did any person connected with this case request you to come here as a witness previous to the time you were subpoenaed?

A. No sir.

Q. Or speak to you in any way? A. No sir.

The Chairman: The witness is excused.

Mr. Sullivan: Q. I have not discussed the matter with you have I?

Mr. Lindsay: I will admit you have not.

Mr. Sullivan: Q. Has Judge Smith discussed it with you?

A. No sir.

Mr. Sullivan: In fact I have not spoken to you.

Mr. Lindsay: In fact I did not either.

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The Chairman: The Committee would prefer to hear evidence on this Specification No. 6.

Mr. Burke: How many witnesses have you got?

The Chairman: I think you have several witnesses on this point.

Mr. Sullivan: I would like to introduce the testimony of some witnesses from Santa Cruz City.

The Chairman: We must necessarily restrict testimony.

The Chairman: How many do you want to put on?

Mr. Sullivan: I suppose we want to put on about ten or a dozen. We will restrict the number to ten or twelve.

The Chairman: We will give you half an hour after adjournment.

The witnesses are recognized to be here.

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AFTERNOON SESSION.

Mr. Sullivan: We have subpoenaed quite a number of witnesses here from Watsonville, but we are satisfied with the testimony thus far introduced by these witnesses, and we desire now to introduce the testimony of a limited number of witnesses from Santa Cruz, and thereafter we will discontinue to introduce character testimony.

The Chairman: Now Mr. Sullivan, the Committee has decided they will give you one half hour. We will consider any further evidence on that point as cumulative.

Mr. Sullivan: Well we are satisfied with that.

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**TESTIMONY
OF
MICHAEL LEONARD, Sworn.**

Mr. Sullivan: Q. Mr. Leonard where do you reside? A. Santa Cruz.

Q. In the city of Santa Cruz? A. Yes sir.

Q. How long have you resided here? A. Between forty and forty seven years. Forty six or seven, along there-nearly forty seven years.

Q. Own considerable property in the city of Santa Cruz? A. Yes sir.

Q. On the main streets? A. Well some on the main streets, some outside of town -- different places.

Q. Did you ever occupy any official position?

A. I was on the Board of Supervisors once.

Q. Have you taken more or less interest in political affairs during your residence here?

A. I have yes.

Q. Do you know Judge Lucas F. Smith? A. Yes sir.

Q. How long have you known him?

A. Since he first came to the County probably sixteen years ago or somewhere in that neighborhood.

Q. Have you taken notice of his career on the Bench as a Judge?

A. I did yes.

Q. Do you know his reputation as a judicial officer--his general reputation in this county?

A. Yes sir I think I do.

Q. Do you know his reputation as an impartial and fair Judge?

A. Yes sir, I think I do.

Q. What do you know about his reputation?

A. His reputation is good so far as I know.

Q. His reputation is good so far as you know?

A. Yes. I have spent a great deal of time in the Court House here off and on since he was first elected.

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Q. Have you observed the manner in which he treated counsel, witnesses, clients and jurors in this Court? A. Yes sir.

Q. What have you observed? A. I think he has treated all very fair. When he ran first for the position I voted against him, because I do not believe in changing the Judiciary very often when we get a fairly good one we like.

Q. But the next time --

A. (interrupting) When he was elected the second time -- well I watched the business of the Court for six years, and he made such a good impression on me, I went through the County for him and we reelected him.

Q. You are satisfied with the work you did?

A. I am perfectly satisfied.

Mr. Sullivan: That is all.

Mr. Burke: Q. How long do you say you have lived here?

A. Nearly forty seven years.

Q. If Judge Smith had been guilty of partiality would you have known it?

A. I think so; I am right close to the Court here, and in it off and on.

CROSS-EXAMINATION.

Mr. Lindsay: Q. Have you heard others say anything in reference to his partiality?

A. The only man I ever heard condemn him was one; but I have heard lots the other way consider he was a fair Judge; that is the discussion I heard lately since these charges were brought up; there was only [one] man I ever heard say anything against him, and numerous discussed the position of Judge Smith since he was here, and they all say he was a fair and good judge during that time -- only one man I heard to the contrary, and I think he was a little bit hot - I did not discuss it with him because I thought it would make it worse.

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**TESTIMONY
OF
JAMES LEONARD. Sworn.**

Mr. Sullivan: Q. Mr. Leonard where do you reside?

A. I reside in Santa Cruz.

Q. How long have you resided in Santa Cruz?

A. I have been here not quite a year.

Q. How many years? A. Not quite a year.

Q. Not quite a year in the town of Santa Cruz? A. No sir.

Q. How long have you been in the County? A. 41 years or so.

Q. Are you an uncle of John Leonard the memorialist? A. Yes sir.

Q. The gentleman sitting here on the right of Mr. Cassin?

A. Yes sir.

Q. Have you been interested in the public affairs of this County since your residence here?

A. Yes sir, somewhat.

Q. More or less interested in politics? A. Yes sir a little.

Q. Do you know Judge Lucas F. Smith? A. Yes sir.

Q. How long have you known him? A. Well I have known him - well I have known him fairly

well since the first time he ran for Judge.

Q. Have you noticed his career on the Bench? A. Yes sir somewhat.

Q. Do you know the reputation of Lucas F. Smith as a judicial officer?

A. Very good so far as I ever heard.

Q. Do you know his reputation as being fair and impartial and an upright judge? A. Yes sir.

Q. His reputation is good in that respect is it?

A. So far as I know.

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CROSS-EXAMINATION.

Mr. Lindsay: Q. His reputation for those qualities is good so far as you know is it Mr. Leonard?

A. Yes sir so far as I have ever seen it.

Q. Do you know anything about Mr. Cassin?

A. Yes sir I have known him for some time.

Q. Known of his being an able, upright, and conscientious lawyer?

A. Yes sir.

Mr. Sullivan: One moment, I object to that.

Mr. Lindsay: Well strike it out.

The Chairman: Objection sustained.

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TESTIMONY

OF

L. L. FARGO,

Sworn.

Mr. Sullivan: Q. Mr. Fargo where do you reside?

A. Number fourteen Spruce Street.

Q. What is your business? A. Car penter [sic; carpenter?] and builder.

Q. Are you a contractor also, do you take contracts? A. Yes sir.

Q. How long have you resided in Santa Cruz City?

A. Forty seven years last October.

Q. Do you take an interest in public affairs? A. Yes sir.

Q. Do you know Judge Lucas F. Smith? A. I do.

Q. How long have you known him? A. I think since 1890.

Q. Do you know the reputation of Judge Smith as a Judicial Officer in this County? A. So far as I have heard it expressed.

Q. Do you know the general reputation among the citizens? A. Yes sir.

Q. What is it good or bad? A. Good.

Q. You are a Republican in politics are you? A. Yes sir.

Q. You first voted against Judge Smith when he ran didn't you?

A. Yes I worked hard against him.

Q. After an experience of six years on the Bench, after you observed his conduct on the Bench as a Judicial Officer, you voted for him?

A. No sir I didn't but I was down here two weeks before election; I had business in Berkeley at that time, I could not get back here for election day.

Q. You happened to be out of the County on the day of the election?

You did what you could possibly to help him in the election?

A. Yes sir.

Q. On account of the reputation that he had made as a Judge in this County?

A. Yes sir.

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CROSS-EXAMINATION.

Mr. Lindsay: Q. I understand you to say you know Judge Smith's reputation as a Judicial Officer.

A. Well I did not say that. I heard it expressed—that is the opinion of the public.

Q. The opinion of the public? A. So far as I had heard.

Q. Do you mean to state to the Committee you know the opinion of the public? A. Well I did as long as --

Q. (interrupting.) So far as you heard it expressed? A. Yes sir.

Q. Have you discussed that matter very much? A. Considerable, yes.

Q. Then it is from what you learned from your discussion with others that you based your opinion on? A. Yes sir.

Q. You were an active worker for Judge Smith the last election weren't you? A. Yes sir.

Q. Of course, knowing you as well as I do, you took off your coat and worked for him. Isn't that the idea?

A. Well I would not have made the fight if I had not had confidence in Judge Smith.

Q. So far as you know from what you learned, his reputation is good?

A. Yes sir.

Q. Have you heard any people say anything to the contrary?

A. No sir, I think not.

Q. Never? A. Yes I heard some sore-headed Republicans talk against him.

Q. Sore-headed Republicans talk against him? A. Yes sir.

Q. You are not a sore-headed Republican are you? A. No sir. I am not.

Q. Name people who talked against him who were sore-headed Republicans.

A. There were some of them I think.

Q. Your answer was you heard sore-headed Republicans talk against him. Name them.

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Mr. Sullivan: I object as not cross-examination and exposing the affairs and private knowledge of this witness.(Objection sustained.)

Q. Who have you heard talk in his favor?

A. Well I decline to say that on the same grounds.

Q. You decline to say?

A. Yes sir.

Mr. Lindsay: That is all Mr. Fargo.

Mr. Burke: Q. These parties whom you have heard express opinions as to the reputation of Judge Smith as a Judicial Officer, were they intimate friends of the Judge, or were they disinterested parties?

A. I think they were people of repute in the community, disinterested.

Mr. Sullivan: Q. I understand you to say you are a Republican?

A. Yes sir.

Q. Mr. Fargo you served on the Jury in Judge Smith's Court on many occasions.

A. Well I don't know how many.

Q. On several occasions then?

A. Well yes I guess so.

Q. While you were sitting as a juror did you notice the manner in which he treated counsel, witnesses, clients, and jurors?

A. Yes I did.

Q. What did you observe about it?

A. I think it was fair.

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TESTIMONY
OF
DUNCAN McPHERSON SR., Sworn.

Mr. Sullivan: Q. Mr. McPherson, what is your business or profession?

A. Journalism.

Q. Are you publisher of the "Sentinel"? A. I am one of them.

Q. That is a Republican paper is it not? A. Yes sir.

Q. How long have you been connected with that paper? A. 40 years.

Q. How long have you resided in Santa Cruz? A. 49 years, on and off.

Q. That paper has been published for the last forty years? A. 49.

Q. And as a Republican paper all the time?

A. During the last twenty eight years I have been its editor, it has been all the time.

Q. You have been the editor for the last twenty eight years?

A. Yes sir.

Q. Do you know Judge Lucas F. Smith? A. Yes sir.

Q. How long have you known him? A. I have known him ever since he came to the County.

Q. You knew him as a practitioner at the Bar? A. Yes sir.

Q. Did you observe his career carefully as Judge of this Court?

A. I think so.

Q. You had of course, as a journalist, criticised [*sic*] public officials? A. Yes sir.

Q. Did you observe the course and conduct of Judge Smith during the first six years he was on the Bench? A. Yes sir.

Q. Do you know the general reputation of Lucas F. Smith in this

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County as a judicial officer? A. I think so.

Q. What is that reputation? A. Good.

Q. Has he the reputation of being fair, upright, and impartial Judge. A. I think so.

Q. That is the general reputation among the people in the community?

A. Yes. That is my judgement [*sic*] from what I heard.

Q. And you have noticed -- you have had quite an extensive career -- you have noticed, have you not, in all Counties, there are certain attorneys who are very bitter against the Judge of the Court?

A. Yes sir that is my observance in the County of Santa Cruz, and in Monterey County the last forty years.

Q. There are a number of attorneys who are bitter against the presiding Judge?

A. Has been in every single instance to every Judge in this County without exceptions, during the forty nine years I speak of.

CROSS-EXAMINATION.

Mr. Lindsay: Q. You are friendly with Judge Smith?

A. What do you mean by the word "friendly"?

Q. The ordinary acceptance of the word.

A. Yes. I meet him on the street - not intimate with him, neither politically or socially.

Q. You print his opinions in your paper don't you?

A. Yes. If the Judges hand them to me; always have; never refused the opinion of a Judge yet.

Q. Since he has been on the Bench he has been very kind to you in furnishing copies of

opinions?

A. He has always furnished them - always during his term of office.

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Q. And takes from you a number of copies of the paper in which the opinions are printed?

A. Sometimes yes; sometimes he has not taken a single copy.

Q. During the course of this investigation -- I don't mean since it has been on hearing here, but afterwards, these charges were preferred and before this Committee came to Santa Cruz, I think on the fifth of January, did Judge Smith bring to you two alleged interviews, one by himself, and one by Chas. M. Cassin to request you to publish them?

A. Did not bring them to me.

Q. He did bring it to the office? A. I think so although I don't know.

Mr. Sullivan: I object as hearsay.

Mr. Lindsay: Q. Did you see them? A. I cannot say I saw them.

Q. Can you say you did not?

A. I can say this: I don't know that I saw any interviews from him.

Q. You saw what purported to be the interviews did you?

A. I saw copies of what was represented to be interviews; it was on the table when I arrived at the office in the evening.

Q. In whose handwriting was it do you know?

A. I never saw his handwriting, I could not swear to that; I never saw him write -- at least I may have seen him -- I could not swear to his handwriting.

Q. You have seen his handwriting many times haven't you?

A. I could not swear to that; I have seen his handwriting in his decisions, but I did not see him write this writing and so I could not swear to his writing; I simply say I have seen decisions that have been sent into the -- he would send into the office what he gave to the reporter.

Q. Were these communications to which I now refer, in the same handwriting as these decisions you speak of?

A. I never saw but one communication if that is the one you

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refer to.

Q. That is the one I refer to.

A. I should judge it was in the same handwriting as the decisions.

Q. The same handwriting as the decisions? A. Yes sir.

Q. Did they purport to be interviews with Judge Smith and Mr. Cassin?

A. It is a part of the interview with Mr. Cassin --

Q. (interrupting) It was in the same handwriting as the decision?

A. If the reporter interviews a man, he writes out the report sometimes, sometimes the man to be reported writes it out.

Q. It purported to be an interview with Mr. Cassin didn't it?

A. Yes sir, that is my recollection.

Q. Did you publish it? A. I don't think it was all published; it was left in the hands of the office people, and I don't think it was all published -- only part.

Q. So in part --

A. (interrupting) I think some was published - I can't say about that.

Q. Is it not a fact that you obtained legal advice in reference to the matter? A. No sir that is not a fact.

Q. Or somebody acted for your paper? A. I did not do it.

Q. Isn't it a fact that legal advice was obtained and you decided not to publish? A. No sir.
Mr. Sullivan: I object as not cross-examination, in calling for hearsay.
Mr. Lindsay: It simply goes to his interest - to the interest of the witness.
The Chairman: I think he could answer within his own knowledge whether it was or not.
Mr. Lindsay: He says he answered it.
Mr. Witness: A. There has been no legal advice asked and none

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obtained so far as I know.

Q. So far as you personally know?

A. So far as I personally know.

Q. Do you mean by that so far as you personally are concerned do you not Mr. McPherson? A. I mean so far as I know.

Q. So far as you can swear to?

A. So far as I can swear to; Mr. [blank] has charge of the paper in the evening after six o'clock, as the city rule, the City Editor, and is the proper witness for you to examine on a matter of that kind.

Q. He is in San Francisco isn't he? A. No sir he is in Santa Cruz.

Q. Is he still here?

A. He is still in the town of Santa Cruz and will remain here until to-night I understand.

Q. I understood he had gone. A. No sir he is here.

Q. We may get the information I suppose from him? A. Yes sir.

Q. But is it not a fact that you telephoned to your partner and requested him to get legal advice? A. No sir it is not a fact.

Q. That is not true then? A. No sir.

Q. Didn't you suggest to your partner or direct him to obtain legal advice on this article? A. No sir.

Q. Did you know before legal advice was obtained that it was going to be obtained? A. No sir.

Mr. Sullivan: I object as irrelevant, immaterial, and incompetent in cross examination, in calling for a communication between the Witness and third parties.

Mr. Lindsay: Question withdrawn. Q. Now as one of the last questions, will you now say Mr. McPherson, considering the fact that you have known Judge Smith a great many years, and considering the fact that during the time he has been on the Bench, he has, as you say, sent to your office, copies of his opinions

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and decisions for publication whenever they were made, which you have seen, will you now say that you don't know that that alleged interview was in the handwriting of Judge Smith?

A. I will say that it was in the handwriting of the reports of his decisions. But I will say that I don't know his handwriting when I see it.

Q. You mean by that of course simply you never saw him write.

A. That is what I mean exactly.

Mr. Sullivan: I think the counsel will take up our half hour.

Mr. Lindsay: I have not taken up any more than I think is necessary.

Mr. Sullivan: Let the interview go in will you?

Mr. Lindsay: Certainly we will let it go in.

Mr. Sullivan: Get it here, I think we will let it go in.

Mr. Burke: Q. Have you ever in your paper, criticised [sic] the official acts of Judge Smith, or any great oppression, tyranny or mal-administration in the affairs of his office? A. No sir.

Q. If such acts had been committed by him in court or out, you would have criticised [sic] him?

A. Well I think I would.

Q. If you had known it.

A. A man cannot tell exactly what he will do until he does it.

I cannot tell what I will do to-morrow as the publisher of a newspaper. I try to say what I think is true.

Q. Try to state the truth. A. The truth.

Mr. Lindsay: Q. But it is always with you a matter of policy and consideration, whether it is policy to take up any particular line of investigation isn't it?

A. I always use my own judgement [sic] the same as an attorney-at-law does.

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Q. If you don't consider it is policy to attack a person through the columns of the newspaper, you don't do it?

A. I don't attack everything or every man. I don't tell half what I know.

Mr. Lindsay: I think that is right.

A. I could not do it.

--ooOOOoo--

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TESTIMONY

OF

F. D. Baldwin,

Sworn.

Mr. Sullivan: Q. What is your business or occupation?

A. I am a fruit grower engaged in banking.

Q. What Bank are you connected with? A. The City Bank.

Q. Of Santa Cruz? A. The City Savings Bank.

Q. You are President of that Bank aren't you? A. Yes sir.

Q. Are you more or less interested in political affairs Mr. Baldwin?

A. Always have been from boyhood more or less.

Q. Are you Chairman of the Republican County Committee of Santa Cruz?

A. I am at present.

Q. Do you know Judge Lucas F. Smith? A. I do.

Q. How long have you known him? A. Probably fifteen years.

Q. Have you observed his career upon the Bench of this Court?

A. I have been in Court more or less at different times during the time, probably some time every year during the period.

Q. Have you served as a juror in his Court at times? A. Yes.

Q. Have you, while sitting as a juror in his Court observed the manner in which he treats litigants, counsel, witnesses, and jurors?

A. Yes sir.

Q. What did you observe as to his manner of treatment of all?

A. He seemed to be fair on all occasions that I was present.

Q. You know his reputation as a judicial officer in this County?

A. I think I do.

Q. What is that reputation?

A. As it comes to me it comes as being an honest and upright judge.

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Q. Fairly and impartially a just Judge is that so?

A. That is the way I look at it. Yes.

Q. Did you ever act as a juror in this Court when Mr. Cassin represented one of the parties litigant? A. Excuse me?

Q. Did you ever act as a juror in this Court when Mr. Cassin represented one of the parties to the litigation? A. Yes sir.

Q. Did you observe the manner in which the Judge treated Mr. Cassin and his opponent?

A. I could see no material difference in the treatment.

Q. You could see no material difference of either counsel?

A. No sir, none at all.

Q. Who was opposed to Mr. Cassin at that time?

A. Mr. Hall was one of the attorneys and Mr. Torchiana.

Q. Have you been in Court at other times when Mr. Cassin has appeared as attorney for one of the parties?

A. I have been in Court at various times.

Q. When you saw Mr. Cassin plead his case before the Court, did you notice any difference in the treatment of him by the Court than that of his opponent?

A. I don't recollect any.

CROSS-EXAMINATION.

Mr. Lindsay: Q. Have you entered into much discussion concerning Judge Smith's reputation as a Judge? A. Not very much.

Q. And the answer which you have given -- you say "as it comes to me" you mean as it comes to you from those who talked to you?

A. Yes sir, that is the idea.

Q. You don't purport to give your own opinion? A. No sir.

Q. Simply the opinion of the people you talked to? A. Yes sir.

Mr. Lindsay: That is all Mr. Baldwin.

--ooOOOoo--

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**TESTIMONY
OF
JAMES G. PIRATSKY,**

Sworn.

Mr. Sullivan: Q. Mr. Piratsky, what is your profession or business?

A. Publisher.

Q. Newspaper publisher? A. Yes sir.

Q. What paper do you publish? A. The "Pajaronian" at Watsonville.

Q. How long have you been connected with that paper? A. Two years.

Q. That is a Republican paper isn't it? A. Yes sir.

Q. In politics you are Republican? A. Yes sir.

Q. Of course you know Judge Smith? A. Yes sir.

Q. How long have you known him?

A. I have known him for about five years -- six years.

Q. Five or six years? A. Yes sir.

Q. Do you remember meeting Judge Smith before he went on the Bench when he tried a case in Hollister? A. Yes sir.

Q. How long ago was that?

A. Well I met him - I think I met Judge Smith about six years ago in Hollister.

Q. Well he was elected eight years ago Judge of this Court. You met him while he was

practising [sic] law? A. Yes sir.

Q. How long before he was elevated to the Bench?

A. That was the first time I met him. He came over and presided in the Court and I was County Clerk at the time.

Q. That was after his election?

A. That was after his election, and in that capacity I met Judge Smith.

Q. You were then, you say, County Clerk?

A. I was County Clerk of the County of San Benito.

Q. How long did Judge Smith preside there in the Court?

A. He presided a number of times off and on - took the place of Judge Dooling a number of times.

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Q. While presiding as Judge in that Court, did you observe the manner in which he treated counsel, litigants, witnesses, and jurors?

A. Yes sir.

Q. How did he act?

Mr. Lindsay: I don't think there is any specification charging him as to how he acted in San Benito County. (Objection withdrawn.)

Mr. Sullivan: Q. How did he treat everybody?

A. Very fair, very fair.

Q. But of course by reason of your experience as County Clerk, you were able to note fairness or unfairness weren't you? A. Yes sir.

Q. And so far as your observation goes, his rulings were always impartial were they? A. Yes sir.

Q. After you came into the County of Santa Cruz, did you notice his conduct on the Bench?

A. No sir, I never attended Court here since I have been in the County.

Q. You never attended his Court? A. No sir.

Q. But your newspaper of course, publishes the doings of the Court?

A. Yes sir.

Q. Daily I suppose? A. Yes sir.

Q. Did you in that part of the County, learn the general reputation of Lucas F. Smith as a Judicial Officer while conducting your paper?

A. How was that?

Q. Did you learn or know of the general reputation of Lucas F. Smith as Judge - as a Judicial Officer in your part of the County?

A. Well what I learned - possibly - I really don't know how to answer you on that point.

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Q. Well reputation is based on what people say about him.

Q.[i.e., A.] Well judging from what people say, his reputation is not good.

Q. What people say? A. What people say.

Q. What is his general reputation? A. That was it that I heard.

Q. You heard that from outside attorneys did you?

A. I heard that from dissatisfied attorneys - that is I suppose they were dissatisfied; I don't know I would not say they were dissatisfied attorneys.

Q. What attorneys were they Mr. Piratsky?

Mr. Lindsay: I object.

The Chairman: Objection sustained.

Mr. Sullivan: Q. How many attorneys?

A. Well I heard it from one or two, possibly three or four, I could not tell; that is the impression on my mind judging from the conversation I heard.

Q. Are these the only persons you heard say anything against his reputation? A. Yes.

Q. That is all you ever heard? A. Yes.

Q. Is one of these attorneys George P. Burke?

Mr. Lindsay: I make the same objection.

Mr. Sullivan: Of course I am taken by surprise.

Mr. Lindsay: You are?

Mr. Sullivan: Yes. (Objection sustained.)

Q. Then the only attorneys you ever heard say anything against his reputation was about four attorneys wasn't it?

A. About three or four attorneys.

Q. What is the population of Watsonville?

A. I think Watsonville has the reputation of 3500 population in the city limits.

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Q. Now have you seen any person at all in the last few days in relation to this matter?

A. How do you mean, Mr. Sullivan?

Q. Have you had a manuscript given to you in the last few days?

A. Yes sir.

Q. By whom? A. By Mr. Adylotte.[sic]

Q. Did you hear Mr. Adylotte [sic] say anything against the reputation of Judge Smith?

Mr. Lindsay: Same objection.

Mr. Sullivan: Q. Is Mr. Adylotte [sic] one of the four attorneys?

Mr. Lindsay: I make the same objection.

(Objection sustained.)

Mr. Sullivan: Q. Is Mr. Wickoff one of the three or four attorneys?

Mr. Lindsay: Same objection.

Mr. Sullivan: All right. Q. Now Mr. Piratsky you published the article in your paper?

A. Yes sir.

Q. Have you the manuscript with you? A. Yes sir I think I have.

Q. Will you please let me look at it?

(Witness here produced manuscript.)

Mr. Sullivan: Q. Do you know in whose handwriting that is a copy of?

A. What do you mean, the writing or the typewriting?

Q. Oh there is typewriting in it too. No sir the handwriting.

A. The handwriting is in my handwriting.

Q. Who furnished the typewritten matter?

A. The typewritten matter was furnished by Mr. Adylotte [sic].

Q. The typewritten matter was furnished by Mr. Adylotte? [sic]

A. Yes sir.

Q. And the headings over the typewritten matter were written by you were they? A. Yes sir.

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Q. For instance here is one of the headings: "Like monkeying with a buzz-saw". That is in your handwriting?

A. That is my handwriting.

Q. All the sub-headings are in your handwriting?

A. All the sub-heads are in my hand writing.

Q. Did you publish the article in the “Pajaronian” of yesterday?

A. No, the day before yesterday.

Q. The day before yesterday? A. Yes sir.

**Q. I see another sub-heading: “Porter makes a proposition.”
That is in your handwriting?**

A. That is in my handwriting.

Q. Have you any objections, Mr. Piratsky, to leaving this here until we put Mr. Adylotte [sic] on the stand?

A. I would like to have the copy remain in my possession.

Q. We will return it to you just as soon as we finish with Mr. Adylotte [sic].

Mr. Lindsay: That there may not be any trouble of taking up the time of the Committee, you can put in any part of it.

Mr. Sullivan: will you admit the publication in the “Pajaronian” of the day before yesterday, was a correct copy of this article I hold in my hand?

Mr. Lindsay: If Mr. Piratsky says so. Q. Is it?

The Witness: A. Do you mean, was it an exact reprint of Mr. Adylotte’s [sic] article -- is that what you mean?

Mr. Sullivan: Yes.

A. There are certain portions of that article I eliminated and censured it. I would not say that it was - that it is - just exactly as it came from Mr. Adylotte’s [sic] hand, because it is not.

Mr. Sullivan: Q. The typewritten matter here is all furnished by Mr. Adylotte[sic], and published by you in your paper? A. Yes sir.

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Q. Where was this typewritten matter prepared?

A. I could not tell you.

Q. Was it brought to your office and handed to you by Mr. Adylotte? [sic]

A. It was brought, as you will notice, in these long type-written sheets, - then I cut it up to put the head-lines over it.

Q. Will you kindly leave this with us. We will return the copy in exactly the shape it is now to you to-morrow.

A. I suppose so as long as you return it to me.

Mr. Sullivan: We will return it to you just as you give it to us.

Mr. Lindsay: You will turn the article over to the clerk.

Mr. Sullivan: We will keep it here.

Mr. Lindsay: Turn it over to the reporter.

Mr. Sullivan: It is not in evidence yet.

Mr. Lindsay: Simply keep it here.

Mr. Sullivan: We will take charge of it. Mr. Piratsky will trust me; I give you my word of honor I will give it back just in the same shape. It is turned over to me to be used as evidence and Mr. Adylotte is on the stand - that is the understanding -.

Mr. Lindsay: Is it to be admitted in evidence now?

Mr. Sullivan: No sir not yet.

Mr. Burke: The way to settle this - the reporter is here, let it be put in his possession.

Mr. Sullivan: It can remain in his possession. I mean it is not in evidence yet. It belongs to Mr. Piratsky - it is his property -. It is also to remain his property if he trusts me with it; I promised to return it to him just in the same shape.

Mr. Sullivan: Q. Is it not a fact, Mr. Piratsky, that the four attorneys who denounced Judge

Smith were Mr. Leonard, Mr. Adylotte, Mr. Wickoff, and Mr. Geo. P. Burke?

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Mr. Lindsay: I object to the question on the same grounds.
(Objection sustained.)

CROSS-EXAMINATION.

Mr. Lindsay: Q. Mr. Piratsky, in reference to this article that was sent you by Mr. Adylotte[sic], was it done voluntarily on his part, or did you request an interview with him?

A. I requested the interview. It struck me that Mr. Adylotte[sic] might have a good story about that, about this time, taking it up before the Legislature, accordingly I called him up on the 'phone, and asked him if he would not give me a story for the newspaper. At first he refused, and said no, that he would not; then about half an hour afterwards, he called me up on the 'phone and says "All right, if you will come over here I will give you a story".

Q. That is the way that it happened?

A. That is the way it happened.

Mr. Lindsay: That is all.

Mr. Sullivan: That is all.

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--ooOOOoo--

**TESTIMONY
OF
ALBERT DICKERMAN, Sworn.**

Mr. Sullivan: Q. Judge, what is your occupation?

A. Attorney-at-law.

Q. How long have you been engaged in the practice of your profession?

A. About 38 years.

Q. About 38 years? A. Yes sir.

Q. You have been admitted to practice by various courts have you?

A. Well by the Courts of Michigan and this State only.

Q. Have you ever held any judicial office? A. Yes sir.

Q. Where? A. In Michigan.

Q. In what Courts? A. Circuit Court of the Fourth Judicial District of that State.

Q. Corresponding with the Superior Court of this State?

A. Yes, substantially.

Q. How long did you serve Judge? A. Six years.

Q. Have you been a member of the Legislature of Michigan also?

A. Yes sir.

Q. Have you held any other public office?

A. I was Judge of Probate for four years in that State.

Q. Prior to engaging in practice you had some military experience?

A. I was in the Civil War.

Q. An officer in the Civil War were you?

A. The highest office I held was an Adjutant of my regiment.

Q. How long have you been in California?

A. A little over--nearly eleven years.

Q. Do you know Judge Lucas F. Smith? A. Yes sir.

Q. How long have you known him? A. A little over ten years.

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Q. Have you been actually engaged in the practice of your profession in this Court?

A. Well yes and no, I have been engaged in my profession, I have not been actually engaged in litigation in the Courts in the trial of contested cases.

Q. You have had considerable experience in probate matters?

A. Yes sir.

Q. Have you been present in Judge Smith's Court often during the last several years?

A. Since I have lived here, I have been here frequently; I am here perhaps about once a month.

Q. You had occasion to observe the manner in which he conducts the affairs of his Court?

A. Yes, sir, when I have been here.

Q. What have you observed in the matter of his trying cases and disposing of the affairs of his Court?

A. So far as I have observed I think he has been fair; I think he has disposed of the business, he has kept the business up, worked hard, so far as I have been able to observe.

Q. Impartial in his rulings? A. So far as I have observed.

Q. Have you noticed at any time in the trial of cases before him whether he favored one counsel against the other, or one party as against the other in his rulings?

A. I never observed it.

Q. Have you ever observed any partiality shown by the Judge towards any counsel whether Mr. Cassin, or anybody else, at any time?

A. No sir, I never have.

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CROSS-EXAMINATION.

Mr. Lindsay: Q. Ever been in Court when Mr. Cassin was trying a case, a contested case?

A. Yes occasionally.

Q. What cases?

A. Well I don't know, I have not been here when he has been trying many cases, but I have been here occasionally.

Q. You don't attend Court frequently?

A. Not frequently; I am here on about an average, about once a month, I should say.

Q. You prosecute the business you have in Court and than take the next train back to Watsonville? A. I generally take the first train.

Q. You are a member of the law Firm of Dickerman and Torchiana?

A. Yes sir.

Q. Mr. Torchiana, counsel for Judge Smith, is you Law partner?

A. Yes sir.

Q. And contested matter [sic], Mr. Torchiana usually attends to them doesn't he? A. Yes sir.

Q. You confine yourself to the office work and work of that kind?

A. Largely and mainly.

Q. That is all Judge.

--ooOOOoo--

Mr. Sullivan: D. Maher?

The Chairman: What is this evidence on?

Mr. Sullivan: This is on Sub-Division One.

The Chairman: I understand there was no evidence introduced by the prosecution on Sub-Division one.

--ooOOOoo--

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TESTIMONY
OF
D. F. MAHER, Sworn.

Mr. Sullivan: Q. What is your profession? A. Attorney.

Q. How long have you been engaged in the practice of your profession?

A. Eleven years.

Q. Eleven years? A. Yes sir.

Q. You have been City Attorney for Watsonville for a number of years haven't you?

A. Ten years.

Q. Ten years. During your eleven years of experience as attorney have you practised [*sic*] in Judge Smith's Court? A. Yes sir.

Q. To what extent?

A. Well I have had quite a number of matters before him; principally uncontested matters; several contested matters.

Q. You have tried contested and uncontested matters before him have you? A. Yes sir.

Q. Have you tried cases in which Mr. Cassin was retained on the other side? A. Yes sir.

Q. Some cases? A. I was interested in two - two I had against him.

Q. In the trial of cases which were tried by Judge Smith, where Mr. Cassin was opposed to you, how did Judge Smith act in his rulings?

A. Very fair.

Q. Fair to both sides? A. Yes sir.

Q. Did he treat you as fair as he did Mr. Cassin? A. Yes sir.

Q. He did? A. Yes sir.

Q. Do you remember the outcome of these cases? A. I won both of them.

Q. You won both of them against Mr. Cassin? A. Yes sir.

The Chairman: Q. How long ago was that? A. That has been some three or four years ago.

Mr. Lindsay: Q. That was before the last election? Was it

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not before the last election? A. I don't recollect that it was.

Q. What? A. I don't recall that it was.

Q. You say it was three or four years ago?

A. I don't think it was before the last election.

Mr. Sullivan: Q. You don't think it was before the last election?

A. No.

Q. You think it was after the last election?

A. It has been within the last three years.

Q. Have you seen Mr. Cassin engaged in the trial of cases where other attorneys were employed to oppose him?

A. Occasionally I would notice him in the Court Room as I would come in.

Q. How often did you come into this Court Room?

A. Well I would average about two or three times a month.

Q. You would average about two or three times a month? A. Yes.

Q. And when you saw Mr. Cassin engaged in the trial of cases opposed by other counsel, did you notice the manner in which the Judge treated both counsel - that is counsel on each side?

A. Yes sir.

Q. How did he treat counsel? A. Fairly sir.

Q. Did he treat the counsel opposed to Mr. Cassin any different from the manner in which he

treated Mr. Cassin?

A. I never noticed any difference.

Q. Never noticed any difference? A. No sir.

CROSS-EXAMINATION.

Mr. Lindsay: Q. Have you any opinion, gained from your knowledge of Judge Smith's manner in presiding over this Court, or from any other source, that goes to the question or whether or not he is partial to Mr. Cassin?

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Mr. Sullivan: We object as calling for the opinion of the witness. He can testify as to what he observed; he can testify to facts that is his own observation, but he cannot to his opinion as formed from other sources. (Objection sustained.)

Mr. Lindsay: Q. What case was this you tried against Mr. Cassin Mr. Maher?

A. That was the case of Berson [i.e., Burson] Vs. Green. The contestant was Mrs. Berson [sic], Ada E. Berson of Indiana.

Q. Was it tried before a jury? A. No before the Court.

Q. You don't remember how long ago it was? A. No.

Q. It was three or four --

A. (interrupting.) Within the last three years.

Mr. Sullivan: Q. Was it not within the last year?

A. It has been running along for a year and a half; it was wound up recently.

Mr. Lindsay: Q. Do you engage in the trial of cases to any great extent Mr. Maher?

A. No, my litigations, in which I am interested, is principally uncontested matters.

Q. You do a great deal of probate work don't you Mr. Maher?

A. Yes; and I have a great deal to do with litigation, but I don't let it get into Court if I can help it.

Q. You try to keep it out of Court? A. Yes sir.

Q. You are quite friendly to Judge Smith? A. Yes sir.

Q. You frequently talk with him in his chambers don't you?

Q. Well I cannot say that I do; I have been in his Chambers, have never gone into his chambers only when I came here - and he off of the bench -- to have some orders signed.

Q. Of course I don't imply anything by my question reflecting on you.

A. I understand.

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Q. You do go there - you go there frequently?

A. When I have business.

Q. Have you noticed many contested cases in this Court during the last two years?

A. Well no, I can't say as I have.

Q. Have you sat through the trial of any one?

A. Well no, I don't think I have.

Mr. Sullivan: That is all.

--ooOOOoo--

The Chairman: If agreeable we will have a short intermission.

RECESS.

Mr. Sullivan: I will call Mr. Sheehy[sic]. This is the witness in response to that first specification.

Mr. Lindsay: I understood that the examination of Judge Smith was temporarily suspended for the purpose of putting on one witness.

Mr. Sullivan: Mr. Sheehy[sic] is an attorney. He is a witness residing out of town, and wants to take this four o'clock train.

He resides in Watsonville. What train do you want to take?

Mr. Sheehy[sic]: I want to take the four o'clock special train.

--ooOOOoo--

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TESTIMONY

OF

S. G. SHEEHEY,

Sworn.

[i.e., Philip George Sheehy]

Mr. Sullivan: Q. What is your profession? A. Attorney-at-law.

Q. How long have you been engaged in that profession?

A. About five years.

Q. Where were you born?

A. I was born and raised in this County, near Watsonville, in the town of Watsonville all my life.

Q. You have been City Attorney of Watsonville? A. Yes sir.

Q. As attorney of the Superior Court you have been engaged much in practice?

A. Yes most of my practise[sic] is in --

Q. (interrupting.) The Superior Court?

A. Yes sir of this County.

Q. How often do you come to this Court?

A. About once or twice a month on an average. Once a month anyway.

Q. How long have you been City Attorney in Watsonville?

A. About two years now, nearly.

Q. During your practice have you noticed the manner in which Judge Smith treats counsel in the trial of cases? A. Yes sir.

Q. How does he treat them? A. Very courteously.

Q. Partially or impartially? A. I should say impartially.

Q. Have you seen his trying cases where Mr. Cassin was opposed to other attorneys?

A. Yes sir, I have been engaged in cases with Mr. Cassin also.

Q. You have been engaged with Mr. Cassin in cases also? A. Yes sir.

Q. Have you noticed the manner in which the Judge treated Mr. Cassin, the manner in which he treated Mr. Cassin?

A. It appeared the same as with any other attorney.

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Q. He did not discriminate in favor of Mr. Cassin, as the attorney on the other side?

A. Never.

Q. Never noticed any discrimination at all?

A. Never noticed any discrimination at all.

Q. In the last five years you have been coming here, have you observed the conduct of the Judge and the manner in which he tried cases?

A. Yes sir.

CROSS-EXAMINATION.

Mr. Lindsay: Q. How many contested cases have you been in in the last five years?

A. I don't know Mr. Lindsay; I could not tell - probably a dozen.

A. A dozen contested cases? A. Yes sir.

Q. How long since has it been that you were engaged in any such case in this Court?

A. Mr. Cassin and I tried a case last November I think - October or November.

Q. What case was that? A. The case of Bagnell [sic] Vs. Bagnell [sic].

Q. Was it a divorce case? A. No sir it was father against son.

Q. A jury case? A. No sir before the Judge.

Q. A contested case? A. A contested case.

Q. You were with Mr. Cassin? A. Yes sir.

Q. Now last year, during the year 1904 were you engaged in the trial of any other contested cases?

A. Yes sir; I had two cases last year. One was the Chummy case against some lady, I don't know - I don't recall the lady's name - Nordon; the other was -- I can't recollect the name.

Q. Was Mr. Cassin in these cases? A. No sir.

Q. During the year 1904, with the exception of the cases you have referred to as being tried last year, and that you and

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Mr. Cassin were on one side, did you sit as the spectator of a trial of any contested case in which Mr. Cassin was engaged?

A. Yes sir; I saw him two or three times during the trial of several cases; I was here during the Loma Prieta case.

Q. Houghton Vs. the Loma Prieta Lumber Co. A. Yes sir.

Q. Did you sit throughout the trial of that case?

A. I was here one afternoon; I came up here on a motion, and I had to wait all the afternoon, and I spent a good deal of time that day in the Court Room here.

Q. That case took a good many days to try?

A. I was here just the afternoon; just one afternoon, that was all; and then that water case of Ramirez Vs. the Watsonville Water and Light Company, Duckworth.

Q. And the Reanda [sic]? A. Yes sir I was here another afternoon during the progress of that case.

Q. One afternoon during the progress of that case? A. Yes sir.

Q. It took some time to try these cases of course, and your testimony goes to what you yourself have observed? A. Yes sir.

Q. You are not giving the opinions of others about the matter?

A. No sir; I talked the matter over with others though. I understand this does not go to the character --

Q. (interrupting.) Not at all. You are giving your own testimony?

A. Yes sir.

Q. And your own knowledge?

A. Yes sir.

Q. Mr. Cassin is a relative of yours by marriage isn't he?

A. Yes sir.

Mr. Sullivan: Q. What case was that you tried with Mr. Cassin?

A. Bagnell [sic] Vs. Bagnell [sic].

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Q. You were on the same side of the case?

A. Yes sir.

Q. It was an action to set aside a Deed of Trust wasn't it?

A. Yes sir.

Q. Who was on the other side of the case as attorneys?

A. Mr. Skirm and Mr. Hauck [sic].

Q. That was tried before Judge Smith himself? A. Yes sir.

Q. You and Mr. Cassin lost the case didn't you?

A. Yes sir.

Q. The Judge decided against Mr. Cassin and against you?

A. Yes sir.

--ooOOOoo--

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TESTIMONY
OF
THOMAS J. GAFFEY, Sworn.

Mr. Sullivan: Q. What is your profession? A. Attorney-at-law.

Q. Where do you reside? A. Watsonville.

Q. Are you a graduate of any University?

A. The University of Michigan? A. Yes sir.

Q. And admitted to practice by the Supreme Court of this State?

A. Yes sir.

Q. How long have you been engaged in the practice of your profession?

A. About ten years.

Q. Where? A. In Monterey County and Santa Cruz County.

Q. Do you know Judge Lucas F. Smith? A. I do.

Q. How long have you known him? A. I have known him for about eight years.

Q. During his official career as Judge, have you observed the manner in which he conducts the business of his Court? A. I have.

Q. Have you been present in the Court Room during any trials?

A. I have; in many.

Q. In many? A. Yes sir.

Q. Have you observed how he treated opposing counsel when trying cases? A. Yes sir.

Q. How has he treated them? A. He has always acted fair so far as I can discern.

Q. Treated counsel alike. Have you seen him try a case where Mr. Cassin represented one side, and another counsel represented the other side?

A. Yes sir I have seen him in many cases.

Q. Have you observed the manner in which he has treated the

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respective counsel in these cases? A. I have.

Q. How did he treat them?

A. I never saw him favor any counsel whether he was engaged on one side or on the other - he was sitting as Judge - would naturally act fairly -- in a fair and impartial manner.

Q. Have you been with Mr. Cassin in cases? A. Yes I have.

Q. And against Mr. Cassin also? A. I have.

Q. Have you been in cases with Mr. Cassin when the Judge has decided cases against your and

Mr. Cassin and against your client? A. I have.

Q. You remember a case where Mr. Cassin appeared as your attorney?

A. Yes sir.

Q. The Judge decided against you? A. Yes sir.

Q. That was recently was it not? A. That was quite recently.

Q. You are the gentleman who placed Judge Smith in nominated in the Democratic Convention two years ago? A. Yes sir.

CROSS-EXAMINATION.

Mr. Lindsay: Q. Have you engaged in the trial of many contested cases Mr. Gaffey?

A. I have been in a number in this Court, yes sir.

Q. What? A. I have been in a number of cases, yes.

Q. When was the last time you were in this Court engaged in the trial of a case?

A. I had not been engaged - I never tried a contested case in this court for a long time.

Q. How long? A. I don't know -- eight months.

Q. Have you been here many times during the last year?

A. I have been here many times, engaged in matters before the Court, well uncontested matters.

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Q. How many times? A. Well I frequently visit Santa Cruz - say once or twice a month.

Q. You visit Santa Cruz once or twice a month? A. Yes sir.

Q. You say Judge Smith decided a case against you?

A. He did a short time ago, yes.

Q. That was a jury case from a Justice's Court wasn't it? A. It was.

Q. Where you sued somebody for a fee?

A. I sued a person for an attorney's fee and recovered judgement[sic] in the Justice's Court; they took an Appeal to the Superior Court and we subsequently had a trial of the case here.

Q. It was not decided against you at the time?

A. We recovered \$200.00 as attorney's fee in the Justice's Court; it came on appeal to the Superior Court, and Judge Smith allowed us \$50.00 in the Superior Court.

Q. Allowed you \$50.00. Then the decision was in your favor at any rate.

A. I don't consider it such, Mr. Lindsay.

Q. You recovered in the action didn't you?

A. We recovered in the action, but still consider that decision was erroneous at that time, and still think so.

Q. Judge Smith had a different opinion from you as to the value of your services?

A. That was the idea of course.

--ooOOOoo--

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----- Transcriber's Insert -----

[Transcriber's Note: Mr. Aydelotte's name is misspelled throughout
(e.g., Adyelott or Adyelotte)]

----- End of Transcriber's Insert -----

**T e s t i m o n y
of
LUCAS FLATTERY SMITH,
(Resumed).**

Mr. Sullivan: Judge Smith, accompanying specification is an affidavit by William M. Adyelotte,

sworn to January 25th, 1905, before D. B. Richards, Notary Public. On the stand Mr. Adyelotte testified substantially in the same manner as he swore in the affidavit. Now, did you have a conversation with Mr. Adyelotte in November last in relation to the Buelna case?

A. Well, I do not remember what day it was, but I did have a conversation with him, I think it was the Monday following the day that Buelna was sentenced.

Q. It was after the sentence of Buelna, was it?

A. Yes, sir; I think it was the following Monday or Tuesday, I would not be positive.

Q. Where did the conversation take place?

A. In my chambers.

Q. Was any one present at the time? A. No, sir.

Q. Do you now recall the conversation? A. I do.

Q. State substantially what the conversation was between you and him?

A. Mr. Adyelotte came into the chambers and says, "Judge, I understand you passed sentence on Buelna", I says "Yes, he asked me to have sentence passed Friday, and said he did not require, did not want you as attorney, I called in Mr. and Mr. McPherson, and he requested to be sentenced, and after consultation with them he requested to have sentence passed and it was done."

Q. What else was said by you? A. Nothing else.

Q. What was said by him? A. He said "well, I will see about that matter", and walked out.

Q. How long did the conversation last? A. About 2 or 3 minutes; he never sit[sic] down, I never invited him to have a seat or anything.

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He stood there; that was about the sum and substance of the conversation.

Q. He was not at that time on friendly terms with you?

A. No, sir.

Q. How long had he been unfriendly with you?

A. Ever since last election.

Q. Ever since last election? A. Yes, sir.

Q. He electioneered against you, did he? A. Well, he joined with Mr. Burke and that crowd and electioneered against me.

Q. That is the impeachers? A. Yes, sir; Leonard and Burke.

Q. What? A. Leonard and Burke and the other impeachers, yes.

Q. In that conversation did you say to Mr. Adyelotte -- I am going to refer to the testimony of Mr. Adyelotte, "Your man Buelna went back on you, he concluded not to ask for a new trial and asked sentence to be pronounced"? A. Well, I do not remember whether I mentioned the words to him "went back on you". I said "Mr. Buelna requested me, said he did not desire you as his lawyer to represent him, and asked to be sentenced, and that after consulting with Mr. Houck and Mr. McPherson, who consented to represent him, and with the District Attorney, he asked to have the sentence passed and it was passed.

Q. Did Mr. Adyelotte say in substance or effect, "I am not so sure he went back on me, but I am constrained to believe some evil influence has been at work"?

A. No, sir, he never, anything of the kind, or anything similar to it.

Q. Did Mr. Adyelotte say "he was deprived of his counsel's advice and assistance"? A. No, sir; he did not, nor anything similar to it.

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Q. Did Mr. Adyelotte say "however, since the affairs have taken that course, I will have nothing further to do with the case unless I am called on again"? A. No, sir; he did not say that; he says

“I will see about it,” and walked out.

Q. Did you say “Well, it is a nasty case, you could not afford to have anything to do with”?

A. I am not so sure but what I mentioned that language.

Q. It was a nasty case? A. Yes sir.

Q. In your opinion it was a nasty case? A. Yes, sir; indeed, a very nasty case.

Q. Did Mr. Adyelotte say, “I do not care how nasty it is, I would never be dishonest and cowardly enough to throw down a man whose [case] I had accepted”? **A. No, sir; I believe since you mention about the nasty case, I did remark to him “it seemed to be a nasty case, he should be glad to get rid of it”, something of that kind; I might have said that; he never said he was deprived of his counsel and assistance, because he had attorneys, two lawyers, either one who was as good as Mr. Adyelotte, if not better.**

Q. After Mr. Adyelotte appeared in the County here, did you in any way encourage him at all?

A. I did; I have been extremely kind to him, as I always do, as I was to Mr. Leonard and all other new lawyers that come in town.

Q. In what respect? A. I frequently appointed him to defend men, gave him an opportunity to introduce himself before the People, make himself known. I appointed Mr. Adyelotte to defend, I think it was Rodriques and Berry(?), and possibly another case, I do not remember the title.

Q. They were quite important cases for this County?

A. Yes, sir; and frequently sent parties to him who asked for an attorney, I referred to him as a reliable attorney, along with others.

Q. That was before you knew him well?

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A. That was before the election of two years ago. I was extremely courteous to him, he would come in here if he had a demurrer sustained to his complaint, he would come in my chambers and say “Judge, I wish you would point out, if you would be kind enough, the particular point or ground upon which you sustained this demurrer”. I was always courteous and kind enough to do that for him, show him where to amend his pleadings so as to be sure to cover the defects in the original, I have done that quite a number of times.

----- Transcriber’s Insert -----

[Transcriber’s Note: a demurrer is a pleading in a lawsuit that objects to or challenges a pleading filed by an opposing party. The word demur means “to object”; a demurrer is the document that makes the objection. A demurrer is typically filed near the beginning of a case in response to the plaintiff filing a complaint or the defendant answering the complaint.]

----- End of Transcriber’s Insert -----

Q. Didn’t he become angry at you because you would not allow him the large fee which he claimed from an estate?

A. Mr. Adyelotte did not come to me; Mrs. Cooper came in my chambers --

Q. Mr. Adyelotte’s client? A. Yes, sir; the case was down and it was to come up in a short time, and she told me ---

Q. Did you in that estate allow Mr. Adyelotte less than he demanded for his services.

A. Yes, sir; I allowed him a great deal less.

Q. How much less? A. About \$13.00.

Q. Less than he demanded from this lady?

A. I do not know whether he demanded it of me, because when the matter came up he left a blank in the original Final Account, instead of putting in what he thought was a reasonable fee, he left that blank.

Mr. Lindsay: For you to fill in? A. Yes, sir; he demanded of the widow \$1500.

Mr. Lindsay: I move that be stricken out as hearsay.

A. She told me so.

Mr. Lindsay: It is hearsay. (Objection sustained).

A. There was trouble between them about the fee when it came to me; it was left to me, and I fixed it at \$150, instead of \$1500.

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Mr. Lindsay: I move the \$1500 be stricken out.

The Chairman: Strike the \$1500 out.

A. Shortly after I understood Mr. Adyelotte went off and joined the impeachers, and he afterwards made remarks against me.

The Chairman: What was the value of the estate?

A. The estate was between 4 and 5000 thousand dollars, including a little stock in a corporation.

Mr. Sullivan: The gross value was about five or six thousand dollars?

A. Yes, sir; between five and six thousand dollars. I think it was inventoried at about six thousand dollars.

Q. Appraised at that? **A.** Yes, sir.

Committeeman Burke: A Probate case? **A.** Yes, sir. This was about fifty dollars -- I would have allowed him in an ordinary case -- he put in a large fee, I thought I would be liberal and allowed him about fifty dollars more than my schedule fee would be.

Mr. Lindsay: Mr. Adyelotte never demanded any such fee of you, did he? **A.** No, sir; No, I fixed it myself; he did not demand anything, because Mrs. Cooper informed me he demanded of her.

Mr. Lindsay: I submit that is hearsay, and Judge Smith ought to know it.

Mr. Sullivan: Strike that out.

A. Very well.

Mr. Sullivan: After he was allowed this fee of about \$150, he joined the impeachers? **A.** Well, this was along in the Spring, the first part; when the affidavits were got up I see he made an affidavit here.

Q. He did not include that estate? **A.** No, sir; nothing mentioned about that.

The Chairman: Did you have any reason to believe that was his reason for joining the impeachers? **A.** I think that is one of them.

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Mr. Sullivan: That is one of the reasons?

A. I think so.

Q. Then the last case was a Justice Court case involving a horse trade? **A.** Yes, sir, that was another; the Jury decided that one Mr. Langley had sold two horses to Mr. Bloom[sic], and Mr. Bloom[sic] testified the horses were not to be found.

Mr. Lindsay: I do not think we had better go into that.

Mr. Sullivan: That is in evidence here.

A. Mr. Langley makes an affidavit here.

Mr. Sullivan: There was a great principle involved in that case, Mr. Adyelotte said -- a small amount of money involved.

Mr. Lindsay: On cross examination, I believe you did ask him about that.

A. That is one of the miscellaneous charges. I gave all Mr. Adyelotte's [sic], or nearly all of his instructions, and refused instructions by Mr. Cassin, and in spite of that the Jury returned a verdict in favor of Mr. Bloom [i.e., Blum].

Mr. Sullivan: **Q.** The Jury returned a verdict in favor of Mr. Bloom?

A. Yes, sir. It was a horse trade.

Q. In subdivision three of the 12th specification you decided this case of Bloom[sic] against Langley --

Mr. Lindsay: I understand the witness to state he gave nearly all of Mr. Adyelotte's instructions?

A. I think I gave nearly all of them.

Mr. Lindsay: Q. Gave nearly all of Mr. Adyelotte's and refused nearly all of Mr. Cassin's.

Mr. Sullivan: What was the amount involved in that case?

A. Two hundred dollars.

Q. Two hundred dollars. The value of the horses, I understand.

A. Yes, sir. Two horses.

Q. Two old horses. It was testified that the horses had died of

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old age in that case, was it not? A. One of them before the trial, and the other was broken winded some way.

Q. Now then we come here to specification 12. I think I have covered all of the specifications except this last, this sort of job-lot here?

A. Thirteen.

Q. No, no; you have the original specifications. In subdivision one of specification 12? A. Yes, sir; there are twelve.

Q. That refers again to the Buelna case? A. Yes, sir.

Q. In subdivision 1; but we have gone over subdivision 2, that refers again to the Buelna case.

A. I will state again in that connection, since hearing the testimony of Mr. Zabala, I would not have issued the citation citing Mr. Wyatt and Mr. Zabala to appear here as I did if I had known the truth of the transaction as testified to by these gentlemen upon the hearing of that matter, because they testified they had a letter, that they had notified her four or five days, nearly a week, before the day of the trial that they would have nothing further to do with it.

Q. I refer you to subdivision 3 of this specification twelve, that refers to this case appealed from the Justice's Court, Bloom[sic] against Langley; when Mr. Adyelotte happened to lose his case - you have gone over that. Subdivision 4 of this specification. "In giving, on all manner of occasions, both in court and out, expressions, gestures, smiles of recognition, deferential acquiescence[sic], encouragement by look, word, and deed, signs of extreme friendliness, to and toward the warm personal friends of said Smith". What have you to say about this specification 4 of the Articles of Impeachment?

A. I will refer to the people of Santa Cruz County to say whether my Court has not been conducted in an upright, honorable and dignified manner, as much so as any Court thus far held in this County, I will

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refer them to the citizens of Santa Cruz County.

Q. I refer you to subdivision 5 of this Article 12, "Making it known by look"----

Mr. Beardslee: There is nothing introduced in evidence by the plaintiff on that point.

Mr. Sullivan: Yes, I think there is. "Making it known by look, act, word, and deed, both in court and out, on all possible occasions, that a person who opposed the warm personal friends of said Smith in persona non grata with the said Superior Court and with said Judge Smith".

What have you to say about that?

A. No, sir.

Q. I see here a number of extracts from the "Surf".

The Chairman: The newspaper?

Mr. Sullivan: Yes, sir.

The Chairman: There is no use in going into that.

Mr. Sullivan: Before your last election was that newspaper opposed to you to effect your defeat?

A. It was very unfriendly. I would like to state it was very unfriendly, and has been unfriendly.

Mr. Lindsay: I want to object to that?

Mr. Sullivan: Mr. Adyellotte testified he wrote some of these newspaper articles.

The Chairman: I think it is only justice to the Judge, these charges having been filed against him and stated in the memorial, and they are made a matter of record in Sacramento, and people might not understand why Judge Smith did not testify to all these specifications, and it is no more than just to him that we allow him to give his testimony on them.

Mr. Lindsay: My objection does not go to the extent of depriving Judge Smith of any right to be heard fully, but simply on the proposition that the matter is not at issue, I have no objections

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otherwise.

Mr. Sullivan: How long has this paper been opposing you?

A. Ever since the election.

Q. The last election, when you ran for office first --

A. He supported me.

Q. Held you up as a paragon of judicial virtue? **A.** Yes, sir.

Q. As the best man for the office? **A.** Yes, sir.

Mr. Lindsay: Do I understand the chairman of the committee to say they will give Judge Smith the right to express himself in reference to these charges. It appears he is doing it.

Mr. Sullivan: When you ran for the office of Judge of the Superior Court the first time, how did this paper serve you, treat you?

A. Treated me very nicely, fairly courteous and supported me, although at the same time it spoke very nicely of Judge Logan, my opponent.

Q. How long did it continue to speak in a friendly manner about you?

A. It continued along up to the time, until I ran the second time.

Q. It continued along up [to] the time you ran the second time?

A. Yes, sir; had no ground of complaint.

Q. When you ran the second time, how did the paper treat you?

A. After I announced myself in it and gave it all the patronage necessary for a campaign it turned --

Q. After what? **A.** After I had paid for my announcement as a candidate in the Surf -- I was a subscriber -- it turned very bitter against me in the campaign, very bitter, published very vile and malicious things.

Q. Did that paper publish -- this is on the other point, these Articles of Impeachment? **A.** Some of them, yes. It published a printed statement of the number of cases reversed and affirmed, it published that.

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Q. Has the paper been libeling you ever since your election the last time? **A.** Yes, sir; more or less; it has published some things in my favor; it published the Soldiers' Resolutions pass by my good old Soldier Comrades, and slander has been published against me.

Q. Have you ever given any cause ---

A. It also published my letter to the legislature in my defense. Beside that have published anything that was printed and put in the papers by these ---

Q. Impeachers? A. Affidavit makers, and published everything that appeared in any newspaper, they copied.

Q. Had you given the paper, or the proprietor, any cause for these attacks upon you? A. Never in the world; I had always taken his paper; I never discriminated against his paper in advertising; I always put in legal notices; I was a subscriber for his paper and paid for it and treated him courteously and kindly.

Q. You say you never discriminated at all in the matter of publication of legal notices.

A. No, sir.

Committeeman Burke: Who is the editor of this Paper?

A. Arthur H. [sic] Taylor; really no one is known as the editor.

Mr. Sullivan: You say you do not know who the editor is?

A. He claims to be the editor of it.

Q. Was he the editor of the paper these times you refer to?

A. Yes, sir; Arthur H [sic] Taylor is the gentleman that publishes the paper, I presume he is a good writer, a writer, I think of ability.

Committeeman: Do you know the circulation of the paper?

A. I do not know, no, sir. I know I do not take it now. I had been taking it ever since I had been in town up to two years ago.

Mr. Sullivan: Is the amount of circulation is published at the head on the first page anywhere?

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A. Yes, sir; it is published by Arthur H. [i.e., A.] Taylor, editor.

Q. I mean the amount of the circulation?

A. I do not know.

Q. The number of papers circulated? A. No, sir.

Mr. Sullivan: Judge, I think I have gone over the entire field from the beginning of those charges to the end thereof. Is there anything that I have overlooked, anything you remember now that you ought to state? A. I do not believe there is anything, if you have gone over all those. I will just glance through and see. I believe I have already stated that I never favored Mr. Cassin either in court or out of court. As a Judge I am aware that I have treated every lawyer courteously and alike. I want to state to the committee this fact in that connection: whenever I received a communication asking me to point out or recommend a reliable lawyer from this county that I have made it a universal practice not to select any one lawyer, but give a number of the prominent lawyers of this county.

Q. You say you frequently receive communications from outside?

A. I have received one since this committee has been here, one from Oregon and one from back east asking me to recommend some good lawyers. I showed no favors in that matter, gave them the name of Judge Skirm, the old gentleman Mr. Younger, Mr. Casson[sic], Mr. Jeter, Mr. Story [i.e., Storey] and Mr. Netherton, I gave them the older members of the bar; and then I gave them the younger members of the bar, telling them among the younger members of the bar those who are reliable, upright members, I have made that the universal practice ever since I have been judge.

Mr. Lindsay: You included Mr. Cassin?

A. Yes, sir; I also included him; I did not seek him out. I do not put Mr. Cassin's name first; I generally put Judge

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Skirm first, he is the oldest member; I generally then put C. B. Elder [sic; i.e. Younger Sr.] next, he is next the oldest; then I put them in the manner of rank, in the way of practice, and

then tell them they will have to select from that list; and the younger members in the same way.

Q. Did you ever have any agreement with Mr. Cassin or any of the members of the Bar ^that you recommended^ that any fees they should receive it should be divided? A. No sir, anybody that would make that proposition to me he would never make it the second time.

Mr. Lindsay: That proposition was made to you once?

A. Yes sir that was before I went on the bench.

Q. You informed me also about it did you?

A. Yes sir, I went to you as District Attorney; you and I discussed it, whether he should not be indicted and punished for it.

Q. And the same man afterwards represented you as your attorney in the Supreme Court of this State?

A. Well, he volunteered because he was attorney in that case; I did not employ him, no sir.

Q. He did represent you?

A. Yes sir, I think he represented me.

Mr. Sullivan: That was the same case where he represented the original party to the suit?

A. Yes sir.

Q. It was a mandamus proceeding which was issued and directed against you, and he represented you in the case?

A. Yes sir, he volunteered to represent Judge Bayers ["Bahrs" hand-written over "Bayers."]

Q. ^by Mr. Sullivan:^ It is also the practice of the Court in certiorari or mandamus to have the attorneys--isn't it the universal practice for Judges to be represented in those extraordinary proceedings, as a proceeding in the case of certiorari or mandamus, to be represented by the attorney who represented a party interested in the case out of which the writ arose? A. Yes sir.

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Mr. Lindsay: There is no universal practice regarding an attorney who has made an improper proposition to the Judge to represent him.

Mr. Sullivan: The universal practice is for the attorney representing the party interested, where a writ of certiorari is issued, to represent the court?

A. As I told you he represented Hoffman, W. C. Hoffman, who had married Mrs. ["Miss" hand-written over "Mrs."; *i.e.*, Helen M. Moore] Moore, one of the heirs of this Moore Estate, and then Mr. Stone was the attorney for Hoffman in this matter; he was also put in for the purpose of disqualifying the Superior Judge of San Francisco and Stone without my requesting him represented us in those proceedings; I did not protest against it.

Mr. Lindsay: Was that in the same matter that was referred to here in Younger against Moore?

A. Yes sir.

Q. It was a certiorari proceeding in the Supreme Court?

A. Yes sir, that is my recollection.

Q. In order that no injustice may be done I will ask you Judge if it is not true that this man of whom you now speak is not one who has before been spoken of in connection with these proceedings, if he is not one of the best attorneys practicing in this court?

A. No sir, he has left the city.

Mr. Sullivan: I want my question straight on the record. Every one of the parties have complained of the action of the court and applied to the Supreme Court for writs of mandamus and certiorari and prohibition and like writs? A. Yes sir.

Q. On account of the action of the court in certain actions pending before the Court?

A. Yes sir.

Q. Now is it the universal practice of the Judge of the Court to allow attorneys representing the parties in interest to

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represent the Judge in the Supreme Court?

A. That was my practice, thus far my practice.

Q. At the time Mr. Stone made this corrupt proposition to you, did you immediately report the proposition to the District Attorney, Mr. Lindsay? A. Yes sir, I told him about him and he and I discussed whether he should be indicted.

Q. Was that after the election he made the corrupt proposition to you?

A. Yes, and before I went in office.

Q. And after your election? A. Yes sir.

Q. Then immediately after the corrupt proposition was made to you you reported the matter to the District Attorney? A. I did.

Q. For the purpose of procuring an indictment of that gentleman?

Mr. Lindsay: I suppose you did; you can answer.

A. I do not know just immediately, but not long, I do not remember, when I saw Mr. Lindsay but I told Governor Jeter and Judge Skirm and two or three others the proposition that was made about this corrupt proposition at once, and he was said to be such a disreputable man and that he had such a disreputable reputation I told them I did not know hardly what to do when he made the proposition to me.

Q. He had been practicing extensively in this court before that occasion? A. Yes sir, before Judge Logan.

Q. Had quite an extensive practice before that occasion?

A. Yes sir.

Mr. Lindsay: He tried many cases in this court since?

A. Not since this Moore case and the Grover case; I believe he represented them in the Big Creek Case.

Mr. Sullivan: I believe I am through.

The Witness: I believe I have already answered these different specifications, these affidavits and this here case of Marcuse [sic]

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against Gardiner [i.e., Marquis vs. Gardner].

Mr. Sullivan: There is nothing said about that.

The Witness: That is where they had a publication in the newspapers about that; I would like to explain it to the committee.

Q. You may go on and explain that.

Mr. Lindsay: There is no evidence introduced on that.

Mr. Sullivan: No evidence?

The Witness: It was published by a newspaper in this town and given by the newspaper and published all over the State.

Q. What is that?

A. That is the case of Marcuse [sic] against Gardiner [sic].

Q. What page? A. Page 6. I will state just briefly that it was a case that was appealed to my court from the Justice Court. A judgment had been rendered there for \$100 and costs amounting to \$6. The attorney who represented the appellant deposited \$50 in lieu of the undertaking required by the statute, \$100, and the case was appealed up here and the attorney for the other party made a motion to dismiss the appeal on the ground no sufficient undertaking had been given as required by law; after that motion had been made, before it was heard in court, the attorney who appealed the case, deposited with the clerk \$50 more making \$100 that the law allows to be put up in lieu of a bond; and on the motion they claimed that

perfected his appeal and I was very much inclined to believe that at that time and I am not sure but what in discussing the case my mind was made up, well made up that this would make it good but I would investigate the authorities, and I told them I would examine the authorities, but upon examining the authorities I found that the court could make no order or anything in appeal cases from the Justices' Court that

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would give it jurisdiction and hence I held the appeal was not properly taken within the 30 days and dismissed the appeal for want of jurisdiction. A young gentleman, an honorable and upright man so far as I know, brought [an] order to me to sign and I asked him if it was just the ordinary order -- you see it is quite lengthy -- it covered a page and a half; he told me "yes, it was the ordinary order" and it was signed as you see at the bottom of the first page as follows: "And it is further ordered that the sum of \$106 gold coin, deposited with H. H. Miller, Clerk of this Court, in lieu of an undertaking on appeal of this action, be paid by said clerk to the plaintiff in satisfaction of the judgment appealed from." Signed "Lucas F. Smith, Judge of the Superior Court." Of course, if I had noticed that in the order or the endorsement on the outside, or if he had called my attention to that, I would have struck out that clause because having determined I had no jurisdiction to try the case I certainly had no jurisdiction to make an order in that suit saying the money on deposit must be paid out on the order of the Court.

The Chairman: Who appealed the case?

A. Mr. Gardiner [*sic*].

Q. The defendant? A. Yes, the defendant, that is all there is to that.

CROSS EXAMINATION.

Mr. Lindsay: You would not have signed the order if you had seen that clause?

A. No sir. Judge Beatty himself is puzzled over the question now, as to whether or not he would grant the certiorari by reason that clause being in here.

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Mr. Sullivan: The Statute provides that money being deposited in lieu of a bond, deposited with the Clerk, should be deposited to the order of the Clerk?

A. Yes; Judge Beatty to-day has before him the question he has had before him for over a month, whether or not that order should be made in the Superior Court or Justices' Court.

Mr. Lindsay: But he did hold you did not have jurisdiction?

A. And when he came there and told me had this order sustaining his motion to dismiss I did not examine it because I knew he would not willingly try to impose upon me; I signed the order as I do a great many others and signing bonds and orders of dismissal; this young man I knew was honest and sincere when he applied to this court to make the order.

Mr. Sullivan: At any rate the money was paid in satisfaction of the judgment? A. Yes, he assured the Supreme Court he would pay the money back.

Q. Assuming you had no jurisdiction to make the order, the money was paid to the plaintiff?

A. Yes sir, the plaintiff did not lose anything.

Mr. Lindsay: Q. You still think you had no jurisdiction, you had no right?

A. No sir, I think I had no right to make the order.

Mr. Sullivan: There had been no injury because the plaintiff got the money?

A. Yes sir, that is what Judge Beatty said; he said the man has been paid, how are you injured.

Mr. Lindsay: You have talked to Judge Beatty about it?

A. No sir; an attorney who talked with him told me.

Q. He applied for a writ of certiorari?

A. Yes sir, and I requested him to do so; this is a nice question; he is a nice honorable lawyer, and I told him I would be glad if he did so.

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Mr. Lindsay: We are not making any point on that any way.

The Witness: It was a point I would like to have the court decide. I do not know of anything else Mr. Sullivan.

Mr. Sullivan: I think we have covered it completely?

A. Here is another charge.

Q. What is it?

A. Specification 11. They have not introduced any testimony on that.

Mr. Sullivan: We have covered the ground completely.

A. About my discussing cases in chambers and out.

Mr. Lindsay: There had been no evidence of that at all.

Mr. Sullivan: Specification 11; the Judge is incorrect.

A. That refers to something else.

Q. Not specification 11. You have got the original specification there I think.

A. It reads this way: "Through ignorance favoritism partiality incompetence willful disregard of facts and permitting attorneys and litigants privately in chambers and out, to freely discuss causes[sic] before decision thereon, has wrongfully and incorrectly decided a great percentage of the cases tried before him, as is evidenced by the fact that about 50 per cent of the civil cases are appealed to the Supreme Court from his judgment, and about 75 per cent of criminal cases are appealed to Supreme Court from the decisions of said Lucas Flattery Smith, have been reversed by the Supreme Court, at great expense to litigants and to the people of the State of California."

I want to denounce that whole concern as a falsehood and a slander and I ask the permission of the committee to permit it because the impeachers and affidavit makers published it in every newspaper in this State.

Mr. Beardslee: You went into that fully.

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A. The latter part, not the whole part. I want to brand that as a vile slander and falsehood.

The Chairman: Now, does that conclude the direct examination?

A. I will see if I have omitted anything. That gentleman[sic], I believe is all I want to say.

Mr. Sullivan: Is that all.

A. I think so.

CROSS EXAMINATION.

Mr. Lindsay: In reference to this case of Younger against Moore and others?

A. What specification Mr. Lindsay is that?

Mr. Burke: That is in specification 7.

Mr. Sullivan: No, that is not 7.

Mr. Lindsay: You struck the complaint of Helen Younger from the files after consulting with Judge Budd and Judge Bennett.

Q. Where is Judge Bennett now?

A. I think he lives up in Placerville Eldorado County; he was a judge up there at that time.

Q. Where is Judge Budd. Judge Budd of Stockton?

A. Judge Budd, I understand is dead, but at that time he was Superior Judge of Stockton.

Q. Did you go into the question of the reasons for striking that from the files? A. I did.

Q. You struck it from the files?

A. Yes sir; and recited why I did so as you will see on the papers.

Q. Afterwards there was a certiorari proceeding brought against you?

A. Yes sir.

Q. In the Supreme Court of this State? A. Yes sir.

Q. Reviewing your action and striking this complaint from the files?

A. Yes sir.

Q. You did not strike the complaint from the files at the

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request of any litigants in that case? A. No sir.

Q. You struck the complaint from the files because you thought the dignity of the court had been assailed in including you as a party defendant? A. That is right.

Q. And it was in defense of the honor and dignity of the court as you looked at it that you struck the complaint from the files?

A. Yes sir.

Q. I understand that to be your position?

A. That is my position.

Q. It was not at the request of any litigant? A. No sir.

Q. Did you consult any litigant about it? A. No sir.

Q. You consulted no one either party plaintiff or defendant in that matter? A. No sir.

Q. Before you struck the complaint from the files? A. No sir.

Q. For the sole reasons indicated by you?

A. Yes sir; after consultation with those Judges.

Q. Now do I understand you to say in the proceedings in the Supreme Court that you were represented by this gentleman who made this proposition to you? A. Yes sir; if I was represented at all I was represented by him.

Q. You are not mistaken about that?

A. Well, Mr. Lindsay I may be; I was represented up there by you and Mr. Cassin once.

Q. Didn't Mr. Netherton himself represent you?

A. I believe you did once, you represented me on one or two occasions, very kindly represented me.

Q. I wanted to clear that matter up?

A. And I am much obliged to you; I am glad I did not have that

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other party to represent me.

Q. But he did represent you in the Supreme Court, Judge?

A. That is what I thought.

Mr. Sullivan: The record don't show it.

Mr. Lindsay: We will try to get it.

A. Yes, I think he tried to represent me.

Q. At the time this decision was rendered your attorneys of record in the Supreme Court were Lindsay and Netherton?

A. I think so.

Q. I am going to ask you however Judge, if this same man did not represent you in the contempt proceedings which were instituted against Charles B. Younger Senior and Charles B. Younger Junior and John H. Leonard, growing out of the same transaction?

A. No sir; Mr. Leonard, he brought an affidavit to me to sign for citation and I hesitated quite a while before I signed it and I came very near refusing it, but finally I signed the citation and I

told him at the time under no circumstances would I hear it.

Mr. Sullivan: He represented Hoffman?

A. He represented Hoffman.

Mr. Lindsay: I am trying to get at the facts? **A.** Yes sir.

Q. He prepared the affidavit? **A.** Yes, it was his own motion.

Mr. Sullivan: Now I object to that. The affidavit was prepared for Hoffman.

A. That was the way I understood it.

Mr. Lindsay: Did he prepare any affidavit for you to sign?

A. I do not remember of signing any affidavit.

Q. What did he bring an affidavit to you for?

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A. For me to issue a citation for them to appear and show cause why they should not be punished for contempt.

Q. It was a contempt of your court? **A.** Yes, sir.

Q. And the attorney who was defending the honor of your court in that matter was the attorney who had made the proposition when you were cited? **A.** Yes, sir; but I did not secure him for it.

Q. I do not mean you employed him, or retained him in any way, anything of that kind? **A.** I did not ask him to do it.

Q. You did issue the citation? **A.** Yes, I did; at his request I considered the matter, because I knew that those attorneys had been wilfully [*sic*] in contempt, but I did not want to have that party to represent the court, at least not at my request. I will state, Mr. Lindsay, the reason there was no notice served that that complaint was stricken from the files, that the plaintiff had signed in her own proper person, and you could not serve notice on her because she was in Europe; there was no attorney to serve.

Committeeman Burke: You were criticized by the Supreme Court?

A. Yes. They set aside the order; they said I had no jurisdiction.

Mr. Sullivan: The Supreme Court said he had merely made a mistake.

A. They held I had no right to without notice. They did not know what the circumstances were; I do not think Mr. Leonard -- I know he would get up a better record; in the case I think it had been brought so no notice could have been given. What the Supreme Court would have done --

Mr. Sullivan: That they could not deprive her of her property because it was an action in partition.

Mr. Burke: I am just reading from the decision.

A. Yes, they held I was in error in striking the complaint from the files without notice; that is one of my reversals in several cases;

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that is one of the nine of the two thousand cases.

Mr. Lindsay: Now Judge, passing to another matter, and I am not going to take up but a very short time in the cross examination. I am not going to take up specification by specification, but just ask a few questions on some matters I have in my mind. You say out of a number of criminal appeals to the Supreme Court that six were reversed during your term? **A.** Yes, six has [*sic*] been reversed in eight years.

Q. How many were appealed? **A.** I do not know, Mr. Lindsay; I could not tell you, but six reversals; I gave you the names: two Plyers [*sic*]; Roderriguez [*sic*]; Zeigler; Schoddi [*sic*] and Shara [*sic*].

Q. You say you looked up the number of reversals? **A.** Yes, sir. I did not have time to look up the probate appeals; I could not tell you.

Q. Is it not a fact there were nine appeals? A. I do not know; I could not tell you.

Q. How many reversals in civil cases? A. There were nine.

Q. How many appeals? A. I tried to get that from the clerk of the Supreme Court and he forwarded that list here, it is so defective, he overlooked --

Q. Approximate it from your own record?

A. Well, as near as I can get at it, it is in the neighborhood of one hundred; the Supreme Court Clerk furnished me a list of 72 appeals, as soon as I had looked at the list I found he had left out a number of them.

Q. Seventy two appeals in criminal cases? A. No, civil cases; but in looking over it I saw it was fatally defective; I went to the record and tried to get it, but could not get it accurate; it is something in the neighborhood of 100, including the habeas corpus cases that were applied for. It would be between 80 and 100.

Mr. Sullivan: Of course the habeas corpus cases are not included in the civil cases? A. No.

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Mr. Lindsay: Habeas corpus are not appeals? A. No, sir.

Q. Now, Judge, you say that you have invariably, without exception, consented to the request of attorneys for another Judge to try a case?

A. Whenever they came to me; I think I have done that for you once.

Q. Once I know. A. Any case they do not what tried before me, or because I have tried another branch of the case, I think I have done it once or twice for you when you were practicing here, called in Judge Dooling. I know it has been once or twice for you. In the case you filed affidavits, I did not file any counter affidavits, if I remember except my own. I did not think I was disqualified, at the time I preferred to call in another Judge.

Q. But you have invariably consented to such a request?

A. Yes, sir; in variably [sic]; I do not know of a single case where I ever refused. In this contempt business, Mr. Younger made out an affidavit, he did not want it brought before me; I told him "you need not have made an affidavit, all you got to do is to come and request me". But he did make an affidavit asking that another judge be called in during that contempt business in the Younger matter, and when he presented it to me, I told him it was not necessary for him to go to the trouble to make an affidavit, I had made my mind up not to hear it under the circumstances. If I remember I think there was a case of Mr. Wyckoff he had with Mr. Younger and I called in another Judge without an affidavit.

Q. Then you testified in your direct examination to the same effect without exception you--

A. Well, there may be an exception, I do not remember.

Q. Aren't there several exceptions, Judge?

A. I do not think so.

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Q. Your testimony in chief was without exception?

A. I think that was my rule.

Q. That you consented to call in another Judge whenever a request was made? A. That was my rule. If I have varied I have no recollection of it.

Mr. Lindsay: I will ask the Clerk to bring in the records.

Mr. Adyeltte: Bring in Volume 24 of the Minutes.

A. If I have made an error I would be glad to correct it.

Mr. Lindsay: I call your attention now to the case of -- rather a matter pending in your Court in October, 1903, probate Number 1164, in the matter of the Estate of Mary Mooney, deceased.

A. Yes, sir.

Q. You remember that there was a contested matter in that estate going to the question of revoking letters of administration, etc. of Thomas Mooney? A. Well, I do not remember, so many things in the Estate; I do not remember everything, but I think there was some contest of that kind.

Q. I will call your attention ---

A. It was here for a year or two, and very near every probate day, there was some contest in that contest.

Q. An affidavit was filed in that case. Is that it?

A. Yes, sir; This is the file, and Mr. Leonard, I think was discharged as attorney before the matter came up. That is my recollection.

Q. I just call your attention to it.

A. But I think that he got another attorney. Mr. Leonard made the affidavit my recollection is before the matter came up.

Mr. Lindsay: I will offer in evidence this affidavit.

(The affidavit is in the words and figures as follows):

[188] [Affidavit in the Matter of the Estate of Mary Mooney, Decd.]

**In the Superior Court of the County of Santa Cruz,
State of California**

**In the Matter of the Estate
of
Mary Mooney, Deceased.**

You will please take notice that James Mooney, as administrator of the above entitled estate and in his own right, will, at the convening of this Court on this 21st day of September A. D. 1903, move said Court for a postponement [*sic*] of the motion, now being heard in said Court in the above entitled matter, for three days so as to enable his attorney, J. H. Leonard, to inquire into the status of the case and prepare to proceed therewith.

This motion will be made upon the affidavit of J. H. Leonard, hereto attached, and upon the papers now on file in the matter of said estate, and upon oral testimony to be heard at the time of making the said motion.

To Phillip [*sic*] Sheehy, George P. Burke and Charles M. Cassin, Esq's., Attys. for Thomas Murray, Fred Murray, and Helen Murray.

**John H. Leonard
Attorney for Administrator.**

Received copy of within notice of motion and affidavit this 21st day of September, A. D. 1903, at 10.15 A.M.

**Geo. P. Burke
P. G. Sheehy
Attorneys for Thos. F. Murray,
Fred Murray & Helen Murray.**

[189] [Affidavit in the Matter of the Estate of Mary Mooney, Decd.]

**In the Superior Court of the County of Santa Cruz,
State of California**

**In the Matter of the Estate
of Mary Mooney, Deceased.**

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Mr. Lindsay: Here is the affidavit of James Mooney in the Estate of Mary Mooney. (Reading affidavit).

(The affidavit is in the words and figures as follows:)

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[Affidavit in the Matter of the Estate of Mary Mooney, Deceased.]

In the Superior Court of the County of Santa Cruz,
State of California

In the Matter of the Estate)
 of)
Mary Mooney, Deceased.)

State of California,)
) SS.
County of Santa Cruz.)

JAMES MOONEY, being first duly sworn, deposes and says:

That he is affiant herein:

That a certain citation was issued by the Clerk of the above entitled Court on the 18th day of September, 1903, requesting affiant to appear in said Court and show cause why Letters of Administration issued to affiant on the above entitled estate should not be revoked upon the grounds of frauds committed by affiant upon the said estate, and the incompetency[sic] of affiant to act as such administrator;

The order for the issuance of said citation purports to have been made upon the affidavit of Thomas F. Murray;

That the Hon. Lucas F. Smith, Judge of the above entitled Court, is about to try said case;

That affiant cannot have a fair and impartial trial before said Lucas F. Smith, the Judge of said Superior Court, by reason of the prejudice and bias of said Judge against affiant;

That during the trial of a motion, in the above entitled matter, being heard before said Judge, in which said Thomas F. Murray and others applied to said Court to set aside, annul [sic] and

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vacate an order, made by said Court on the 11th day of August, 1903, in the matter of said Estate, setting apart to affiant the homestead described in said last mentioned order, on the 18th day of September, and while said motion was being made, affiant's attorney withdrew from the case and ceased to represent affiant on said last mentioned hearing; and notified said Judge in open Court that he no longer represented affiant, and suggested to said Judge that affiant be allowed time in which to secure the services of some other attorney;

That affiant then informed said Judge that he had no attorney to represent him at the hearing of said matter then being heard before said Judge, and requested the said Judge to postpone the said hearing for a reasonable time that affiant might secure the services of another attorney;

Said Judge refused to grant said affiant's said request, and proceeded to hear testimony on behalf of Thomas F. Murray and others while affiant was unrepresented[sic] at said hearing;

That affiant was unable to secure the services of any other attorney until within about one hour

before said motion was called to resume the hearing thereof on September 21st, 1903; That on said 21st day of September, 1903, and before said motion was called for hearing, affiant's attorney, John H. Leonard, made and files [*sic*] an affidavit in said Court stating that said John H. Leonard had that day been substituted in the place and stead of affiant's former attorney, Charles B. Younger, and that said John H. Leonard had not until that day been employed by affiant and had not had time, and had not examined the papers, or inquired

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into the status of the case, and that he was not prepared to proceed with the hearing of said action, and moved said Court for a postponment [*sic*] of the hearing thereof for three days that he might prepare to proceed with said hearing;

That said Judge thereupon denied said attorney, J. H. Leonard's motion for a postponment [*sic*] of said hearing and ordered that the trial proceed;

Whereupon said J. H. Leonard informed the Court that he did not know what matter was being tried before said Court and asked to be informed in a general way what was the matter being heard, and said Judge replied, "inform yourself", and compelled said attorney to proceed with the hearing of the case thus unprepared;

That thereafter, during the hearing of said case, said attorney requested said Court to allow him to allow him [*sic*] the privilege of cross-examining affiant on matters that had been testified to him in chief [*sic*; i.e., brief?] as a witness for said Thomas F. Murray and others;

Whereupon the said Judge informed the attorney that Mr. Charles B. Younger, affiant's former attorney, had fully cross examined affiant on said matter, which said statement of the Judge was untrue and prevented affiant from having a proper hearing in said action, and having a proper record therein; That affiant is informed and believes and therefore alleges the truth to be that said Judge has prejudged the matters to be heard at the hearing of the above mentioned citation and that said Judge had discussed the matters contained in the affidavit of Thomas Murray upon which the order for the issuing of said citation was made, and that said Judge has concluded and prejud-

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ged now and before the hearing of said citation that affiant has committed frauds upon said estate of Mary Mooney, deceased, and has concealed great sums of money belonging to said estate, and is incompetent to act as administrator of said estate for the reasons set forth in said last mentioned affidavit of Thomas Murray, and that affiant is dishonest and untruthful; That said Judge is disqualified to hear said citation.

James Mooney

Subscribed and sworn to before me this 24th day of September, 1903.

H. H. Miller, Clerk of said Court.
By Harry E. Miller Deputy Clerk.

Wherefore, affiant prays that the hearing of said citation be transferred to some other Court, or another Judge called to hear such action.

John H. Leonard, Attorney for Administrator.

Received a copy of the within affidavit this 24th day of Sept., 1903.

Attorney for petitioners
Thos. F. Murray, Fred Murray, Hellen Murray.[*sic*]

The parties hereto being present in Court and represented by their respective counsel, John H. Leonard, Esq., attorney for James Mooney, Administrator herein, now offers on motion, the affidavit of said James Mooney, asking that the hearing of said citation to Administrator to appear and show cause why he should not be removed, etc., be transferred to some other County or another Judge be called to hear said action.

Said motion is denied and it is ordered by the Court that this cause be and the same is hereby continued to the hour of 2:30 o'clock P.M. of this day for further hearing.

(minute order taken from Vol. 26 of Probate Proceedings at page 94 thereof, records of the Superior Court of the County of Santa Cruz, State of California.)

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Mr. Lindsay: You made that order, did you?

A. If it was signed by me, I made it.

Q. It is signed by you? A. I do not know.

Mr. Sullivan: I suppose that is a regularly entered minute order made in open court.

A. Yes sir, if it is it is alright.

Mr. Sullivan: We will admit it is.

Mr. Lindsay: Does the Judge admit it?

A. If it is any of the records of the Court, of course I admit; I do not dispute the Clerk's office, because Mr. Miller keeps a good record.

Mr. Sullivan: Of course we will admit that. My recollection is the matter was tried ---

A. By a jury.

Mr. Sullivan: We will come to the matter afterwards.

A. Very well.

Mr. Lindsay: I call your attention, Judge, to the case of Peter Paul Hartmann, plaintiff, vs.

Frederick A. Hihn, defendant, which was pending in this Court in the year 1903. It is numbered 3929. Do you remember that case? A. Well, I remember something about it.

Q. Here it is, Judge -- to refresh your memory it is a case which has been referred to during this investigation?

A. Exactly.

Q. Where Peter Paul Hartmann brought an action against Frederick A. Hihn, to set aside the probate of a will, something of that kind, was it not? A. Yes, I think so.

Mr. Lindsay: I will offer in evidence.

Mr. Sullivan: That is a probate matter.

Mr. Lindsay: It was a probate matter. It was an action brought in reference to property, but it is an independent action to have a trust set aside -- to have a trust declared.

Mr. Sullivan: An apportion

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Mr. Sullivan: An apportion.

Mr. Lindsay: It was not in the probate proceeding at all, an independent action. The suit is entitled as follows: Peter Paul Hartmann vs. Fred. A. Hihn, filed May 14, 1903." You remember that case, do you? A. I remember something about it.

Q. It was pending before you? A. Yes, sir.

Q. I will ask you if the attorney for the plaintiff did not make a motion in that case for another Judge to be called in to hear the case? A. Well, I do not remember.

Q. Yet you testified positively yesterday, Judge, emphatically, that in no single instance did you

ever deny the request of an attorney for another Judge to be called in?

A. That was the best of my recollection, not a single case had I ever done it; that is my recollection; that is what I am going to stick to now.

Q. That is what you stick to now?

A. Yes, the best of my recollection, I do not remember of denying a request of a single attorney; in this case, of course I do not consider probate matters --

Q. This is not a probate matter? A. That is a probate proceeding.

Q. Is that order in your hand writing? A. Yes, sir; that is my hand writing.

Q. Signed by you? A. Yes, sir; that is right.

Mr. Lindsay: We offer in evidence in this case, first, the affidavit of Lucas F. Smith, filed June 17, 1903, H. H. Miller, Clerk, by Harry E. Miller, Deputy Clerk. That is number 3929. Affidavit on this motion to call in another Judge. The affidavit of the Judge.

The Witness: Was that case ever tried, Mr. Sullivan. Does the record show that case was ever tried?

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[Affidavit of Judge Lucas F. Smith]

In the Superior Court of the County of Santa Cruz, State of
California.

Peter Paul Hartmann, Plaintiff,

vs

Frederick A. Hihn, Defendant.

State of California,

SS.

County of Santa Cruz.

LUCAS F. SMITH, being first duly sworn deposes as follows: That he is the Judge of the Superior Court of Santa Cruz County, State of California and has been such for more than six years last past, that affiant has read the affidavit filed herein by Peter Paul Hartmann, plaintiff in the above entitled cause, filed on the 10th day of June, 1903. Answering said affidavit of said Hartmann affiant denies that on or about December 6th 1902 or at any other time, or at all, that the so called dialogue mentioned in said Hartmann's affidavit ever took place between this affiant and said Hartmann, to-wit: "Mr. Hartmann:- Judge, what is the reason that you have not decided my case sooner? I heard that you had given a decision against Mr. Hihn. Is that true?"

Judge Smith:- It was true. I decided that case of you, Mr. Kohl, in favor of F. A. Hihn.

Q. The Judge. I think you are very unfortunate for having that drunken lawyer of yours try the case. I suppose he made the false statements to you that he made about me

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during the campaign that he made about me; even if you should win this case he would only rob you out of it."

Affiant denies that he ever at any time stated to said Hartmann, plaintiff in the above entitled cause that if he, Hartmann, ever got anything out of the Kohl estate that Burke, his attorney, would rob him out of it, or that affiant ever used at any time, or at all, the above words, or words of similar import or meaning.

Affiant alleges the truth to be that he never met the said Hartmann, plaintiff herein, but once to converse with him and that was a few days after the hearing of said Hartmann's Petition to have the Probate of the last Will of George Kohl, deceased, set aside and vacated, and that said

Hartmann then came to the Chambers of this affiant in the Court House and asked affiant if the Kohl Will case had been decided; that affiant then and there informed the said Hartmann that said matter had not yet been decided, but that a decision would be rendered at the earliest date possible; that thereupon the said Hartmann left affiant's chambers and no other or different conversation, or any conversation at all has ever been had between said Hartmann and this affiant except to speak as we meet.

Affiant further states that he is on friendly terms with said Hartmann and has been on such friendly terms with him ever since he first made his acquaintance; that affiant has no bias or prejudice or ill feeling of any kind against said Hartmann and never has entertained any sentiment or feeling towards him except that of kindness and respect.

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Affiant further states that said Hartmann plaintiff in the above entitled action, can have and will receive a fair and impartial trial before this affiant; that affiant would cheerfully call in another judge to try the above entitled action if this affiant was disqualified from hearing the same, but knowing that such is not the case it would be putting the County of Santa Cruz to a useless and unnecessary expense and at the same time be setting a precedent which would not be tolerated in any Court of Justice, to-wit:

Allowing an attorney who imagined himself unfriendly with the judge to try his cases before another Judge called at his instance from a distant county when the resident Judge was not disqualified to hear and determine such cases.

Affiant further states in answer to the affidavit of one George P. Burke, filed herein on June 10th 1903, that he, affiant, did not use the precise language set out on page six (6) of said Burke's typewritten affidavit, but affiant admits that during said campaign he, affiant, did state in a few public addresses, among other things, that there were a few drunken lawyers going around abusing and vilifying affiant because affiant would not as Judge of the Superior Court permit them to rob the estates of deceased persons under the guise of allowing extravagant attorney's fees, and robbing orphan children out of estates by wanting the Judge to approve worthless bonds in Guardianship matters. But affiant states that in his said public addresses he mentioned no names nor places of residence of attorneys in that connection, and that out of some thirty licensed attorneys residing in Santa Cruz County the said Burke is the only one who seems to feel aggrieved

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at the language used in affiant's said campaign addresses.

Affiant denies that as Judge of the Superior Court he has ever in any way injured or endeavored to injure said Burke in his business, or that affiant has as such Judge shown an unfriendly spirit towards the said Burke, or shown intense or any animosity or discourtesy towards said Burke as alleged in his said affidavit.

Affiant denies that he is or ever was a close, intimate or confidential friend of Frederick A. Hihn, the defendant in this action, but avers the truth to be that affiant and said Hihn are on speaking terms when they meet, but are no more friendly than affiant is with most of the other citizens of the City of Santa Cruz.

Affiant further states that it is not true as stated in said Burke's affidavit that at the time said Frederick A. Hihn was a witness in the contest to set aside the probate of the Last Will and Testament of the said George Kohl, deceased, referred to in the complaint herein wherein Peter Paul Hartmann was Contestant and the said Frederick A. Hihn was Respondent, that the said Hihn while a witness on the hearing of said matter evaded any question asked him or that he hesitated or seemed embarrassed or at a loss to answer and that this affiant noticed said embarrassed and came to the assistance of said Hihn in answering any question or questions

propounded to him during said hearing.

Affiant further states that it is not true that this affiant ever applied to the said Frederick A. Hihn as the Vice President or one of the Directors or Principal Managing Agent of the City Bank or of the City Savings Bank or in any

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other capacity or at all for permission to draw upon said City Bank for the amount of affiant's expenses of the campaign while he was a candidate for Superior Judge or that affiant made any such application for any part of his said campaign expenses while a candidate for the Office of Judge of said Superior Court.

Affiant further states that it is not true as stated in said Burke's affidavit that this affiant ever tendered and offered or tendered or offered as security for any purpose or to pay affiant's said campaign expenses or any part thereof, his, affiant's salary as such Judge, or at all.

That affiant never applied to said Hihn, either as Vice-President, Director or Principal Manager of the said City Bank or of the said City Savings Bank or of either of them or otherwise for a loan or overdraft or any sum of money whatever or at all upon the security of affiant's salary as such judge or otherwise.

Affiant denies that said City Bank or said City Savings Bank or either of them paid the election expenses or any part thereof of this affiant during said canvas and campaign as such judge.

Affiant denies that during the trial of said contest in the matter of the Estate of George Kohl, deceased, of Peter Paul Hartmann against Frederick A. Hihn, that affiant did exhibit or manifest and partiality in favor of the said Hihn, but states the truth to be that he treated the said Hartmann and the said Hihn during the trial of said contest fairly and impartially the same as he treats all other litigants in said Superior Court.

Affiant further states the[sic] he did not at any time prior to

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the general election of November 4th, 1902, apply to said City Bank or to said City Savings Bank or either of them or at all for permission to draw upon said City Bank or said City Savings Bank or either of them for the amount or any portion of the expenses of affiant's campaign for the Office of Judge of said Superior Court; that affiant did not draw upon said City Bank for, nor did said City Bank pay the election expenses or any part thereof of this affiant as Judge of said Court; affiant further states that the said City Savings Bank did not pay any portion of affiant's campaign expenses or any part thereof, and that affiant did not draw upon said City Savings Bank for the expense of his canvas or campaign or for any part thereof nor did said City Savings Bank pay the election expenses or any part thereof of this affiant while a candidate for Judge of said Superior Court.

Affiant denies that during the trial of the contest for the revocation of the probate of the Last Will of said George Kohl, deceased, and while one Mr. Hodgdon was a witness in said proceedings that this affiant admonished said witness in an angry and intimidating manner or at all, but avers the truth to be that he spoke to said witness in a polite and pleasant manner; affiant denies that he ever either in the Court Room in the City of Santa Cruz or at any other time or place or at all ever referred in disrespectful terms or insinuatingly of the Supreme Court of this State or of any Judge thereof or of any decision rendered by said Supreme Court or any action taken by the same, but avers the truth to be that during his term as Judge of the Superior Court for

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more than six years last past and as a practicing lawyer before that time he has always spoken of the Supreme Court with respect.

Affiant further states that he never at any time arbitrarily refused or declined to listen to said Burke as an attorney in said Court and denies that he ever refused to consider the decisions of said Supreme Court bearing on any questions involved in affiant's said Court; denies that he ever at any time in an angry or abrupt manner exclaimed "the motion is granted", but avers the truth to be that he has always treated the said Burke in affiant's court with the same kindness and consideration as shown to other attorneys practicing in said Court; affiant further states that the said Burke did not on March 13th 1903, or at any other time or place or at all in open court or elsewhere present to this affiant for settlement a statement on motion for a new trial or anything purporting to be such statement; and that affiant has never failed or refused to settle such statement or anything purporting to be such statement on motion for a new trial, but avers the truth to be that affiant never saw such statement and that the same was never presented to him by said Burke or anybody else.

Affiant further states that said Burke never left with the Clerk of this Court any proposed statement on motion for a new trial in said matter and that no such document has ever been filed in the Clerk's office for affiant as affiant is informed by the Clerk of said Court.

Affiant further states that the demurrer

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filed to the complaint in this action was by agreement of the attorneys for the parties set down for hearing before the Judge of this Court on June 12th, 1903, and that no objection was made by plaintiff Hartmann or his attorney Burke to the hearing of the demurrer by affiant.

Lucas F. Smith.

Subscribed and sworn to before me H. H. Miller, June 1903, Clerk of the Superior Court of the County of Santa Cruz, State of California, by Harry E. Miller, Deputy Clerk.

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Mr. Sullivan: I am just looking at the record. I will let you know in a moment, Judge.

Mr. Lindsay: All I care to introduce is the affidavit of Judge Smith.

A. I out to be allowed to know-- oh, yes, the affidavit is mine.

The Chairman: You introduce that affidavit.

Mr. Lindsay: It is the affidavit in this case No. 3929. It may be considered as read and incorporated in the record.

Mr. Sullivan: Alright.

The Chairman: So ordered.

(The affidavit is in the words and figures as follows, to wit):

[see the Affidavit as transcribed on pgs. 122-126]

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Mr. Lindsay: I also desire to offer in evidence the affidavit of George P. Burke, attorney for the plaintiff in that case in support of his motion for another Judge to try the case.

Mr. Sullivan: I object to the affidavit unless the motion was based upon affidavits-- I object to these slanderous matters against Judge Smith, unless it appears in connection with the affidavit that a motion was made for a change of venue or for another Judge.

Mr. Lindsay: This affidavit is offered for no other purpose than to contradict the testimony of the witness as to this matter of calling in other Judges.

Mr. Lindsay: We object unless it appears that the motion was made, or application was made, based upon affidavits for another Judge to try this case.

The Chairman: Doesn't the record show?

A. I could explain that in a very few moments.

Mr. Sullivan: You will have a chance in a few moments.

Mr. Lindsay: I will offer in evidence this Order of Court which has been identified.

The Chairman: Same case.

Mr. Lindsay: Same case.

The Chairman: I will read the Order.

(The order is in the words and figures as follows, to wit:)

[211] [Affidavit of Judge Lucas F. Smith]

In the Superior Court of the County of Santa Cruz, State of California.

No. 3929.

Peter Paul Hartmann,
Plaintiff,

vs

Frederick A. Hihn,
Defendant.

Plaintiff's motion for an order calling in and securing some other Judge to preside at the trial of the above entitled action, on the ground of the prejudice and bias of the Judge of said Court is denied, upon the ground that said Judge is not prejudiced or biased against the plaintiff and is not disqualified to try said cause.

Lucas F. Smith,
Judge of said Superior Court. Dated June 23, 1903.

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Mr. Lindsay: I want to call attention to the fact that the order is entirely in the handwriting of the Judge.

Mr. Lindsay: Now I offer in evidence the affidavit of George P. Burke in support of this motion which may be considered as read. It is too long, and I do not care to read it.

The Chairman: So ordered. You have introduced two affidavits?

Mr. Lindsay: Yes, sir.

(The affidavit of Mr. George P. Burke is as follows, to wit):

[213] [Affidavit of George Patrick Burke, attorney for
Plaintiff, Peter Paul Hartmann in Hartmann vs. F. A. Hihn]

Peter Paul Hartmann,)

Plaintiff,)

vs)

Frederick A. Hihn,)

Defendant.)

AFFIDAVIT.

STATE OF CALIFORNIA,)
) SS.

COUNTY OF SANTA CRUZ.)

GEO. P. BURKE, Being first duly sworn, deposes and says:

- 1. That he is , and at all times herein mentioned was an attorney at law, duly licensed to practice his profession in all the Courts of this State, and for twelve years last past a resident of the said County of Santa Cruz, with the exception of a short period of residence in the City and County of San Francisco, in this State.**
- 2. That affiant is, and at all times herein mentioned has been attorney for said plaintiff, and plaintiff's attorney of record in the action above entitled, and in the other matters and proceedings hereinafter mentioned.**
- 3. That at the State election held in the month of November, 1902, Lucas F. Smith, the then incumbent of the office of Judge of the Superior Court in and for the said County of Santa Cruz was a populist candidate on the democratic ticket for re-election to the said office, and during his campaign in the months of October and November, 1892, made frequent nightly public addresses and speeches to the voters of said County, at divers places therein, in advancing and promoting his candidacy for said office, in which ad-[dresses]**

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dresses, and speeches he said Lucas F. Smith used the following language in a manner so as to be heard by the audience:

“Now in a suit for foreclosure of a mortgage the judge must fix the fee of the attorney, and if he thinks the judge does not put it as high as he wants it he is a little sore about it. Again there are estates to be administered, and if the judge does not allow the attorney to gouge the estate for all the fee it will possibly stand the lawyers get dissatisfied and abuse the judge. It is my duty to protect the little orphans. Some of these schemers want me to appoint them guardian of the little children's property so that they can get hold of it and because I would not do so they are at cut's with the judge.

They will ask me to approve straw bonds, and let the little children go penniless. There are some of this clique in Santa Cruz who try these very things on me, and because I stand firm they don't like Judge Smith.

“There is another element, - a different class of persons: you will find them at the County Court House in Santa Cruz. They are to be found at every County seat in this State, and that is a set of individuals who want to live by using the Judge to further their own private schemes, and their corrupt purposes. It is an element that wishes to live off the judge, and use him for advancing their own selfish interests, and their own corrupt purposes, and because they could not use me as a tool to further their schemes of robbery and thievery are slandering me in the vilest and basest terms. Now when an estate is being administered I would not be keeping the oath I am sworn to if I did not stand for the widow and little orphans, and yet for this reason there is a clique of lawyers who

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are circulating falsehoods about me. These men at the County seat at Santa Cruz are fighting me by fair means and foul. They are resorting to every kind of schemes, falsehood and villany to defeat me. They want a judge that will grant injunctions on fictitious or pretended claims, - a judge who will appoint a receiver at their bidding.”

That this affiant knowing and believing that all of the foregoing charges were and each of them was absolutely false and unfounded, and that said Lucas F. Smith well knew them to be false and unfounded when he spoke and published them, and that said Lucas F. Smith thought and believed that by pouring out these false and unfounded charges against the good name and reputation of the members of the legal profession and the County officers of this County he

would bring them into odium and disrespect and thus secure the sympathy of some few voters, and this affiant knowing and believing that all the lawyers and attorneys practising [*sic*] their profession in this County, and all of said County officers, were men of honor, honest truth, integrity and ability, and wholly unworthy and undeserving of the scandalous assertions and charges made against them by said Lucas F. Smith, and believing, as this affiant did believe that to allow such false, and unfounded charges and slanders so uttered and published by said Lucas F. Smith to go unanswered would bring odium and disrespect to the bench and bar, and for other important reasons to hereafter stated in the next paragraph, this affiant with the knowledge and approval of all the said County officials, and nearly all of the said attorneys and lawyers took an active part in said election campaign in opposition to the

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candidacy of the said Lucas F. Smith, and delivered two public addresses a few evenings before the election in November, 1902, one in the City of Santa Cruz, and one in the City of Watsonville, and indignantly denounced the false and slanderous character of the campaign of said Lucas F. Smith for the important office of Superior Court Judge. That at one of said addresses, to-wit: that delivered in the city of Watsonville, this affiant accused the said Judge Lucas F. Smith, who was then present and in the hearing of affiant, of uttering and asserting these false, undignified, and malicious slanders against the members of affiant's profession and the said County officials; challenged the said Lucas F. Smith to name any man, lawyer layman or County officer who ever attempted to corrupt him, or attempted to gouge an estate, or attempted to have him appoint them guardian of little children's property so that they could get hold of it, or attempted to get him to approve straw bonds and let the little children go penniless, or tried to live by using him as judge to further their own private schemes and their own corrupt purposes; but the said Lucas F. Smith although he was close to and saw, and was within hearing and speaking distance of affiant's platform and heard and understood affiant, stood mute and silent and refused and declined, although affiant repeatedly challenged him to do so, to give the name of any lawyer or person who ever attempted to do any of the acts or things so as aforesaid falsely uttered and published by him; and affiant thereupon publicly charged and accused the said Lucas F. Smith of deliberately uttering and publishing these false charges and making

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these false statements for the advancement of his own selfish and private ends, and affiant denounced such undignified conduct on the part of one seeking the high and important office of Judge of the Superior Court.

5. That at all times since the said election the said Lucas F. Smith has been and still is very bitter and unfriendly towards affiant, and has in every way in his power endeavored to hurt and injure this affiant in his business; that it is public rumor that this affiant has no chance of getting or receiving fair play, or fair or impartial justice from said Lucas F. Smith, and affiant has lost the patronage of many of his clients in this County because of such rumor, and because of the unfriendly spirit and intense animosity and discourtesy of the said Lucas F. Smith at all times towards affiant whenever affiant has any business transactions in said Court.

6. That this affiant hereby refers to and makes a part of this affidavit, the verified complaint in this action.

7. That upon the trial in this Court of the contest mentioned in said complaint the said Lucas F. Smith, presiding as Judge, the said defendant in this action, F. A. Hihn, (who is and at all times herein mentioned was a close, intimate and confidential friend of the said Lucas F. Smith), was a witness in his own behalf and upon cross-examination by this affiant was being questioned

closely as to why he did not make the written instructions for the will of Geo. Kohl, as set out in said complaint herein, containing the trust clause in favor of the poor of the village of Rechtenbach [*sic*], which written instructions are par-

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[par-]ticularly set forth in said complaint, a part and parcel of said original or engrossed will (also particularly set forth in said complaint), and the said F. A. Hin [i.e., Hihn], evading the questions and hesitating, and being apparently embarrassed and at a loss for an answer, the said Lucas F. Smith, as the presiding judge, seeing and noticing such embarrassment came to the assistance of said F. A. Hihn with the following extraordinary remarks and suggestions addressed to this affiant:

“Mr. Burke I never drew a will in my lifetime for anyone that I did not change when I came to write it out.”

(and then later on the following dialogue took place between the said Lucas F. Smith, and this affiant).

Mr. Burke. Then if it was the intention that the trust clause should not be in the original will as signed it would have been stricken out of the original memorandum of instructions.

The Court. It seems to me you have covered that very thing in the testimony, and I do not think Mr. Hihn would object to produce the draft or if he could find it.

Mr. Burke. But that is the very thing I am urging your honor to do. We are trying to have produced here the draft instructions for the will and Mr. Hihn seems unwilling to produce it. Suppose a client came to you to prepare a will in which he wanted John Doe to be named as trustee of his property, and after his death the proceeds to go to the poor of a certain place,- would you as attorney for that client say to him: oh put no such trust clause in your will, give it to John Doe absolutely, you would do, would you not/ that only what your duty as an attorney suggested?

The Court. I don't think that I would advise a trust in a will.

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I'd advise him to leave it out. I'd believe Mr. Younger there or any other friend: I would rather take a chance to their honor than to a trust clause in the Supreme Court of this State.

8. That later on in the course of said trial one of the attesting witnesses to said will was under cross-examination by affiant, and having testified under oath that when said original will was read to deceased by said F. A. Hihn, he, the witness was under the impression that it contained the trust clause in favor of the poor of Kohl's native village, said Lucas F. Smith admonished said witness and in an angry and intimidating manner said to the witness:

“Mr. Hodgdon (witness) when you undertake to state what the will contained you should be very careful in testifying” and that during the progress of the said trial the said Fred A. Hihn was in the Court-room and listened to and heard of the remarks of the Court.

9. That one of the other reasons for the spleen, displeasure, and unfriendliness of the said Lucas F. Smith, is that during or at the time when affiant was delivering the public addresses aforesaid, he, affiant took occasion to and did accuse the said Lucas F. Smith, of publicly in the Court-room of this Court, in the trial of said contest, referring in disrespectful terms and insinuatingly of the Supreme Court of this State in reference to the remark of the said Lucas F. Smith, that he would rather take a chance to Mr. Younger's, or any other friends honor, than to a trust clause in the Supreme Court of this State.

10. That at the time of and during the trial of said contest, and during the campaign of the said Lucas F. Smith, as

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aforesaid, to-wit: commencing on the 17th day of September, 1902, and continuing on the following dates, to-wit: September 18th and 19th, 1902, and October 13th, 14th, 15th, 21st and 24th, 1902. "The City Bank", and "The City Savings Bank" were and still are allied corporations organized by said defendant F. A. Hihn under the Banking laws of the State of California, and having their principal office or place of business in the City of Santa Cruz, in said County of Santa Cruz, conducted and managed in the same office, by the same officers, under and by the same Board of Directors, and under the same management, and that at all said times said Frederick A. Hihn was and still is the Vice President, one of the directors, the principal stock-holder, and general consulting manager of the said two banks, and that said banks are and each of them is popularly called and known as "Hihn's Bank" in and around the said City of Santa Cruz, and the said County of Santa Cruz: that as affiant is informed and believes no loans or overdrafts are made or allowed by said Banks, or through either of them, or have been made or allowed by said banks at anytime herein mentioned without the authority and consent, knowledge and approval of the said defendant, and that at all times herein mentioned the said Lucas F. Smith was an intimate acquaintance and friendly with the said F. A. Hihn, and well knew of all the facts herein in this paragraph alleged and stated, and that on or about the 18th day of September 1902, the said Lucas F. Smith, being without funds and not having the necessary means to carry on and conduct his

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canvass for the office of Judge of said Superior Court applied to the said City Bank and to the said defendant as the vice-president and one of the directors and principal managing agent as aforesaid for permission to draw upon said City Bank for the amount of the expenses of his campaign and canvass for the said office of Judge tendering and offering as security therefor his salary as such judge, and said City Bank and said defendant as such vice president, director and principal manager granted said application upon the security of said salary of said Lucas F. Smith, as such Judge, and thereafter and at various times between the said 18th day of September, 1902, and the 18th day of November, 1902, the said Lucas F. Smith, did draw upon said Bank, and said City Bank did pay the election expenses and the expenses of the canvass and campaign of said Lucas F. Smith for the office of Judge of said Superior Court, and that said expenses amounted in the aggregate to the sum of \$348.50, every cent of which was paid by the said City Bank, upon the sole security of the said Judge's salary, and with the knowledge, consent and approval of the said defendant: that on the 18th day of November, 1902, the said Lucas F. Smith filed in the office of the County Recorder of the said County of Santa Cruz, his verified statement, in writing, of his receipts and expenditures of the moneys received by, and amounts paid out for expenses in aid of his election to the office of Judge of said Superior Court, and in said statement the aggregate amount of said expenditures is set out at the sum of \$348.50, and that under the heading, in said statement, reading: "From whom, or from what

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source received", is the following item in the handwriting of the said Lucas F. Smith, to-wit: "Received from City Bank on salary as Superior Judge, cash. Amount \$348.50."

11. That affiant did not learn or know or discover, and had no means of learning, knowing, or discovering that the said City Bank, popularly known as "Hihn's Bank", was during the trial of said cause and contest, paying and advancing the election expenses of said Lucas F. Smith, upon the sole security of his salary as Superior Court Judge, until on or about the 18th day of November, 1902, when said Lucas F. Smith filed his sworn statement in the said County

Recorder's office as aforesaid.

12. That on December 16th, 1902, the said Lucas F. Smith rendered and filed in said will contest and cause, his written decision, as set forth in the complaint herein, establishing said trust in favor of the poor of the said village of Rechtebberg[*sic*], which said decision is hereby referred to and made a part of this affidavit.

13. That this affiant as attorney for the contestant in said contest, the plaintiff herein, duly served and filed within the time allowed by law, said contestant's notice of intention to move for a new trial of said contest and cause, and on the 12th day of January, 1903, Charles B. Younger the attorney of record, and general counsel and confidential adviser of said defendant, F. A. Hihn, agreed and stipulated in writing, that contestant, said plaintiff, might have to and until February 4th, 1903, in which to prepare and serve contestant's proposed statement on motion for a new trial, and to serve and file the affidavits on motion for a new trial, in pursuance of said notice of intention, which stipulation was filed in said contest and cause on the 18th day of January, 1903; that

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affiant afterwards prepared a complete, full, true and correct transcript of the evidence and proceedings, in said contest and cause and served the same on the said Charles B. Younger on February 2nd, 1903, which transcript was the contestant's proposed statement on motion for a new trial: and at the same time with the service of the said proposed statement, affiant served said Charles B. Younger with the affidavit of contestant upon which he relied for a new trial, and said affidavit was filed in the Clerk's office of this Court on the same day: that upon the said 2nd day of February, 1903, there was served upon affiant by said Charles B. Younger, as attorney for said F. A. Hihn, in said contest and cause, a notice of motion that on the 9th day of February, 1903, before this Court said F. A. Hihn would apply for an order striking from the files of said Court in said matter and cause said contestant's notice of intention to move for a new trial, said contestant's affidavit on motion for a new trial, and the said proposed statement on motion for a new trial, on the grounds (1) that a new trial could not be granted therein, (2) that said Court had no jurisdiction to grant a new trial therein: that said motion came on regularly to be heard before said Superior Court on the 16th day of February, 1903, (having been regularly continued from the 9th day of November, 1903,) said Lucas F. Smith presiding, when said C. B. Younger moved the Court in accordance with the terms of said motion, and upon the grounds stated therein, and when this affiant attempted and offered to show authorities of the Hon[orable] the Supreme Court of this State, and the decisions of said Supreme Court bearing upon the questions involved in said motion

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said Lucas F. Smith arbitrarily and peremptorily refused and declined to listen to this affiant in defense of the contestant, the plaintiff herein, but immediately, and without any consideration or reflection, and in entire ignorance of the law involved in the motion, and in an abrupt manner exclaimed "the motion is granted", and thereupon an order was entered upon the minutes of this Court, in said contest and cause striking from the files of this Court the papers and files mentioned in said notice of motion, and said contestant was thereupon, without being given a right to be heard deprived of his privilege to proceed for a new trial: that on March 13th, 1903, this affiant as attorney of said contestant, in open Court, said Lucas F. Smith presiding, made a written demand upon said Smith to settle said statement on motion for a new trial, and said Lucas F. Smith, although holding and adjudging that he had no jurisdiction to hear or determine motions for a new trial in cases of appeals from orders refusing to revoke probate of wills, took said written demand under advisement, which said written demand was

filed in said contest and cause on the said 13th day of March, 1903; that on the 18th day of March this affiant wrote a letter addressed to said Lucas F. Smith, and mailed same to said Lucas F. Smith again demanding that he forthwith announce his intention or refusal to settle said proposed statement on motion for a new trial, which letter the said Lucas F. Smith received on the evening of March 18th, 1903, and on the 19th day of March, 1903, the said Lucas F. Smith wrote a letter to H. H. Miller, County Clerk, and Clerk of this Court directing the said Miller to enter an order upon the minutes striking out certain affidavits of

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F. A. Hihn, and T. G. McCreary, filed in said contest and cause, upon the ground “that there is no law authorizing a motion for a new trial based on an order refusing to revoke the probate of a will,” and further ordering that the statement on motion for a new trial be set for March 27th, 1903, at ten A.M.,” and said County Clerk duly entered upon the minutes of said Court an order in pursuance of said instructions; that on March 27th, 1903, this affiant again appeared in open Court and made a demand that the said Lucas F. Smith proceed with the settlement of said proposed statement on motion for a new trial, as appears by the minutes of said Superior Court of that day, but the said Lucas F. Smith again refused to settle said statement.

14. That affiant on the 27th day of March, 1903, filed in the Supreme Court of this State, a petition in writing, duly verified, in which this plaintiff here was petitioner and said Lucas F. Smith was respondent, and alleging in said petition that said Lucas F. Smith had stricken from the files said contestant’s notice of intention to move for a new trial, said contestant’s affidavit on motion for a new trial, and said proposed statement on motion for a new trial, on the ground as repeatedly stated and alleged by said Lucas F. Smith that he had no jurisdiction over and that there was no law authorizing a motion for a new trial to be made based on an order of Court refusing to set aside the probate of a will, and that he said Lucas F. Smith had refused and declined to settle said proposed statement, and praying for a writ of mandate commanding him to show cause why he should not restore said papers to the files and proceed to

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settle said statement, and on the 20th day of April, 1903 said petition came regularly on to be heard in said Supreme Court when and where the said Charles B. Younger appeared as attorney for said Lucas F. Smith, and filed therein the verified and sworn answer of said Lucas F. Smith: That the said Smith, in said sworn and verified answer, in order to prevent and for the purpose of preventing the said contestant this plaintiff from having a fair and impartial hearing before said Supreme Court solemnly and boldly swore that he had no information or belief that there was and such stipulation as that heretofore referred to in this affidavit signed by said Charles B. Younger, extending the time of contestant in which to prepare and serve his proposed statement and affidavits on motion for a new trial, notwithstanding the fact that his said attorney, C. B. Younger, prepared and had type written said answer: had a duplicate of said stipulation in his possession: new of its existence, and that said stipulation was, when said Lucas F. Smith swore to said answer, to-wit: April 18th, 1903, and for a long time previously had been on file in the records of his own Court: that in said answer so sworn to as aforesaid on the 18th day of April, 1903, by the said Lucas F. Smith, he solemnly states and alleges that he had no information and no belief that there had been served upon his own attorney, C. B. Younger, who prepared and had type-written the answer, the said proposed statement on motion for a new trial, notwithstanding all the orders in reference thereto the had been previously made and proceedings had in reference thereto as hereinbefore stated: and notwithstanding that said affidavit of contestant on motion for

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a new trial and the affidavit of service thereof upon said Charles B. Younger were, and had been on file among the records in said contest and cause long previous to the time when said Smith swore to said affidavit: during all said times herein mentioned the said Lucas F. Smith had complete supervision and control of said papers and records and the same were at all times accessible to him, and frequently inspected by him: that notwithstanding the written demands made in open Court upon the said Lucas F. Smith to settle said proposed statement, and the letter of this affiant addressed to and received by the said Smith repeating[sic] said demand and notwithstanding the various orders made by the said Smith, and appearing upon the minutes of the Court herein, and hereinbefore particularly referred to, striking the papers from the files upon the grounds thrice repeated by him, that he had no authority to hear or determine motions for new trials in the cases aforesaid, he the said Lucas F. Smith solemnly swore and declared in his said affidavit on file in said Supreme Court, sworn to April 18th, 1903, that the said proposed statement on motion for a new trial, or any other statement, had never been presented to him to settle same, or that he had refused to do so. That said sworn answer so filed in the Supreme Court was subscribed and sworn to by said Lucas F. Smith, before H. H. Miller, Clerk of said Superior Court.

14. That by reason of the facts herein set forth this affiant says that he cannot have a fair and impartial trial of this action for his client the plaintiff herein before the said Lucas F. Smith: that affiant is acquainted with and has personal

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knowledge of the facts and circumstances of this case and is of the opinion that plaintiff has a good and substantial cause of action upon the merits.

That affiant hereby refers to and makes a part of this affidavit all the papers, files, and records herein referred to.

Geo. P. Burke

Subscribed and sworn to before me this 9th day of June, 1903.

(SEAL) Harry J. Bias,
Notary Public in and for the County of
Santa Cruz, California.

----- Transcriber's Insert -----

[Transcriber's Note: The above Affidavit of George P. Burke, and petition to the California Supreme Court was decided by that Court in:

PETER PAUL HARTMANN, Petitioner, v. LUCAS F. SMITH, Judge of
Superior Court of Santa Cruz County, Respondent

S. F. No. 3532

Supreme Court of California

140 Cal. 461; 74 P. 7; 1903 Cal. LEXIS 620

October 1, 1903

PRIOR HISTORY: MANDAMUS from the Supreme Court to the Judge of the Superior Court of Santa Cruz County. Lucas F. Smith, Judge.

DISPOSITION: Let a peremptory writ of mandate therefore issue requiring the respondent, as judge of the superior court of the county of Santa Cruz, to proceed to settle the statement on motion for a new trial in the estate of George Kohl, deceased, pending in said court.]

----- End of Transcriber's Insert -----

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Mr. Lindsay: There is another affidavit I will have introduced. That is the affidavit of the plaintiff in the same case No. 3929.

The Chairman: So ordered.

(The affidavit of Peter Paul Hartmann, plaintiff, is in the words and figures as follows:)

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In the Superior Court of the County of Santa Cruz, State of California.

PETER PAUL HARTMANN,
Plaintiff,

vs

FREDERICK A. HIHN,
Defendant.

STATE OF CALIFORNIA

SS.

COUNTY OF SANTA CRUZ

PETER PAUL HARTMANN, plaintiff in the foregoing Court, being duly sworn, deposes and says: That he has read the affidavit of George P. Burke, this day filed in the case above-entitled, and deposes and says:

That previous to the decision of the Court, affiant, meaning the decision of the Court, and on or about the Sixth day of December 1902, affiant went to the Judge of said Court, to inquire in reference to his case, and asked him about his case, and the following dialogue occurred and took place between the said Judge and this affiant:

Mr. Hartmann:- Judge, what is the reason that you have not decided my case sooner? I heard that you had given a decision against Mr. Hihn. Is that true?

Judge Smith:- It was true. I decided the case of you, Mr. Kohl, in favor of F. A. Hihn.

Q. The Judge. I think you are very unfortunate for having that drunken lawyer of yours try the case. I suppose he made the false statements to you that he made about me during the campaign that he made about me; even if you should win this case he would only rob you out of it.

That during all of the times in this affidavit mentioned, this affiant had put confidence in and treated the said George P. Burke as his attorney, and so far as the statement of the said Judge Smith is

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concerned about the drunkenness and intoxication of the said George P. Burke, this affiant states that it is false and untrue, and without any foundation;

That during said conversation the said Judge stated to me that if I should get any thing out of this estate, "that Burke would rob me out of it; that I do not think that Burke would rob me out of it, nor do I intend that he shall.

That during all the times herein mentioned, this affiant had full trust and confidence in the said George P. Burke, and employed him as his attorney, having confidence and faith in him; that during the times herein mentioned the said George P. Burke was in the Court room, attending to this affiant's case, and that at no time during these occasions was he under the influence of liquor or other than apparently in his senses; that affiant has full faith and confidence in the said George P. Burke, and the said George P. Burke has from this affiant been informed of all the facts and circumstances connected with his case; and the said George P. Burke has been selected by this affiant to present the law upon these facts and circumstances.

That affiant having complete confidence in the said George P. Burke, and believing that so far as the representations, if they are true, of the said Judge Smith, during the trial of this cause, are concerned, believes and knows from what he has stated to the said George P. Burke, as his attorney, and with the confidence that affiant has with the said George P. Burke that he will faithfully attend to his business.

That this affiant has stated all the facts in the case to the said George P. Burke, and is informed and believes that he has a good and meritorious case upon the merits in this cause. That affiant believes that the said Judge Smith in consequence of and because of the affidavit of George P. Burke this day filed cannot have a fair and impartial trial, because of the bias and prejudice of the said Judge Smith; and affiant hereby makes a part of, and refers to this

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affidavit to the affidavits of the said George P. Burke, and each and every of the records and files therein referred to.

Peter Paul Hartmann.

Subscribed to and sworn to before me, this 10th day of June, A. D. 1903.

(SEAL) Harry J. Bias,
Notary Public in and for the
County of Santa Cruz,
State of California.

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[Cross-examination of Judge Lucas F. Smith, resumed]

Mr. Lindsay: I will call your attention, Judge, to the case of White against Bessee[sic] which was tried in this Court some time ago, I do not remember the date-- do you recollect the case?

A. Yes, sir.

Q. The plaintiff was Edward White, one of the gentlemen who testified here today, was it not?

A. No, that was his wife, I think.

Q. His wife? A. I think it was Annie E. White; I think so; that is my recollection; I am not sure.

Q. And the defendant was the sheriff of the county?

A. Sheriff Bessee[sic], that is my recollection; it was Annie E. White against Sheriff Bessee[sic].

Q. An action involving certain real property, did it not?

A. Yes sir.

Q. Mr. Wyckoff represented the defendant, did he not?

A. Yes, sir.

Q. Well, that is my recollection; I think he was one of the attorneys.

Q. And Mr. Cassin represented the plaintiff?

A. Mr. Cassin and Mr. Younger, I think.

Q. Mr. Cassin and Mr. Younger? A. Yes, sir; and Mr. Wyckoff, and I think somebody else, I am not sure who it was.

Q. I will ask you if that case, before the case was tried, if you were not requested in open court by the attorney for the defendant, Mr. H. C. Wyckoff, for a change of Judge, for another Judge to be called in to try the case? A. I have no recollection of it at all, recollect no such motion.

Q. Did you not then and there consent to call in another Judge if Mr. Cassin would give his consent?

A. No, I do not recollect that.

Q. Didn't you say you would agree to do so if Mr. Cassin consented?

A. No, I do not recollect that.

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Q. Did not Mr. Cassin decline to give his consent and did not you deny the request?

A. I have no recollection of that.

Q. Do you deny it? A. I have no recollection of it; if any such thing as that occurred in the case I have no recollection; I know it was taken to the Supreme Court and they affirmed my decision.

Q. I have no doubt you decided it right.

A. I have no recollection of any motion being made, or any request whatever, so if there was such a thing I have no recollection of it.

Q. You have no recollection of it? A. No, sir; it is a perfectly blank-- it might have been. Committeeman Burke: What was the title of that case?

A. Annie E. White against Bessee[sic], sheriff.

Mr. Lindsay: I mean the request was made while the Court was in session, but there was no record made, it was not upon a motion, but simply a request, hence my question.

Mr. Sullivan: The minutes of the Court do not show.

Mr. Lindsay: I have not examined them, I do not know, it was not a motion, it was a request. I suppose the attorneys in the matter will remember better than I perhaps can, and perhaps better than the Judge.

A. I would have been glad to call in another Judge; Mr. because Mr. Bessee[sic] was a particular friend of mine, so was the plaintiff; I would have been glad to call in another Judge if I had been asked by the other side; that is the way I felt about it. It might have been done.

Q. If you refresh your memory-- you did agree to call in another Judge if Mr. Cassin consented to it.

A. Yes, I would be glad to think over the matter, and correct my testimony if I think that occurred. It seems to me you were in the

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case too.

Q. No, no-- was I? A. I think you were. I think you assisted Mr. Wyckoff, that is my recollection.

Q. I did not have anything to do with the trial?

A. That is my recollection.

Mr. Sullivan: Weren't you in the case?

Mr. Lindsay: No, I was not in the case. May be my name was signed as attorney, I had nothing to do with it?

A. You were attorney for the sheriff, Mr. Bessee[sic].

Q. I was his personal attorney, and no doubt he could not have a worse selection.

A. I do not think so; you seemed to keep him out of trouble quite a good deal.

Q. I will see if I can find any record.

Q. I will, because I kept notes. If that was done in open Court the Official Reporter's notes will show all about it, and what was done.

Mr. Sullivan: Look that up.

Mr. Lindsay: So now there are at least two cases established by the record which you concede, where there were affidavits-- in one case a very lengthy affidavit on a motion for a change of Judge, to call in another Judge, which you denied, that is true?

A. Yes, sir; under certain circumstances.

Q. It is true, is it? A. Yes, that is the record you have presented.

Q. Then the testimony you gave last night to the effect without a single exception, on every occasion whenever a request was made that another Judge should be called in you granted it,

was a mistake, was it not? A. No, sir; my testimony was exactly right last night; I stated my recollection, to the best of my recollection there was not a single case where attorneys had ever asked for a change of venue, or called for another Judge, that I did not accord it;

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that is my recollection.

Q. It was the best of your recollection?

A. I say I think it was qualified in that way; if I did not, that is what I intended to do. I want to say to you these cases are-- of course you do not wish to hear me, so I will wait for the redirect examination.

Mr. Lindsay: I do not desire to stop you. I would not put a straw in your way to making any explanation you want.

A. I will have the reporter-- I will see if I can get my notes in this case. I think I have them.

Q. I desire now to call your attention to the record of this Court in case No. 3336, Helen Younger, plaintiff, versus Charles Moore, and others, defendants. You have heard of this case a good many times?

A. Yes, sir. I will state, Mr. Lindsay, I did send for another Judge, if that is what you want.

Mr. Lindsay: I desire to offer in evidence a citation issued in that case to Charles B. Younger, Sr., Charles B. Younger, Jr., and John H. Leonard, requiring them to appear on Tuesday, the 21st--.

Mr. Sullivan: That is already in evidence.

A. That is gone over, with my explanation.

Mr. Lindsay: To show cause why they should not be punished. I desire to offer this in evidence.

Mr. Sullivan: It is in evidence.

The Witness: Mr. Younger made an affidavit, and I called in Judge Dooling to hear and decide it.

Q. I remember that? A. I told Mr. Younger at the time he did not need to offer an affidavit.

Committeeman Beardslee: Judge Dooling came?

A. Yes, sir; I called in Judge Dooling.

Mr. Sullivan: We have had that already.

Mr. Lindsay: We will proceed to something else. You say

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that you deny, Judge, having ever said to Mr. Leonard in your chambers in that Sambuck case that he should have allowed the railroad doctors to examine his client, and have him bend and squeal, you deny that, do you? A. Yes, sir; I deny every word of it.

Q. Do I understand you to say at that time you and Mr. Leonard were on friendly terms? A. We were just barely on speaking terms by reason of this Moore citation, because I had him cited for contempt in filing that complaint, acting as attorney also, and making me a party.

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

Q. You are positive of it?

A. Well, I know that we spoke; we were not so unfriendly, we did not speak to talk-- he never had any use for me after that.

Q. You know by reason of that you could not have had this conversation? A. Well, no, sir, that is not the reason: I remember very well how he got that idea; it was after the trial-- just as I stated-- Mr. Leonard would never have thought of it.

Q. At the time he came into your chambers, when he said he came into your chambers and you discussed the matter, you were on unfriendly terms by reason of that citation?

A. Not really unfriendly; we were on speaking terms; he came in there and discussed business,

we would talk some; he had no use for me, what you might call intimate terms; I would say we were not on intimate terms, friendly terms, like I would be with the other lawyers if they sit down and talked to me converse; we were simply on terms friendly enough to transact business. Mr. Lindsay: I offer in evidence the Judgement Roll in the case of Nicolaus [sic] Sambuck, plaintiff, against Southern Pacific Company, a corporation, defendant, number 3390, in the Superior Court of the County of Santa Cruz, State of California, solely for the purpose of-- I do not desire anything else to be incorporated in the

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record, it would only incumber[sic] it-- solely for the purpose of showing it was filed on March 16, 1900, a month before these citations were issued, these citations in evidence, one was April 20, 1900, and the other April 30, 1900.

Mr. Beardslee: You mean in the Younger case?

Mr. Sullivan: The complaint was stricken out.

Mr. Lindsay: I want it to appear in the record that the Judgment Roll in the Sambuck case against The Southern Pacific Railroad Company was filed March 16, 1900.

Mr. Sullivan: We will admit that the Judgement Roll in that case was filed March 16th, 1900.

Mr. Lindsay: And it is in evidence that the citations were issued out of this Court-- the citations referred to by the Judge-- were issued out of this Court, one on the 17th and one on the 27th, day of April, 1900, and that they were respectively filed or returned, one on the 20th, and the other on the 30th day of April, 1900.

Mr. Sullivan: We will admit that, that will save putting it in the record.

The Witness: I do not admit, though, he had that conversation with me before the citations were issued.

Mr. Lindsay: Of course it will be conceded that the Sambuck case was tried before the Judgement Roll was filed.

Mr. Sullivan: Do you ask for such a ridiculous admission as that.

Mr. Lindsay: That it is the case.

Mr. Sullivan: I presume we are all presumed to know the case.

Mr. Lindsay: Now, Judge, you were mistaken, weren't you?

A. No, sir; I was not mistaken.

Q. You testified here that by reason of the issuance of this citation that at the time Mr. Leonard came there you were on bad

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terms? A. Yes, sir; that is right.

Q. The citations had not been issued?

A. Yes, sir; they had been issued when he came in there, in my chambers, a few weeks, for a motion for a new trial had been denied in this case.

Q. Ah! Do not let us have any misunderstanding in your testimony, I may be mistaken.

Committeeman Beardslee: He testified it was after the trial?

A. After the motion for a new trial had been heard and determined, within a few weeks thereafter.

Mr. Lindsay: My recollection of the testimony is that this could not have happened at the time because of these people being on bad terms by reason of the citation, if I am wrong ---

Committeeman Beardslee: I want to explain my interjection. I thought you had questioned the Judge as to whether this happened upon the trial of the Sambuck case. You question him that it had happened during the trial.

Mr. Lindsay: No, I do not think that; you say the conversation which did take place occurred

some weeks afterwards?

A. After a motion for a new trial had been settled and disposed of.

Committeeman Beardslee: He did testify to that.

A. That was long afterwards. The trial of that action was in March, and the bill of exceptions were settled two or three months afterwards, my recollection,-- the motion for a new trial, you will find, was two or three months after the trial.

Mr. Lindsay: No question about that. When the record is written out my point will appear. A. Yes, sir.

Q. If I am mistaken about it I will correct it.

A. I might add further, Mr. Lindsay, Mr. Leonard and I were not so very friendly, that is I would not invite him into my chambers to have a seat -- from the very time that complaint was stricken from

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the files he seemed to stand in with the Youngers; I heard some talk--

Q. There was not any particular feeling before the issuance of the citation? A. That aggravated it.

Q. That aggravated it considerably? A. Yes, sir.

Q. So at the time of the trial of the Sambuck case you were not on friendly terms? A. No, sir; not very friendly.

Q. Unless my memory absolutely fails me you testified last evening that at the time of the trial of the Sambuck case you were not on friendly terms, by reason of that citation?

A. If I did, I meant by striking the complaint from the record.

Q. The record will speak.

A. I will say here, I testified to the best of recollection-- there seems to be some question, but from the time this Helen Younger complaint was stricken from the files that we were not on very friendly terms, neither Mr. Leonard nor the Youngers. The issuing of that citation did not smooth matters over any.

Mr. Lindsay: Now, Mr. Reporter, will you turn back to Judge Smith's testimony of last evening and his testimony as to that matter just now.

Committeeman Beardslee: I just want to ask one question. You referred to the fact that these lawyers are not friendly to you?

A. Yes, what I call friends.

Q. Do you mean that is mutual between you?

A. No, it is not; I transact business with them, treat them the same way I do any other lawyer; I speak to them and have business transactions together, but we are not like anyone would come in and sit down and talk-- like Judge Skirm and Mr. Dickerman; they never came in and sat down and conversed with me about things. They come in there with their business-- not what you call a friendly, sociable meeting. Some lawyers come in my chambers and sit down

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and converse with me over different matters.

Q. Then Mr. Leonard did appear friendly before this complaint here was stricken out? A. Yes, the cause of the whole business.

Q. Was anything said at that time that angered Mr. Leonard, that created this ill feeling?

A. No, sir; except the order which was filed striking it from the files.

Mr. Sullivan: Shortly after that they had a writ of certiorari issued by the Supreme Court.

The Chairman: I understand.

Mr. Sullivan: That also was passed upon by the Supreme Court.

Mr. Lindsay: The order does not show that, does it?

A. What order?

Q. The order striking the complaint from the files?

A. Well, you can see it, it speaks for itself.

Q. If you know at that time that Mr. Leonard was the attorney who was representing the plaintiff, on behalf of the plaintiff, why didn't you serve him notice of striking that complaint from the files?

A. I did not know it at that time.

Q. If you did not know it at that time, how came you to include his name in the order? **A.** His name is not in the order; no names of any lawyers is in the order; the order does not mention any attorney's names, because I did not know who signed it.

Q. When did you find out who the attorneys were?

A. It was some [time] afterwards; it was after the Supreme Court had set aside the order to reinstate, before the citation was issued. As soon as I struck the complaint from the files, why they sued out a writ of certiorari that was quite a while afterwards.

Q. A year or more? **A.** Yes, sir; I think it was the next August, 27th, or 17th. When the order was made striking the complaint

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[Transcriber's Note: The case referred to above is:]

CHARLES B. YOUNGER, Jr., Petitioner, v. **SUPERIOR COURT OF SANTA CRUZ COUNTY,** Respondent; S. F. No. 2197; Supreme Court of California, Department One; 136 Cal. 682; 69 P. 485; 1902 Cal. LEXIS 790; July 3, 1902

PRIOR HISTORY: WRIT of Certiorari to annul an order of the Superior Court of Santa Cruz County. Lucas F. Smith, Judge.

DISPOSITION: For the reasons given in the foregoing opinion the order is set aside and annulled.

PROCEDURAL POSTURE: Petitioner landowner sought a writ of certiorari to annul an order of respondent Superior Court of Santa Cruz County (California), which dismissed an action for partition in which the landowner was named as a defendant and the superior court judge was named as an interested party.

OVERVIEW: An action was brought in the superior court to partition land held by the landowner as a tenant in common. The superior court judge was named as an interested party. Without notifying any of the parties, the judge dismissed the action. The landowner brought a petition for a writ of certiorari to annul the superior court's order. The court granted the writ. The court held that the superior court exceeded its jurisdiction by not giving notice to any of the parties of its intent to dismiss the complaint. The court noted that the order was made by the superior court of the judge's own volition without any notice to anyone and without any motion or suggestion by any party. The court said that there was, in general, nothing to prevent a party from naming a judge as a party in a proper case. Further, in this case, there was nothing on the face of the complaint to suggest that naming the judge as a party was improper. In any event, the court concluded, the parties had the right to at least be heard as to the propriety of naming the judge as an interested party. The court said that the superior court was not authorized to deprive the parties of their right of action without a hearing.

OUTCOME: The court granted the landowner's petition for a writ of certiorari and annulled an order of the superior court that dismissed a partition action in which the judge was named as an interested party.

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from the files; I think it was a year or two afterwards before the citation was issued.

Q. After the issuance of this citation in this case of Younger against Moore, and after their service and return and before the return day, did not John H. Leonard call upon you at your house?

A. He came once while I was hurt and got some order signed about this McDonald habeas corpus, the only time I remember his being there.

Q. Didn't he call upon you and have a conversation with you in reference to this very matter?

A. I do not remember.

Q. And didn't you talk very friendly with him and advise him that the best thing he could do would be to find out all about the matter and clear it up and relieve himself of any responsibility?

A. About what matter?

Q. About this Younger against Moore matter?

A. No, never mentioned; I was suffering from a bad attack-- about a year ago my hip was badly hurt.

Q. This was before you heard the case?

A. He never called and talked about anything about it. He came there while I was wounded with this injured hip to sue out a habeas corpus in the McDonald matter; I read his petition, and did not think it stated sufficient facts; he was trying to get it out in Sacramento, I told him he had better go to Sacramento, go to the Supreme Court, so he did go to the Supreme Court. I was not able to come down.

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Follows Judge Smith recalled.

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EVENING SESSION.

---X-X---

TESTIMONY

OF

H. A. VAN C. TORCHIANA, Sworn.

Mr. Sullivan: Q. What is your full name?

A. H. A. Van C. Torchiana.

Q. What is your profession? **A.** Attorney-at-law.

Q. Attorney-at-Law? **A.** Yes sir.

Q. Are you a graduate of any University?

A. Of the University of Amsterdam.

Q. How long have you been practising [*sic*] your profession?

A. Three years; licensed to practice in--

Q. (interrupting.) You are duly licensed to practise [*sic*] your profession in the State of California? **A.** Yes sir.

Q. How long have you lived in Santa Cruz? **A.** Four years.

Q. Lived four years in the County of Santa Cruz? **A.** Yes sir.

Q. Were you interested in the case of Rianda Adminitatrix [*sic*] Vs. the Watsonville Water and Light Co.? **A.** I was.

Q. Prior to the commencement of that suit did you commence an action for Mrs. Duckworth against the same company? **A.** I did.

Q. The defense in that case was that the Deed was made by the mother of the plaintiff to the corporation wasn't it? A. It was.

Q. Well Mrs. Duckworth commenced suit to cancel that Deed did she?

A. She did.

Q. Mrs. Duckworth died? A. She did.

Q. Mrs. Rianda was appointed Administratrix to succeed Mrs. Duckworth in the case?

A. She was.

Q. You represented the substituted plaintiff as Administratrix?

A. As one of her attorneys.

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Q. Who was[sic] the original attorneys in that case of Rianda Vs. the Watsonville Light & Water Company?

A. The original attorneys were Dickerman & Torchiana.

Q. That was a suit in equity was it not? A. It was.

Q. Was a jury trial demanded? A. We demanded a jury.

Q. Who demanded a jury? A. We did.

Q. The plaintiff in the case demanded a jury trial? A. Yes sir.

Q. That was a case of reversal as tried by the Court wasn't it?

A. Yes sir.

Q. And after demanding a jury trial, Mr. Cassin appeared in the case? A. Yes sir he did.

Q. For what purpose?

A. To assist me in the trial of the case before a jury.

Q. To assist you and your associates in the trial of the case before the jury?

A. Yes sir; Mrs. Rianda had retained Mr. Geo. P. Burke also?

Q. Mrs. Rianda had retained Mr. Geo. P. Burke also?

A. Yes sir. I retained Mr. Cassin--for Mr. Dickerman was a party in the interest--to assist me before the jury.

Q. You retained Mr. Cassin to assist counsel in the argument-- in the representation of the argument of the case before the jury.

A. I did.

Q. Of course Mr. Cassin was entered as an attorney and did appear?

A. Yes sir. When we brought suit Mrs. Duckworth requested Mr. Netherton to assist me in the trial of the case; and Mr. Netherton was taken sick; he went to the Springs; at that time there were several cases in the Superior Court in which I was interested, and several of my clients became restless. Of course we did not wish to bring about the trial as long as Mr. Netherton was sick, so finally I told Mr. Netherton

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that unless he would be able to come down and consult with us, I did not feel that we should retain him any longer in the case, as I would prefer to take another attorney in the case. That was agreeable to Mr. Netherton, and at his request his name was stricken off the record and Mr. Cassin's name was substituted.

Q. After the presentation of the case to the jury, and the rendition of the verdict, did Mr. Cassin drop out of the case for a time?

A. Mr. Cassin's employment was ended.

Q. You retained him simply for the purpose of presenting the case to the jury? A. I did.

Q. The verdict of the jury in that case was simply advisory to the Court was it? A. Yes sir.

Q. That is the Court could adopt or reject the verdict of the jury?

A. Yes sir.

Q. It was not like an ordinary jury case?

A. Oh no--an equity case.

Q. After the verdict of the jury had been returned, did you prepare findings for the Court to sign?

A. Mr. Burke and I did.

Q. Mr. Burke and you? A. Yes sir.

Q. Had Mr. Cassin anything at all to do with the preparation of these findings?

A. None whatever.

Q. Did the Court in its findings find the facts as found by the Jury?

A. The main facts, he did.

Q. The Court found the main facts to be as the jury found them to be?

A. Yes sir; there were several issues submitted and some of the findings of the jury were contradicted ^rejected^ by the Court, but the main issues the Court found with the jury.

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Q. But the main issues the Court found with the jury? A. Yes sir.

Q. You and Mr. Burke prepared these findings, and Mr. Cassin had nothing to do with these findings?

A. Mr. Cassin had nothing to do with the findings.

Q. After the findings were signed and filed, was the complaint amended?

A. At that time Mr. Burke became indisposed and I submitted the findings to Judge Smith; at the same time I submitted the amendment of complaint to conform with the proof, and we had the order signed by Judge Smith; I requested Judge Smith--I showed him the amended complaint before I filed the amended complaint; he signed the order and then I submitted the findings and they were filed the same day.

Q. The day you filed the original findings you filed an amended complaint so as to make the allegations conform to the proof adduced at the trial? A. Yes sir.

Q. And after filing the amendment to that complaint, a demurrer was introduced to that complaint?

A. Mr. Wickoff [*sic*] was the attorney.

A. And that demurrer was overruled?

A. It was by the Court.

Q. After the demurrer was overruled did the defendant file an answer to the amended complaint? A. Yes sir he did.

Q. After the answer to your amended complaint was filed, did you make your request to withdraw the original findings?

A. Yes sir; Mr. Wickoff [*sic*] said he wished to introduce further evidence as new issues were raised by the answer and by the amended complaint; and I argued that no new issues were raised, but Judge Smith overruled it and gave Mr. Wickoff [*sic*] further time

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to introduce new evidence; then, in order to keep the record straight, I requested Judge Smith for leave to withdraw it temporarily--it was in open court--Mr. Wickoff's [*sic*] partner--I first gave Mr. Wickoff [*sic*] notice that a motion would be made.

Q. Motion would be made to withdraw the original findings?

A. Mr. Wickoff's [*sic*] partner, Mr. Gardner, came over with me.

Q. Mr. J. E. Gardner came over with you?

A. Came up on the train with me, and we argued that motion in the afternoon here before

Judge Smith, and Judge Smith granted leave to temporarily withdraw these findings from the files.

Q. You were present during that argument were you? A. Yes sir.

Q. At least Mr. Cassin was not present at the argument?

A. No sir; he had nothing to do with it; he was out of the case.

Q. You argued the case on behalf of the motion and Mr. Gardner in opposition to the motion?

A. Yes sir.

Q. Mr. Cassin had nothing to do with the presentation of that motion to the Court? A. No sir, he was out of the case.

Q. And the motion was granted was it? A. Yes sir.

Q. Then after the motion was granted, did you file another set of findings?

A. After the motion was granted, a day was set for the hearing of further testimony, and at that time I came up for Mr.[sic] Duckworth, my client.

Q. There was a trial of the issue raised by the last amended complaint and answer wasn't there?

A. At that time Mr. Cassin was present, but Mr. Cassin did not examine the witnesses--I remember none of the witnesses; I did the examination.

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Q. Well after the trial of the new issues, the Court found the facts again?

A. Just the same as he did before.

Q. The same facts were found on the presentation of the new evidence as the Court found before?

A. The new evidence did not change the mind of the Court.

Q. There were some changes in the language of the findings were there? A. Yes sir; very few.

Q. Were they material? A. No sir.

Mr. Sullivan: The first findings that were filed and the second findings that were filed, have been produced in evidence and have been seen by Mr. Beardslee.

Mr. Beardslee: The whole Committee has seen them.

Mr. Sullivan: Q. Were you present, at any time, in Judge Smith's chambers, with Mr. Cassin and Judge Smith, considering the findings in that case? A. Yes sir.

Q. When was that? A. Well, in fact, I always presented the findings to Judge Smith, I don't think Mr. Cassin ever presented any findings to Judge Smith.

Q. Was Mr. Cassin present at the time the filings[sic] were presented? A. No sir, he was not.

Q. Were all of the attorneys together in Judge Smith's chambers when the findings were changed? A. No I was there alone.

Q. You heard Mr. Wickoff's [sic] testimony on a certain occasion when Mr. Cassin and his associates were together considering the findings?

Mr. Lindsay: I don't think that is the testimony.

A. I heard Mr. Wickoff's [sic]. All I can say is that I

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never saw Mr. Cassin do anything of the kind.

Q. Were you and Mr. Cassin and Mr. Burke at any time together in the Judge's Chambers considering the findings? A. No sir.

Q. On any motion or any papers in the case of Rianda vs. the Company?

A. No sir; I would have considered it an imposition on Mr. Cassin's part to mix up in it; it was our case, and Mr. Cassin was simply retained to handle the case before the jury.

Q. In presentation of the facts before the Court and jury?

A. Yes sir, certainly.

Q. What have you to say in regard to Mr. Wickoff's [sic] testimony-- you heard him yesterday.

A. All I can say is I never noticed anything happened like that Mr. Wickoff's[sic] speaks of.

Q. Were you ever present in the Judge's Chambers, in the vicinity of the Chambers, when Mr. Cassin came to the doorway, and beckoned to the Judge to come into the Chambers?

A. As I said, I was surprised when Mr. Wickoff's [sic] testified to that effect, because I never noticed it.

Q. When the case was submitted after the introduction of the evidence upon the new issues raised by the pleadings, was there anything said about the presentation of the findings to the Judge?

A. No--one morning, I was not in Court--but one morning, as I understand Mr. Burke was here, it was Law and Motion day--there was a great many attorneys before the Court here--this matter took up a few minutes, and our side and Mr. Wickoff's [sic] side were instructed to submit findings to the Judge.

Q. Both sides were instructed to submit their findings to the

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Judge. A. Yes sir.

Q. That is the attorney for the plaintiff and the attorney for the defendant?

A. That is the way I understand it.

Q. Did you, on behalf of the plaintiff, prepare the findings?

A. I did, yes sir.

Q. Had Mr. Cassin anything whatever to do with the preparation of those findings?

A. Oh no, they were prepared in Watsonville by myself.

Q. By yourself?

A. Yes sir, and Mr. Burke was there a part of the time; afterwards Mr. Burke got sick and he dropped out.

Q. Did Mr. Cassin have anything whatever to do with the preparation of these findings as presented to the Court?

A. Certainly not.

Q. Do you remember when you were present, on any occasion, when Mr. Cassin beckoned to the Judge to leave the Bench and go to the Chambers?

A. No, I did not. If he had such proceedings would have been so preposterous that I would have remembered it.

Q. Have you ever seen Mr. Cassin do anything of that kind at all.

A. No sir.

Q. Or any other man beckon to the Judge while he was sitting on the Bench, there, to leave the Bench and come into his Chambers?

A. No sir.

Q. Did you ever see anything of that kind done by Mr. Cassin or any member of the Bar? A. No sir.

Q. Did you present your findings within the allotted time after presenting the findings to the defendant?

A. Judge Smith went East right after the trial of the case, and

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he was there for six weeks; when he came back it was some time in September, if I remember right; I presented the findings to him, and I served out of my office a copy to Mr. Wickoff's [sic] office.

Q. Did you receive a copy of the two proposed findings prepared by Mr. Wickoff [sic]?

A. No sir; I understand that there was a misunderstanding between our office and Mr. Wickoff's [sic]; my understanding always was that we were going to prepare findings and submit them to the Judge, and Mr. Wickoff [sic] was going to prepare findings and submit them to ^and^ the Judge was going to make a set of findings in his Chambers from these two proposed findings; and I understood that afterwards Mr. Wickoff [sic] took exception to that--to this understanding--and that we had to serve findings upon him, and that he afterwards would serve amendments upon us; I know he understood it that way--I did not understand it that way.

Q. There was a misunderstanding then?

A. I understand that there was a misunderstanding.

Q. So then, as I understand it, after the evidence was introduced in support of the new issues, Mr. Cassin had nothing whatever to do with the case in any manner whatever? A. No sir.

Q. Nothing at all to do with the preparation of the findings in the case?

A. Not until the new evidence was introduced.

Q. After the new evidence was in, a new set of findings was filed?

A. I don't think I ever consulted with him about that; I don't think he knew the time I presented them; I am positive I was alone.

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Q. Had he anything to do with the case after the second set of findings were filed? A. I don't think so.

Q. Had nothing at all to do with the preparation of the papers after that? A. No sir.

CROSS-EXAMINATION.

Mr. Lindsay: Q. I don't know what all this talk about these findings means; I want to ask this question; I gather from the evidence that there were two sets of findings; is that right? A. Yes sir.

Q. After the second set was filed by the Judge, you filed an amended complaint.

A. No; after the first set was filed--no. no. it was before the first set Mr. Lindsay, I prepared before the amended complaint and set of findings, and I went before the Judge--also the judgement--; I went to the Judge's Chambers, and presented to him an order, allowing me to file the amended complaint, which he signed before any findings were signed.

Q. I have got what I want. You employed Mr. Cassin, or your client did, to assist you in trying this case before the jury?

A. No, Mr. Netherton was taken sick.

Q. Well he was employed for that purpose? A. Yes sir.

Q. Then his employment ceased? A. Mr. Cassin's--yes.

Q. Well he was afterwards retained again, wasn't he, in the case?

A. After Mr. Wickoff [sic] wished for a delay in the interest of his client to introduce more evidence, he was retained again at my

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request.

Q. I will ask you if, when you made the motion to file the amended complaint in that case, if it is not a fact that Mr. Cassin argued that motion to the Court? A. I don't think so.

Q. What? A. I have no recollection of that Mr. Lindsay; I have got a recollection that a motion was argued.

Q. Mr. Cassin says he did.

A. Let me explain, Mr. Lindsay. I recollect there was one motion here when Mr. Cassin and Mr.

Burke were here when I could not get here, and maybe that morning--it was law and motion day--and it may have happened that morning, but I am not sure I was not here when it happened.

Q. Now Mr. Torchiana, of course there was a number of motions I suppose in that case, from the time it was first instituted until it was finally wound up, were there not? A. No not many.

Q. What your testimony amounts to is this: that you have no recollection of the incident which Mr. Wickoff [*sic*] testified to.

A. My testimony amounts to this; I know positively that it never happened while I was in the Court Room.

Q. Do you go so far as to say that it did not happen? A. Yes sir.

Q. When you were in the Court Room?

A. Unless I had my back turned to him--I know it--.

Q. You may have had your back turned might you not? A. Of course.

Q. If Mr. Wickoff [*sic*] has testified here under oath it did happen, and that you were present, do you say that that is not true?

A. I say I never saw it.

Mr. Lindsay: You never saw it. That is all.

Mr. Sullivan: Q. One question more. This case that was tried before a jury and which Mr. Cassin argued before a jury was one of those usually tried before a Court was it not. It was an equity case was it not? A. Yes sir.

Mr. Lindsay: He has testified to that.

Q. And the plaintiff called for a jury in the case?

Mr. Lindsay: He has also testified to that.

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----- Transcriber's Insert -----

[Transcriber's Note: This page Ends Volume II of the Impeachment Hearing.]

----- End of Transcriber's Insert -----

The Attempted Impeachment of Judge Lucas Flattery Smith
by The Assembly of The State of California.
Feb. 3, 1905 - March 19, 1905

Compiled by

Stanley D. Stevens
2021

Contents

Section 6

Volume 3 of the Impeachment Hearing
(transcribed from the original)

Testimony For & Against the Impeachment of Judge Lucas Flattery Smith
of the Superior Court of Santa Cruz County — Feb. 3, 1905 - March 19, 1905
Volume III — Testimony on behalf of Defense

The Attempted Impeachment of Judge Lucas Flattery Smith

by **The Assembly of The State of California.**

Feb. 3, 1905 - March 19, 1905

**In the Matter of the Investigation of Charges Against
Honorable Lucas Flattery Smith
Judge of the Superior Court of the County of Santa Cruz,
State of California, praying for his Impeachment.**

**Before a Special Committee of Investigation
consisting of Assemblymen H. S. G. McCartney (Chairman),
Thomas E. Atkinson, R. L. Beardslee,
Aubrey M. Lumley and John J. Burke.**

In Three Volumes:

**Volume I — Testimony on behalf of the Memorialists.
Volume II — Testimony on behalf of the Defendant.
Volume III — Testimony on behalf of Defense.**

Ellsworth F. Duden, Reporter.

**The volumes from which this transcription was made are from
the Donald Younger Collection, MS59,
Special Collections, University Library, University of California, Santa Cruz.**

**They contain the Testimony of F. A. Hihn,
Charles B. Younger, Sr. and Charles B. Younger, Jr.,
and many other prominent citizens of Santa Cruz County,
including several Members of the Santa Cruz County Bar.
Each volume bears a notation that they were presented to Charles B. Younger Jr.,
with the Compliments of Assemblyman “Hon. R. L. Beardslee.”**

**Biographical Sketches of Persons Named in these Impeachment Transcripts
are Provided in a Separate Appendix**

An extensive biography of Lucas Flattery Smith and his family is in preparation.

Annotated, corrected, transcribed, and indexed by

**Stanley D. Stevens
Librarian Emeritus
University of California at Santa Cruz**

2021

Introduction

Volume III — TESTIMONY ON BEHALF OF DEFENSE.

Transcriber's Note:

Preservation of the data that appears in the original volumes has been a primary goal. In the following "Index," numbers on the left, in the original documents, are handwritten, on the right the numbers are typewritten. The page numbers do not necessarily correspond to the text. The spacing, the page content, and the seemingly inconsistent page-numbering have been reproduced as close to the original as possible so that users of the original documents have a reference page number. In order to reduce the printed pages, however, whenever possible the content of more than one page has been combined with the next page. The actual, physical pages are numbered in square brackets at the left.

An illustration of the unconventional numbering is demonstrated by the following example:

The variously-numbered pages of Volume III are numbered in the following sequence:
126-138, extra page, 139-149, 1-12, extra page, 13-41, no page, 43-49, 43-44, 150-163,
blank page, 164-181.

Perhaps, to the Court Reporter, these represented the order in which he transcribed his notes.

To avoid the confusion of the numbering schemes, all references in the Transcriber's Index will refer to the Page Numbers that appear in the Footer; e.g. III:56

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CROSS-EXAMINATION
OF
LUCAS FLATTERY SMITH,
Resumed.

Mr. Lindsay: Shall I resume the cross-examination?

The Chairman: Yes.

Mr. Lindsay: Q. Who are the leading attorneys practising [*sic*] at the Bar of your Court? -- now I don't mean by that for you to mention one or two or to give any opinion which involves a case of judgement -- but generally who are the leading attorneys?

Mr. Sullivan: We object that question, that it is not proper cross-examination; and furthermore counsel has no right to call upon the Judge of the Court to discriminate between members of the Bar practising [*sic*] before him.

Mr. Lindsay: I don't want to do that.

Mr. Sullivan: I submit it.

The Witness: It would simply be my opinion.

Mr. Lindsay: Q. It is a fact is it not, Judge, that Mr. Charles B. Younger is one of the leading attorneys practising [*sic*] at this Bar?

A. I regard him as one of the leading attorneys, yes.

Q. Jos. H. Skirm is another leading lawyer?

A. Yes sir I regard him as such.

Q. And Mr. Chas. M. Cassin is he among the leading attorneys?

A. I regard him so, yes.

Q. And is Mr. W. T. Storey and Mr. Benjamin H. [*sic*] Knight?

Mr. Sullivan: We object; we admit they are all leading lawyers.

Mr. Lindsay: When you get through I will ask him the question.

Mr. Sullivan: I admit they are all leading lawyers.

Mr. Lindsay: Q. (continuing) are also among the leading attorneys? A. I regard him as a good lawyer, yes.

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Mr. Sullivan: We object on the ground that it is not proper cross-examination.

Mr. Lindsay: Q. Judge, you testified that Mr. Adylotte [*sic*] had entertained hostile feelings towards you since last election.

A. That is my opinion.

Q. Did he take any part in the campaign against you?

A. I understood so.

Q. You do so understand?

A. Yes sir -- I was so informed -- I don't know it, that Mr. Adylotte [*sic*] throughout the campaign, was engaged with Mr. Burke in getting up a crowd the night he spoke -- I was so informed.

Q. Now Judge, upon reflection aren't you -- don't you think you were mistaken about that? A. I was so informed.

Q. You were informed so? A. Yes sir.

Q. Did he make any speeches? A. I don't know that he did.

Q. He did not take part in any canvass against you?

A. No more than what I knew of; All I knew about Mr. Adylotte [*sic*] in that connection is hearsay and what people told me.

Q. And is it not a fact that after the election -- after your election -- you thanked Mr. Adylotte [*sic*] for the interest he had displayed on your behalf during the campaign? A. No sir, I did not.

Q. Now has Mr. Leonard in that campaign -- did he take the stump against you? A. No sir.

Q. He did not? A. No.

Q. Did he make any canvass against you?

A. Yes sir; I understood so -- went all over the county in a quiet way.

Q. In a quiet way?

A. Yes sir, not making speeches -- and that is mostly hearsay --

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The Chairman: (interrupting) Judge, do you hold any resentment against attorneys if they do that?

A. No sir, I don't if they oppose me in a fair way.

Q. Do you think they have the right to oppose you?

A. I think so in a legitimate way, but where they misrepresent facts and circumstances, and circulate false reports, then I think I have cause to complain.

Mr. Lindsay: Q. You have nothing in your knowledge that causes you to believe that Mr. Adylotte [*sic*] or Mr. Leonard misrepresented you in any way during the campaign?

A. From what I heard.

Q. What did you hear concerning the representations of Mr. Adylotte [*sic*] made about you, Judge, during the campaign?

A. That he was working for Mr. Wickoff [*sic*], misrepresenting me as to a number of cases tried, as to my record here in Court, as to my relations here in Court, criticising [*sic*] all these things.

Q. You did hear these things? A. Yes sir. And that he was out here the night Mr. Burke -- with Mr. Burke the night he spoke here.

Q. As I remember that, Mr. Burke, when he made his speech out here on the street, spoke from a wagon?

A. Yes sir.

Q. Do I understand you to say that Mr. Burke was getting the crowd?

A. Well around in the crowd. He was begging the crowd to let him have a hearing.

Q. What you mean is that when Mr. Burke made his speech, Mr. Adylotte [*sic*] was in the crowd?

A. He was around as I heard -- I was not here Mr. Lindsay - this is hearsay purely and simply; I heard Mr. Adylotte [*sic*] was around

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with the others begging the crowd to hear Mr. Burke, to oppose me and they had a band out there.

Mr. Lindsay: I object as hearsay.

The Witness: It is all hearsay entirely; I was not present and I am not saying that Mr. Adylotte [*sic*] did any of these things.

Mr. Sullivan: Q. The feeling was unfriendly between you and Mr. Adylotte [*sic*] at that time?

Mr. Lindsay: I was simply asking him --

A. (interrupting) I never considered him a friend of mine after that.

Mr. Lindsay: Q. You never did? A. Never; When I seen [*sic*] him I treated him courteously just the same as I did before.

Q. As regard the statement you have made in answer to the question of your counsel and to this allegations -- and concerning which I have not cross-examined you -- have you any corrections do you wish to make at this time? A. Changes?

Q. I mean in your statement, have you any corrections?

A. I don't know.

Q. Any additions or corrections you wish to make?

Mr. Sullivan: We object to that question unless the counsel will point out --

Mr. Lindsay: (interrupting) I mean in any regard --

Mr. Sullivan: (interrupting) We have the right -- counsel should point it out -- any considerable portion of the testimony.

Mr. Lindsay: I am not going to point any portion of the testimony out. The statement which you have made to this Committee, and which you may may [*sic*] make hereafter to your counsel on re-direct examination, you wish to stand as your testimony and answers to these allegations?

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A. Well so far as my recollection now goes -- I may be mistaken like anybody else, in some things, but I don't think I am.

Q. You have mentioned there were nine reversals in civil cases; do you include in that the last two reversals in the case of Newman vs. Marriott?

A. Yes -- not two reversals in it.

Q. That is one.

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A. My order as you see in the case of Newman vs. Marriott, there were two parties in it; I found that one of them was indebted to Marriott in the sum of \$1600.00, I believe; Mr. Younger Jr. in reporting the findings on behalf of the defendant, made it plural; you will see from reading my opinion that I only find one person liable -- one of the Newmans-, but when it went up to the Supreme Court, they were both in there, and the Supreme Court found as I did; in other words the Supreme Court sustained me; but through an error in adopting the findings, one of the Newmans was included that I had not found against whatever in my opinion; it was an oversight; the Mr. Newman brought a temporary restraining order, brought suit against Mr. Marriott, and I granted the temporary restraining order without regarding the point. But the Supreme Court reversed that order saying that the distinction between a temporary restraining order and an injunction was so finely drawn, that it would be better to require the undertaking to be had in all cases.

Q. They reversed your findings?

A. Yes but before that they held that a temporary restraining order was not necessary, since we require undertakings to be given in all temporary injunctions. My opinion is on file where I only found against one Newman in favor of Marriott.

Q. And the attorney presented the findings with reference to both Newmans?

A. Yes sir, it was an oversight. And it went up, and as I said, they held that one of the Newmans was not liable for those sixteen hundred dollars and they reversed it as to him; it was simply an oversight in preparing the findings.

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Q. I don't care to have the decision of the Supreme Court.

A. There were two separate suits; Mr. Younger made a motion to dissolve that restraining order because the undertaking was not given, and the Supreme Court sustained him.

Q. There were two appeals taken?

A. Yes sir; affirmed as to one Newman in favor of Marriott, and reversed as to the other Newman; I had found the same way as the Supreme Court. I wish to explain those two cases by Hartmann.

RE-DIRECT EXAMINATION.

Mr. Sullivan: Q. Those two cases - I am going to ask you about those two cases. Now counsel has directed your attention to two cases where application was made to have the cases transferred to another County, or have another Judge try the case. He has directed your attention to the estate of Mooney where there was an application to revoke the power of the administrator if I remember right. State the circumstances under which the application was made for a change of venue, or for the trial by a new Judge.

Mr. Lindsay: I don't really believe this is re-direct examination.

The Witness: I asked you, if you remember, to explain that.

Mr. LINDSAY; Certainly, yes.

The Witness: A. It was a very mixed up estate the Mary Mooney Estate; the woman married her husband and they lived on this property in Watsonville that was under controversy; she afterwards married Mr. Mooney, and upon her death Mr. Mooney, I believe was granted letters upon her estate. Mr. Burke I believe it was possibly assisted by Mr. Cassin, tried to get him to file

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his report in Court, showing the exact condition of the Estate, and it went along for a long time; they could not get him to file his account; in the meantime he had entered the land down there, and they claimed it would be used for his own use. Finally they had him cited to show cause why he should not be removed as Administrator of his wife's estate. He appeared here in answer to that citation when it was set down for a regular time, and Mr. Charles B. Younger Sr. represented him as his attorney, and when the matter was called at ten o'clock, at which hour it was set for trial, Mr. Burke announced that he was ready to go on with the hearing and asked Mr. Mooney to take the witness stand; he took the witness stand and was sworn, and Mr. Burke commenced interrogating him about this matter, and after it had progressed a little while Mr. Younger arose, and he said that anybody who would testify as Mr. Mooney did, he could not represent him any more; he says "I will state to you now that I withdraw from this case."

Q. And the trial had commenced?

A. After it had commenced. Thereupon, Mr. John Leonard stepped forward, and said Mooney had employed him as attorney and asked me to put the matter over until two o'clock in the afternoon, that he might look into the matter. I put it over until two o'clock, the witnesses all being present, and ordered them to be back at that time. At two o'clock in the afternoon Mr. Leonard came in with this affidavit for a change of Judge; believing it was done to delay, and for the purpose of further delaying the matter, I denied the application--that was one matter--; that was the way that happened. Then Mr. Leonard demanded a jury in the matter, wanted a jury. That was the reason if he deman-

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ed the change of Judge before the time which was set for the trial, I could have gotten one without delaying the matter further.

Q. How many years had that estate been in progress of settlement?

A. I could not tell, but it had been a long time.

Q. Since 1870 was it not?

A. It has been pending that long I think--since 1870 any way--. They could not get him to file an account or make any accountings for rents and profits or for anything belonging to the Estate, and it was done for delays--I simply believe so--for the purpose of harassing the heirs and children.

The Chairman: Q. Were they children of the wife?

A. By the first husband. Then he claimed an interest in the property itself. Then this matter of Peter Paul Hartmann.

Q. Go along.

A. Mr. Burke filed an affidavit for the change of venue; just shortly after the application, Mr. Peter Hartmann himself says he could not get justice in my Court, and he filed an affidavit, and counter-affidavits were also filed.

Q. When were they filed?

A. I think in June--along in the spring of 1903.

Q. In June of 1903?

A. Yes. The case was called for trial; - set for trial -; I took the matter of these affidavits under advisement, and before I passed on it, a decision had been rendered by the Supreme Court in regard to this trust clause, and Mr. Burke called my attention

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to it, and said he would take a chance instead of trying this case, that he would take a chance for a final petition for distribution, that he would come in and present his claim under that particular statute. That he did not care to try this case; I says "Very well; if you don't care to have me, you want to call in another Judge." He says "No". Thereupon, or shortly afterwards I filed my decision denying him the right to call in another Judge.

Q. When did you file that decision?

A. I filed that a short time afterwards; some little time--I don't know how long.

Q. When the matter subsequently tried by you?

A. No sir, never has been tried.

Q. Never has been tried. He never wanted to try it on account of that decision that had been rendered by the Supreme Court of this State.

A. Yes; he says he was satisfied that the proper time would be when the petition for distribution came in, to set up ~~with an~~ *his heir-* ~~air-~~ship, ask the estate to be distributed to him, and that the trust clause be annulled.

Q. Was there any demand made for a change of venue or Judges in the case of White Vs. Bessie? [Annie E. aka Mrs. Edward White versus Milton Besse]

A. No sir, no demand; I asked the Court Reporter to transcribe his notes.

Mr. Lindsay: We don't claim anything appears in the Reporter's notes.

A. Both Mrs. White and Mr. Bessie [*i.e.*, Besse] were friends of mine, and I would have been only too glad in that case to have got the privileged [*sic*] of calling another Judge upon my own motion, because I did not want to try it.

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The Chairman: Q. What case?

A. Mrs. White Vs. Sheriff Bessie. [*i.e.*, Milton Besse]

Mr. Sullivan: I direct the attention of the Committee to the fact that the order striking out the complaint in the case of Younger Vs. Moore, was made on the 17th day of August 1899. It was filed in 1899, a long time before the trial of Sambuck Vs. the Southern Pacific Company, in which Mr. Leonard appeared as attorney.

The Witness: A. Well that was filed in August 1899, and the Sambuck case was tried in March 1900.

Q. When did you issue the citation?

A. I see from the record the citation was issued in April.

Q. The motion for a new trial in the Sambuck case was made several months afterwards.

The Chairman: I think that we understand that this conversation took place after the trial.

Mr. Sullivan: Mr. Leonard says that the conversation took place between them during the trial of the case.

The Judge says no such conversation took place during the trial of the case.

Mr. Beardslee: It took place after the motion for a new trial.

A. After the motion for a new trial had been heard and denied, and an appeal taken to the Supreme Court; Mr. Leonard then came into my Chambers with some paper, some order to sign, and he stood there--he never sat down or anything, I did not invite him to sit--. He stood there and I signed his paper for him, and finally he says "What do you think about the Sambuck case?" or something of that kind. I told him that it depends directly upon what view the Supreme Court will take of it, whether it was an error in denying the examination. That was the only

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conversation that we had about it, and I told him about this case that I had heard of once before.

Q. You have told us all about that.

RE-CROSS-EXAMINATION.

Mr. Lindsay: Q. Do I understand now that you testified that the matter of the Estate of Mooney, that on a certain day Mr. Charles B. Younger withdrew from the case, and on that same day Mr. Leonard came forward and announced himself as attorney for Mooney?

A. Yes sir, my recollection.

Q. And presented this affidavit?

A. He asked for time; this was in the forenoon when Mr. Mooney testified something that offended Mr. Younger, and Mr. Younger got up and says "I will not represent a man who will testify that way." He says "If your Honor pleases, I will withdraw from these proceedings." Thereupon Mr. Leonard came forward. Anyway Mr. Leonard himself acted as his attorney. Then Mr. Leonard asked the matter to be put over until two o'clock as he could look over the matter. At two o'clock he came in with that affidavit and demanded a jury.

Q. Do you mean to testify that that is the way it happened, or that that is the way you recollect it?

A. That is my recollection; I am pretty sure that is the way it happened.

Q. I will have to say it is not.

A. I think the shorthand reporter's notes will show.

Mr. Lindsay: I have the records of the Court here. I offer in evidence in Case 1184 Superior Court of Santa Cruz County, State of California, in the matter of the Estate of Mary Mooney de-

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Ceased, Substitution of Attorneys endorsed and filed September 21st, 1903, H. H. Miller County Clerk.

Mr. Sullivan: What do you offer that for?

Mr. Lindsay: I offer it in evidence to prove that the Judge is mistaken.

Mr. Sullivan: In what respect?

Mr. Lindsay: In saying this affidavit for Judge was made on that date. I am going to show it was made three days afterwards.

The Witness: You will find there are so many things about this Mooney Estate. You will find Mr. Leonard demanded a jury that afternoon, and I denied his application of calling in another Judge.

Q. The files of this Court cannot be mistaken.

A. He demanded a jury; you will find this from the substitution of Mr. Leonard.

Mr. Lindsay: Here is the affidavit we have been taking about with the change of Judge filed the 24th day of September. I offer in evidence an affidavit in the same Court and in the same case, filed on the 21st day of September 1903, under the affidavit, the notice of motion, and also an affidavit and notice of motion for continuance and affidavit filed on the 21st.

Mr. Sullivan: Q. By whom?

A. By Mr. Leonard as attorney for Mooney.

Mr. Sullivan: What does the Record show as to the date of filing?

Mr. Lindsay: I desire to call the attention of the members of the Committee to the fact that the affidavit for change of Judge which has been resolved in evidence here was made and filed on the 24th day of September, three days after the substitution.

(Insert Substitution Attorneys Sept. 21st Estate of Mooney.
Affidavit filed Sept. 24th, and affidavit September 21st.)

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In the Superior Court of the
County of Santa Cruz, State of California.

In the Matter of the Estate

of

SUBSTITUTION OF ATTORNEY.

Mary Mooney, Deceased? [sic]

NOTICE IS HEREBY GIVEN that James Mooney, as Administrator herein, and in his own right, has changed his attorney herein; and that John H. Leonard has been, and is hereby substituted as attorney for said James Mooney, as administrator herein, and in his own right, for and in place of the undersigned. And that the undersigned has withdrawn, and hereby withdraws and ceases to be attorney for said James Mooney, in any capacity.

Dated September 21st, 1903.

Charles B. Younger

I hereby consent to the substitution of said John H. Leonard, as my attorney herein, as Administrator and in my own right,

James Mooney

I hereby enter my appearance as attorney herein for said James Mooney, as administrator, and in his own right.

John H. Leonard.

Notice of the substitution of John H. Leonard as attorney for said James Mooney, as Administrator, and in his own right, is hereby admitted,

P. G. Sheehy
Geo. P. Burke
C. M. Cassin

Attorneys for Thos. F. Murray, Fred Murray & Helen Murray.

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The Witness: Mr. Leonard and Mr. Younger were in Court and Mr. Younger walked out; he said he would not represent any man who would testify like Mr. Mooney had upon the stand. Thereupon Mr. Leonard walked forward--did not tell me when he had been appointed or substituted or anything about it-. Mr. Leonard came forward and asked me to put it over until two o'clock and it was put over. He demanded a jury, as the record will show; I am not mistaken about the matter, and the Court Reporter's notes will show it.

Mr. Lindsay: Q. I understand Judge that we are liable to be mistaken in matters of record; now you say as a matter of fact that this affidavit for change of Judge was filed three days after Mr. Leonard came in the case. A. I don't know when Mr. Leonard came into the case or when he got his substitution. I don't know anything about it. I don't know whether he was associate counsel with Mr. Younger. Mr. Younger represented Mr. Mooney and Mr. Leonard was in Court, possibly he acted as substitution. Mr. Younger appeared here in Court and withdrew--as I said the Shorthand Reporter's notes show it--.

Mr. Burke: Q. The substitution and the date of the filing are the same?

A. I don't know when it was filed.

Mr. Beardslee: Q. The Committee would like to have the date that that case was set for trial.

Mr. Lindsay: There is no question now as to the date of that affidavit--the 21st day of September--.

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Mr. Sullivan: Here is a subpoena here for Mr. Younger.

The Chairman: Mr. Younger was a witness in the case.

Mr. Lindsay: Mr. Chairman and gentlemen of the Committee, my purpose in introducing this affidavit is a very simple one. It is this and this along. The Judge testified in explaining the circumstance that on the date Mr. Younger withdrew from the case and Mr. Leonard appeared to continue it until two o'clock and at that time this affidavit for change of Judge was made, and he stated he believed it was only a ruse to delay the trial, and denied the request. I introduce this to show that the date Mr. Younger withdrew, and the day Mr. Leonard came in was the 21st day of September--I don't care whether it was the day set for trial or not--and the affidavit for the change of Judge was the 24th day of September three days after this.

The Chairman: Does the Record show the case was continued?

Mr. Lindsay: Yes.

Mr. Sullivan: Here is an entry here showing the trial which actually commenced on the 18th day of September 1903, and was resumed the 21st day of September, three days afterwards.

(Insert Minute Order File Sept. 18th - 21st, 1903.)

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Mr. Lindsay: The trial went on with the contest that went on, and this application for change of Judge was entered in this same Estate that is tried.

Mr. Sullivan: I do not know about that.

Mr. Lindsay: Page ninety four this same volume.

(Insert Minute Order October 2nd, 1903.)

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The Chairman: Proceed with the examination.

Mr. Lindsay: In reference to the case of Hartmann Vs. Hihn, I understand your examinations to be these: that Mr. Geo. P. Burke, by reason of differences existing between you, on account of the campaign which had just closed--closed lately at any rate--wanted another Judge, and he filed that affidavit.

A. Yes sir.

Q. And that you filed a counter affidavit.

A. Yes sir, that is right.

Q. And that subsequently there was some change in the law, some change as rendered by the Supreme Court.

A. Mr. Burke had doubted as to whether he should not raise these legal points when the decree for final distribution came up for hearing, and proved his heirship, and set up the fact that they were entitled to it by reason of this trust clause being void.

Q. And that Mr. Burke came to this conclusion, told you that he did not want to try this matter and you said "Well I think I will deny your motion to change the Judge."

A. I says "I suppose you do not need a Judge to come in", he said "No". Thereupon I denied it; I says "Then they don't want me to try the case and don't care to have another Judge called in" he says "No" and the matter has just rested that way ever since.

Q. Now Judge I don't want to in any way, take the slightest advantage of you, but upon reflection may you not be mistaken?

A. I might certainly, I might be mistaken.

Q. As a matter of fact Judge, upon reflection, don't you remember that after you made the order denying the motion for a

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new trial or for a change of Judge, that Mr. Burke took a bill of exceptions from your order which was settled by you.

A. Yes possibly he did; he might have done it to save the point--he never prosecuted the case--I don't know whether he took a bill or not.

Q. Yes he did. I understood you to say that Mr. Burke stated in fact that this motion might be effected.

A. Yes he would let the matter rest until the final distribution and raise the point then.

Q. Then you made the order denying the ~~order?~~ ^*motion?*^ A. Yes sir.

Q. And he took a bill of exceptions.

A. I said "I don't suppose you want me to bring in another Judge" he said "no". So in order to make the records show it, I made the order. That is my recollection if I am not mistaken.

Q. Why did he take a bill of exceptions?

A. I don't remember that he took a bill of exceptions.

Q. You settled the bill?

A. I think so, if there was one settled.

Q. Did you include in the bill of exceptions the fact that Mr. Burke had been denied his motion for a change of Judge?

A. Now I don't know what was in the bill. The record will speak for itself.

Q. The bill of exceptions was presented. It is a fact that Mr. Burke after you denied the order, made an order denying the motion for a new Judge, he did present his bill of exceptions, and that Mr. Burke amended his complaint in the action.

A. Possibly, I don't know any more, and would not say about that. Now I have got my calender [*sic*]. It was commenced on the 5th,

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continued from the 5th to the 18th for further hearing, and passed on until the 21st. On the 8th it was further heard. It says "Estate of Mooney for further hearing from Sept. 5th 1901. Hearing resumed and continued for further hearing until Sept. 18th. On Sept. 18th for further hearing; Estate of Mooney for further hearing Sept. 18th." and the matter went over to Sept. 21st, to give Mr. Mooney time to employ another attorney after Mr. Younger withdrew on the 18th, went over until the 21st.

Mr. Lindsay: Q. That is my recollection.

A. On the 21st is this entry: "Estate of Mooney for further hearing from Sept. 18th. Hearing to set apart homestead denied." That was on the 21st, that was in the Calender [sic].

Mr. Lindsay: That contests this Judge, in reference to the order to set aside the homestead, I believe that there was a citation to show cause how and why Mr. Mooney should not be removed from his office as Administrator.

A. Yes sir. I see on the 21st "Estate of Mooney reset for October 21st at request of Attorneys Leonard and Cassin."

Mr. Lindsay: That is enough of the Mooney case.

Mr. Burke: I want to call you attention to the case of the People Vs. Lavish, in which Mr. Gardner presented to you certain erroneous instructions, apparently with the intention, of deceiving you as you enumerated.

A. Yes sir.

Q. Was that on important instructions in the case?

A. Not so very, but still it was erroneous. I could show you the instructions now if I could get the transcript. A little

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after I discovered, after I had seen it. After the jury went out I did say to Mr. Gardner that I was very much surprised that he would deceive me in that way, because he knew that I did not have time to read these instructions over before I gave them to the jury, they were handed up at the conclusion of the argument, there were quite a number of them, and I did not have time to read them, and I took his word they were exact copied.

Q. When did you inform the jury that you had given them erroneous instructions? A. The same time that I read them.

Q. The jury I understand came back for further instructions did they?

A. no, it was not on that point—some other point they ask me about.

Q. Was that instruction passed upon in the Supreme Court in the Plyler case?

A. Yes sir, they did not find any air in the rest of the instructions. I will say I had refused in the Plyler case, was never passed on by the Supreme Court.

Q. I want to call your attention to the case of Younger vs. Moore. You testified it was your general practice, almost in variable, to call in the Judge from another county when requested. A. Yes sir.

Q. When you found it was not necessary you did not permit the calling in of another judge.

A. I did not think this county should be put in the expense of doing that for the accommodation of attorneys, when such a gross attempt was made to make the Judge a party for the purpose of disqualifying him. I don't encourage such disrepu-

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table practices in my court and would not permit it.

Q. You have no proof it was?

8. I had every reason to believe it; I was put in there as a party defendant for the sole and only purpose; because I have no interest in the lion, I had no claim in it, I never pretended to have a claim.

Q. You struck that from the files as a judicial officer?

A. Yes sir, it was false and put in there for the purpose of delaying the trial of the case in this court.

Q. Just a moment; we will admit it was false and fictitious; what proof did you have?

A. I knew it was personally.

Q. You knew you have no interest in the land?

A. I never claimed any, I knew that was false and fictitious.

Q. Suppose there will is a case the comes before you, in which you are made a party, and you have some personal knowledge, say you know the plaintiff and defendant, you know something of the case which is not introduced in the evidence, do you allow that information to influence you in deciding the case? A. No sir.

Q. That is about the same thing.

A. No sir; I think not, if you permit the attorney to do that the judge would be disqualified in every case; if there was a lawyer there was disreputable enough to do that, you could, disqualify every superior judge in this state to select their own Judge to try any case that comes up, under the pretense they claim some interest

in the party, and thereby select their own Judge which is a direct violation of every principle of fairness and honesty; if you could do that to one judge or two, you could do it to all.

Q. During the time that you been on the Bench, as the

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demands my attorneys for calling in another Judge from another County then ordinary or extraordinary?

A. It is not very often, very seldom, and I always granted it. When I was 1st [*sic*] elected, I was to explain to the Committee, I was disqualified by reason of having been an attorney in a great many cases here; Judge Dooling have been District Attorney and have been interested integrate many civil cases in San Benito County, and we agree that he would come over here to try cases in which I was disqualified, and I would go over there and try his cases. The result was that for the 1st [*sic*] 2 or 3 years I tried more cases in Hollister then [*sic*] I didn't hear [*sic*], and Judge Dooling was very busy trying cases here. We get that as long as either of us was disqualified; but whenever lawyers here suggested that they would like to have another Judge I universally—I don't know much you call these two [*sic*] my friend Mr. Lindsay as called to my attention and if I have explained these often—I universally did that.

Q. As I understand it the case of Reanda vs. Watsonville Water and Light Co. is on appeal to the Supreme Court. A. Yes sir.

The Chairman: Now of course, there are some facts. Q. How do you compare the Bar of this County with the Bar of surrounding counties as to the manner in conduct of your attorneys?

A. I think it will compare favorably, I think. I regard the Bar here as quite an able Bar.

Q. Don't you think there has been an unusual number of contempt proceedings in this Court?

A. No sir I think not.

Q. Not more than is usual in other Counties?

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hey. [*sic*] No sir, I think there has been remarkably few for the time I've been on the bench, not as many as there should have been.

Q. Is your standing with the Bar here just about the average is standing of other Judges in other Counties?

A. I think I stand fully as well within the Bar of this County. I think I get along with the Bar—we get along very nicely.

Q. Would you mind telling the Committee how you conduct your Chambers?

A. Yes sir; people come in their [*sic*], I receive them courteously, I tend to their business, and invite them to sit down and talk a little, and maybe they get up and go.

Q. I presume you keep busy trying cases most of the time?

A. Yes sir, it keeps one Judge very busy in this County to keep up.

Q. What are your hours please?

8. From ten to two and from two to six in the summertime, and from two to five in the wintertime; very often I have to hold court on Saturdays.

Q. Do you allow attorneys to come into your Chambers and discuss cases?

A. No sir I do not; never have. I have had attorneys come in like Mr. Lindsay and other attorneys, after the cases our appeal, because I hardly ever try cases second time, and for that reason I call in another Judge, and as the case is taken to the Supreme Court and reversed and sent back, and if Mr. Cassin or Mr. Skirm suggests they would like to have another Judge, I have done so; I never like to try a case when I have tried it once, if I can get another Judge to come. No sir I don't discuss cases, but I have discussed law points after the case is tried and appealed, like that of Mr. Leonard, I did not

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discuss that with him. I told him about that case I have heard of many years ago.

Mr. Beardslee: Q. What is your temper? Are you quick-tempered?

A. Not so very.

Q. In reply to the Chairman you said probably you did not have as many contempt proceedings in your County as you should have.

A. No sir; I meant by that possibly not so many as some other Judges would have had.

Mr. Beardslee: Q. Do you admonish anything that happens to be contempt of Court, do you generally admonish them first?

A. I have often, if they come and apologize, and furnish a good excuse and offer a good apology, I generally remit the fines, the man's fine. We have not had that very few; I think this Dakin matter and the two others. In the 8 years that I have been Judge the lawyers have acted very nicely, very good.

Q. Have you ever had occasion to admonish attorneys?

A. Yes sir once in a while when a Talking back and forth at the Bar, in making what we call side-Bar remarks. I admonished them to stop very often.

Q. Upon penalty of being in contempt of Court?

A. Yes sir.

The Chairman: Judge your testimony on the Buelna case is quite full?

A. Yes sir; I deny those things in toto.

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Testimony
of
CHARLES M. CASSIN, (SWORN).

MR. SULLIVAN: Mr. Cassin, what is your age?

A. I am 37 years of age.

Q. Where were you born? A. I was born in San Francisco.

Q. Where were you educated? A. I was educated in the Public Schools of Pajaro Valley, Watsonville, at the Santa Clara College, University of Notre Dame, Indiana, and the Michigan University.

Q. Are you a graduate of the Santa Clara College?

A. I have a degree from that Institution.

Q. Are you a graduate of the Michigan University?

A. I have a degree from the law department—Bachelor of Law.

Q. When did you receive your diploma from the University of Michigan? A. I received my, in the Class of 1891.

Q. After receiving your diploma did you come two California?

A. I came to California.

Q. Forthwith? A. I think I started the same day, started for California on receiving my diploma.

Q. When were you admitted to practice by the Supreme Court of this State? A. I will stay[sic] to you Mr. Sullivan, that I was admitted on motion. Under the law of Michigan it is not necessary to apply to the Supreme Court. I came out to California, returned to Watsonville, on a farm, on account of my eyes—it seemed from having studied hard, or something. I then went to San Francisco and it'd [sic] the law office of Judge Maguire, Mr. Lindsay's partner, and was there for some time before I had Judge Maguire make the motion, I think I was admitted in January, 1892, to the Supreme Court of the State of California, but my license was lost at the time of a fire and I have

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not bothered about a new since.

Q. When did you commence the practice of your profession?

A. I would not hardly say I commenced the practice of my profession when I was in Judge Maguire's office, although I attended to one or two cases in the office. I commenced the practice of my profession actively in January 1893—although prior to that time I had tried a few Justice Court cases in Watsonville.

Q. Where did you commence the active practice of your profession? A. I commenced the act of practice of my profession in a rear room of the office of Governor Jeter, right across the street here.

Q. In Santa Cruz here? A. Yes, sir.

Q. And have practiced your profession since January, 1893?

A. I have, principally in this city.

Q. Have you cases, have you not, also in other counties?

A. Oh yes; I have.

Q. What other counties? A. I have cases in Santa Clara County, San Benito County, Monterey and San Francisco, San Mateo and up north, in Butte County; one case in Butte County.

Q. When you commenced practice, were you alone in the practice of your profession? A. I practice my profession for some months alone.

Q. Then did you form a partnership with somebody?

A. I did; I formed a partnership with Mr. Lindsay.

Q. Did he occupy any official position at that time?

A. I would not be sure how long I practiced alone before I formed the partnership with Mr. Lindsay; I think less than that year; I could not say.

Q. When you formed the partnership, Mr. Lindsay was District Attorney of this County? A. Yes, sir.

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Q. How long did you remain in partnership with Mr. Lindsay?

A. I should say about 5 years.

Q. About 5 years. Did you and Mr. Lindsay have an extensive practice? A. I think we have a pretty fair practice.

Q. Who was Judge of this Court while you and Mr. Lindsay were practicing together? A. I believe Judge McCann died a couple of weeks after we formed a partnership, because I know of a remark he made, he was surprised we had formed a partnership, and Judge Logan was Judge until Judge Smith was elected in 1897, or whatever time he was elected.

Q. Judge Logan succeeded Judge McCann?

A. Judge Logan succeeded Judge McCann.

Q. You had an extensive practice, did you not, Mr. Cassin?

A. You mean trying cases together, we tried quite a number of cases together.

Q. Before the Court sitting without a jury and before the Court sitting with a jury? A. Before the Court sitting without a jury—well, mostly before Juries, Mr. Sullivan, and I think we could do better before Juries than before the Court—it depends a good deal on the nature of the cases.

Q. Than before Judges? Yes, sir.

Q. But you say you prefer to try cases before a jury?

A. Yes, Sir; I always preferred to try my cases where I can have juries.

Q. You were successful during the time you were with Mr. Lindsay, while practicing together?

A. Well, Mr. Lindsay was really the senior member of the firm, and tried the cases and examined the witnesses, and I usually prepared the cases for trial and he tried them, by making the opening arguments most all the time while we were practicing together, and I will say that whatever a successfully met with, I am willing to concede, was owing to

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Mr. Lindsay's ability—we having lost hardly any verdicts before the Superior Court of this County, as Mr. Lindsay will tell you.

Q. You were universally successful in the trial of your cases before juries? Hey. I have been, Mr. Sullivan, for this reason—

Q. That is during your partnership with Mr. Lindsay?

A. Yes, Sir.

Q. And before Judge Logan? A. Yes, sir.

2. What measure of success did you have in trying cases before the Court sitting without a jury?

A. I have not examined the record, but we did not try many cases; we were, I would say, ordinarily successful.

Q. While you were practicing law with Mr. Lindsay before Judge Logan, were you ever charged with being a favorite of the Court?

A. No, Sir.

Q. Or was Mr. Lindsay? A. I have heard Mr. Lindsey [*sic*] —I heard other lawyers say Mr. Lindsey [*sic*] got the best of the in criminal cases when he was District Attorney—I think particularly when Judge Smith was on the bench.

Q. He was very the vigorous in prosecuting offenses?

A. I considered him a very forcible District Attorney.

Q. After Judge Logan's term expired, Judge Smith was elected?

A. Judge Smith succeeded Judge Logan; Judge Logan was on the bench two years for the unexpired term of Judge McCann; at the next election Judge Smith was elected.

Q. How long were you and Mr. Lindsey together after the election of Judge Smith?

A. For several years; I'm not sure about the number.

Q. What success did you and Mr. Lindsay have when practicing before Judge Smith? A. We had very good success.

Q. Did you dissolve your relations with Mr. Lindsey [*sic*] amicably?

A. Yes, Sir; we never had a word as partners, not as much as word

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of any kind.

Q. Never quarreled, never had any bickerings?

A. None I can recollect of in our partnership; afterwards we tried some cases opposed to each other.

Q. After the dissolution of the partnership you and he met frequently in the same arena? A. Yes, sir.

Q. Now, has your course been the same since the dissolution of partnership with Mr. Leonard as it was before?

A. Just the same.

Q. You recognized fully the ethics of the profession?

A. Yes, Sir; Mr. Sullivan, I would like to state before—I do not want to interrupt your questions—I have made it a rule to conduct my office like this:—and Mr. Lindsay knows it, it was a rule of that office. I never have taken the case for a client since the time I began the practice of my profession, and I never will, unless I believe at the time I took the case I could win, and when I take a case and do not think I can succeed, when the verdict or decision for my client, I tried to compromise the case to the best interest of my client, the best way I can; that is one reason, that is the reason why I win so many cases.

Q. That is one of the secrets your success at the bar?

A. That is I do not claim to be any better lawyer than anybody else.

Q. After the dissolution of the partnership with Mr. Lindsey [*sic*], Mr. Lindsay still remained in Santa Cruz did he, for a while?

A. For some time. Mr. Lindsey [*sic*] dissolved his partnership with me I think about the same time, or shortly before his last term of office of District Attorney expired.

Q. He had been District Attorney for two terms?

A. Two or three, I do not recall—three terms. He beat Mr. Minor [*i.e.*, Charles Monmonier], he beat Mr. Jeter, and another name, I cannot recall the name.

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Q. What success had you before Judge Smith while you were alone, after the dissolution of the partnership with Mr. Lindsey? [*sic*]

A. Mr. Sullivan, I do not want any favors because I am a lawyer or anything. I have had prepared a list of the number of cases—I think the records of the Court here will show them—I have been engaged in before the Court as an attorney at law, if we could agree to read them, if Mr. Lindsay will concede it is correct, I would like 2 [*sic*] referred [*sic*] to it.

Q. You say it is correct? A. I am satisfied it is correct; I have knowledge of all the cases.

Q. Let me have the cases you tried before Judge Smith after the dizzy dissolution of the partnership between your self and Mr. Lindsay?

A. Are you speaking of before the Court without a jury?

Q. Say without a jury; what cases have you tried before the Judge without a jury?

A. The 1st case that was tried, on the list, is the case of Benjamin K. Knight, plaintiff, vs. Ed. Martin, defendant; the complaint was filed February 27th, 1897. The number the case is eliminated here; Atty. for plaintiff Charles M. Cassin; Joseph H. Skirm attorney for the defendant. That case was decided by Judge Dooling, I remember now; it was decided adversely to Mr. Knight. It was taken to the Supreme Court and Mr. Lindsay assisted there, and we made out the same case we did in the lower Court and it was affirmed by the Supreme Court. The next case was a Justice case, Joseph Schwartz. This was while Mr. Lindsay was with me.

Q. You have a list of the cases with you you tried while the partnership was in existence and afterwards?

A. Yes, sir.

Q. Go on—before Judge Smith.

A. Before Judge Smith, Judge Logan appears for the plaintiff and Lindsay and Cassin for the defendant; judgment went for the plaintiff. The next was Joseph L. Enos, plaintiff, vs. Warren B. Josselyn,

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defendant; Lindsay and Cassin appeared for the plaintiff, and the attorney for the defendant was C. C. Houck; judgment went for the plaintiff. The next case was J. F. Eddy, plaintiff, vs. Mark Hudson, defendant. George P. Burke appeared as attorney for the plaintiff and Messrs. Cassin and Lindsay appeared as attorneys for and the judgment went for the defendants. The next case was the case of Mary Alice Peakes, plaintiff, vs. William C. Peakes, defendant; attorney for the plaintiff was Charles M. Cassin, and the attorney for the defendant was Benjamin K. Knight, well, Mr. Knight appeared, there was no contest; it was a divorce case, and the plaintiff got the divorce. The next next case was J. S. Reid, plaintiff vs. J. D. Knight, defendant; attorney for the plaintiff, Charles Wesley Reed, Lindsay and Cassin attorneys for the defendant; judgment went for the defendant; the next case was Frank Medina, plaintiff, vs. Joseph L. Enos, defendant [sic]; that was a case tried in 1897; attorneys for the plaintiff, Jeter & Makinney and J. H. Logan; attorneys for the defendant Lindsay and Cassin. Judgment went for the plaintiff in that case. Next case was the case of James M. Silvey, plaintiff, vs. Emma Silvey, defendant; Lindsay and Cassin appeared as attorneys for the plaintiff; C. B. Younger, Sr. and Wm. T. Jeter appeared for the defendant, and the judgment went for the defendant, and I also think it went wrong. The next case was City Savings Bank, plaintiff, vs. Jos. L. Enos, defendant, tried in the same year; attorney for the plaintiff, C. B. Younger; attorneys for the defendant Lindsay and Cassin and George P. Burke; judgment went for the plaintiff; the case was appealed to the Supreme Court and was there affirmed. The next case was the case of Charles F. Johnson, plaintiff, vs. Carrie Johnson, defendant; attorneys for the plaintiff, Jeter & Makinney and J. H. Logan; attorneys for the defendants, Lindsay and Cassin. Judgment went for the defendant. The next case, Bloom [sic] & Patton, plaintiffs, vs. Grover &

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Co., defendant Attorneys for the plaintiff, Yalsbury & Houch. [sic, i.e., Spalsbury & Houck]

Committeeman Burke: Have you those cases tabulated, as to how many you were in the total, how many you were in?

Mr. Sullivan: How many cases were you interested in, that were tried before Judge Smith, sitting alone without a jury?

A. I will ask Mr. Lucas if he tabulated them here?

Mr. Lucas: I think twenty three.

A. I think, I remember, I will state to the committee, the record is not here, the clerk has it, if I am not mistaken, I won twenty three cases out of thirty five.

Q. Before— A. Before Judge Smith sitting without a jury.

Q. Without a jury? A. Yes, sir.

Q. How many cases did you win?

A. I got 23 verdicts out of twenty five trials. Three mistrials; there is one that I would not say -- it is down on the list, it was a condemnation suit where there was no contention made but what the condemnation should take place; the jury awarded a verdict for the plaintiff; I have a list here of every juror or that appeared in those cases, I thought this investigation was going to be longer than it has been; I intended to ask this commission to subpoena every one of those jurors here and ask whether or not the cases were tried rightly—

I understand you do not want that.

Mr. Sullivan: you want 23 of those Jury cases out of 25 actual trials; there were three mistrials or disagreements?

A. Disagreements: I am not sure, there may be some other cases where I was called in to assist some lawyer, I could have him take them off the record.

Q. During the last two years, say two years succeeding the date of the election of Judge Smith the last time, how many cases did you try before him?

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A. Well, my opinion is regarding that I tried 8 cases before Judge Smith sitting without a jury.

Q. Since his last election? A. Sense his last election.

Q. How many of those cases did you win? A. I only won four of those cases, and lost four of those cases.

Q. How many other cases did you try since the last election of Judge Smith? A. I could not give you the number.

Q. Approximately? A. May I ask Mr. Lucas if he knows?

Mr. Lindsay: Certainly.

Mr. Lucas: I think it was eight.

Mr. Sullivan: those were all contested cases, were they?

A. Most of those were important cases, and hotly contested cases.

Q. Hotly contested cases? A. Yes, sir; against some foreign attorneys, some of them.

Q. In addition to those contested matters, you had quite a number of what they called *ex parte* matters?

A. Oh, yes; I do not pay any attention to them.

Q. The matters where there were no contests?

A. No. I will state anyone can win cases where there is no contest.

Q. Who was in those cases against you, those four cases where you lost? A. I cannot answer that question, I forget; I will this there are two lawyers at least at this bar from whom I never won cases; I am going to state their names—I think I will have better luck hereafter. Joseph Skirm, Charles B. Younger, Senior, they are good lawyers.

Q. You left out Governor Jeter as one of those attorneys.

Well, you are quite young. A. I think there are other lawyers here who have won an equal number of cases before Judge Smith as I have—two or three.

Q. Other attorneys who have won as many cases as you have before Judge Smith?

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A. I am not going to say definitely, I think—I only assume it.

Q. From your recollection and observation?

A. That is, the number of cases that they tried against me. For instance, Governor Jeter who has retired from the active practice of the law, he may have tried only four or five cases, I have an idea Governor Jeter has won equally as many before Judge Smith.

Q. Hasn't Mr. Younger won a great many cases?

A. He has won all the cases he has tried before Judge Smith when I was opposed to him.

Q. Then he won many cases? A. I believe he has won more cases than I have before Judge Smith sitting without a jury.

Q. How about Mr. Skirm? A. Mr. Skirm has been almost universally successful in trying cases before Judge Smith.

Q. Has Judge Smith ever shown any favoritism towards Charles B. Younger or Judge Skirm? A. I never thought so; I certainly never said so.

Q. Younger had some case before Judge Smith and shortly after he was cited to appear before Judge Smith to show cause why he should not be punished for contempt? A. Yes, sir.

Q. Charles B. Younger, Jr. Was also cited to appear for contempt in 1904? A. Yes, sir.

Q. Notwithstanding the relations between the Judge of this court and the Youngers they have been successful before Judge Smith, have they not?

A. I am speaking now about the older Younger; I think the young man has been quite successful; he is quite a good lawyer, uses very good tact before a jury.

Q. He is young, too? A. Yes, sir; he is young.

Q. Has Judge Smith ever to your knowledge, or within your recollection, shown any favoritism or partiality to any lawyer practicing at the bar? A. I will say no; I do not believe he has.

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Q. What has been his manner of treatment of attorneys who appear before him? A. Speaking personally he has treated me very courteously. Generally speaking I believe he has treated the majority of the attorneys coming before him with the utmost deference.

Q. In your treatment of witnesses how have you behaved, that is witnesses on the stand? A. I will tell you, Mr. Sullivan, if the committee will let me explain, and if Mr. Lindsay will consent?

Mr. Lindsay: Yes, sir.

A. I have always believed that the only way to win cases was to treat every witness and the court and jury and counsel courteous; I believe that is the way to win cases, with the exception of where there is a witness coming up on the stand that I believe is perjuring himself and lying, and then I give him the same kind of the cross-examination that certain gentleman got that were in here.

Mr. Sullivan: That is, where you found the witness telling the truth you treat the witness in a very gentle manner, do you not?

A. I do.

Q. In a courteous manner? A. I do; I claim my record proves that.

Q. When you found a witness that perjured himself you would handle him without gloves? A. If I have reason to believe he is perjuring himself.

Q. If you do sometimes appear harsh in the treatment of witnesses it is because you believe the witness has perjured himself?

A. That is right.

Q. Do you ever brow-beat or bull-doze witnesses as mentioned by one of the witnesses here? A. I do not think so; I will leave it to the bar of the court.

Q. Don't you know as a matter of fact that jurors won't tolerate that kind of practice in lawyers browbeating and bullying witnesses?

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A. I do not believe any lawyer can be successful that does it, because the jurors in this county resent any such conduct as that.

Q. Is this true of other counties? A. Yes, sir.

Q. Now, you recollect in the campaign you took an active part?

A. Yes, sir; in reference to one of the candidates.

Q. You actively supported Judge Smith, did you?

A. I was very active in that campaign.

Q. He was the candidate for the office of Judge of the Superior Court, was he not? A. Yes, sir.

Q. You were then a Democrat and are now? A. Yes, sir. I would like to make an explanation, Mr. Sullivan, if you will allow me—

A. Certainly. A. Do you want to ask another question?

Q. I was going to ask one more question. You were interested in the Democratic organization here in 1902?

A. Well, I was not so much—

Q. Were you not actively interested? A. I have always been a very fair party man—

Q. You had been a member of the Democratic State Central committee? A. I have been a member of the Democratic State Central committee, been a member of the executive committee.

Q. You are the chairman of the State Convention?

A. Of the convention that nominated Judge Maguire for Governor. I have reformed—I have retired.

Q. Now, go on and make any explanation you want to make?

A. During the campaign it was rumored, there is no doubt but what there has been a rumor, and was then, that I was successful, employed in a great many cases that I won on account of favoritism shown me by Judge

Smith, and on consultation with Democrats here I told them I did not think it was good politics or advisable for me to be too conspicuous in the campaign, that I ought not to take a very active part

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openly, except to advise; that issue was fought in that campaign, but it was insisted upon, and my friends came to me and said “we believe that it is your duty, inasmuch as Judge Smith is being attacked for showing favoritism to you, to do what you can to elect Judge Smith”. And I am free to say that I went into that campaign and there was nothing that I could do honorably to obtain votes and support for Judge Smith that I did not do. I went among my friends and my acquaintances and I went upon the platform and on the stump and discussed every proposition, and Mr. Wyckoff who was the opponent of Judge Smith, I think, will bear me out in this that never during that campaign did I ever utter one word against him as a man or as a lawyer, but that I always said he was a first-class young man, an accomplished lawyer, which he is.

Q. While you were on the stump you never abused Judge Smith's opponent at all? A. I never did.

Q. During the campaign of 1902 the same charges that are contained in these specifications were made against the Judge, were they not? A. What is that specification—I want to be sure.

Q. Some of these charges contained in these specifications?

A. Yes, sir, I think—

Q. For instance that “said Smith has been guilty of great or pressure in an tyranny”? A. I would not say that they ever said that there was tyranny and oppression, I never heard that until these charges were made.

Q. What charges were made against him? A. That he favored Cassin. I do not know—I would not care to go into that, because the fight was really very clean in so far as I was concerned and in so far as Mr. Wyckoff was concerned, but there were some people who supported Mr. Wyckoff, I thought used bad judgment in denouncing Judge Smith in every way—Peter Paul Harmann's [*sic, i.e., Hartmann*] case was one principally used in attacks against Judge Smith.

Q. What was the result of that campaign, the result of the elec-

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tion? A. Judge Smith was elected.

Q. By what majority? A. Well, approximately between 600 and 700.

Q. He had the Democratic nomination?

A. The Democratic nomination.

Q. And the County at that time was a Republican County, was it not? A. Well, that year Mr. Lane ran away ahead of his ticket and carried the County by 100 votes; I think the County went pretty near 500 Republican on a majority of the state offices.

Q. So you think eliminating the governor from the fight, he ran about 1200 ahead of his ticket?

A. Yes, sir; I do not wish to reflect upon Mr. Wyckoff. Mr. Wyckoff was unknown outside of Watsonville and Judge Smith was well known, and he got a good big vote.

Q. After the election, of course, you continue to practice before the judge? A. Yes, sir.

Q. Did he show you, after the election, any more favoritism than before? A. I do not believe so.

Q. Have you ever approached him privately and discussed with him with reference to cases he had advisement?

A. I never in my life said a thing to the Judge Smith either in his chambers or any other place—that is not in accordance with the highest ethics of the profession of the law.

Q. Have you been accustomed to visit him at his house?

A. I was there when Judge Smith was injured. I went there in company with two personal friends, two or three times with Mr. William Williamson, the court reporter of this court, and I think to the best of my recollection, with Benjamin K. Knight—

Q. The District Attorney? A. Yes, sir; I went over with a party of three or four people on one occasion to confer with him about securing the nomination for him of superior Judge.

Q. I am talking about —

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A. I never paid him a social visit in my life to his house. He has been to my house. I never took dinner in his house, and he never took dinner in mine, although we are friendly, and quite intimate friends.

Q. During the last two years how often have you visited him?

A. I have not visited him at all—

Q. Haven't visited him during the last two years, since the election of 1902? A. Yes, I went to his home one evening, I went to his house to see him on the matter and came away, right away, did not go inside—yes, I did go inside.

Q. And was he ever in your office until lately during consideration with me in relation to these charges?

A. Judge Smith was in my office—he has been in my office in connection with politics once or twice during the whole time, that is all he ever called in my office.

Q. Have you not on account of the rumors to the effect that he showed you favoritism then careful about meeting him and talking to him? A. I have really tried not to be seen with him too much, although I do not pay very much attention to rumors. I tried to do what I thought was right. I will say this now, to be fair, that since these charges were made against judge Smith and against me—I consider that I am on trial here—that since these charges were made I have conferred with him about getting up his defense.

Q. You consider these charges reflect upon you as they do upon him? A. I consider if these charges are true I am accused of moral turpitude.

Q. Have you ever sought to win the case except by fair means, and by the presentation of the facts and the law as you understand it? A. I have always tried to in my case is fairly; I never put on any witnesses to testify to a fact unless I believed

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that the witness was telling the truth.

Q. That was your policy during your relations with Mr. Lindsay?

A. That undoubtedly was; I am willing to take Mr. Lindsay's word for that.

Q. Do you know Peter Paul Hartmann? A. I know Peter Paul Hartmann, that is a casual acquaintance.

Q. How long have you known him? A. I have known him, I would not say, he came in my office once I think, that was probably the first time I ever had a conversation with him; but I had seen him here in court, he had some business here.

Q. What do you know of the charge in which his name is mentioned?

A. All I know about that is this; Mr. Burke, George P. Burke on several occasions ask [sic] me to associate with him as the attorney for Mr. Hartmann, and I declined.

Q. In what case was that? A. In the case he had involving some will.

Q. In the Kohl will litigation? A. Yes, sir.

Q. He ask you to be associated with Mr. Burke?

A. Mr. Burke asked me to be associated with him. I had no objection to associating with Mr. Burke because we have been associated together in cases many times. I will say there was I good deal of animosity and feeling in that case between Mr. Younger and Mr. Burke and the court and it was one of the bitterest fights, bitterest cases I ever knew of here in this court; I did not want to mix up in it for that reason.

Q. The same Burke who took the stump against Judge Smith?

A. Yes, sir.

Q. How long before the case was actually tried did Mr. Burke seek your assistance and association? A. I do not know whether the case was ever tried or not; I would not say the case was tried; it may be since case was tried.

Q. The proceedings were about the probate of a will, for the purpose of setting aside the probate?

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A. Mr. Sullivan, I am quite sure that Mr. Burke sought my services after the decision went against him; my recollection of the matter is that he told me once that his client had no money, he could not pay any fee, I think it was afterwards. And Mr. Paul Hartmann himself came to my office and asked me to become his attorney in the case, and it was at a time subsequent to the election I know, on account of the conversation we had, and I told him that I hardly would expect employment from him, from any person in his circumstances; if he had come to me originally before this feeling was in gendered, I said “now, I cannot take your case

because the matter was tried on the political rostrum, I do not believe in trying cases on the political rostrum, I believe in trying them in court, I will not take your case". That ended the matter.

Q. When you say the case was tried on the political rostrum, you mean these same charges were discussed on the platform?

A. Undoubtedly they were discussed, right within 75 or 100 feet of where I am sitting.

Mr. Sullivan: How many charges contained in this specification?

Mr. Lindsay: Only one occasion.

Mr. Sullivan: Now we come to specifications 3.

A. Read it, please.

Q. Referring to the Dakin [*sic*] incident. You were in the case, were you as attorney?

A. I was in that case, attorney for Mr. Forgeus.

Q. The case of Forgeus against Dakin? [*sic*] A. Yes, and Mr. Knight.

Q. That was a case that under the law could have been tried before the court without a jury?

A. Yes, sir.

Q. Who demanded the jury in that case? A. I would not say, I think Mr. Younger called for it, I have no recollection.

Q. You do not not recollect who did demand the jury?

A. I cannot recollect that.

Q. By the way in the majority of those jury cases in which you

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[were] successful who demand[ed] the trial by jury? A. I did.

Q. You preferred the submission of the case to a jury?

A. Yes, sir.

Q. And not submit it to the Court? A. Yes, sir; a great deal depends upon the nature of the case I am trying; if I believe the facts are such as will appeal to the sense of justice of men, sometimes the law is such that the Court might be constrained to decide the case another way, were twelve men will say "well, this thing is right and we will decide it in accordance with what we feel is natural justice in this kind of case".

Q. Were those cases in which you were successful before juries, cases that might have been tried before the court sitting without a jury? A. I do not know of any case I tried, without it being a criminal case, and what the Court could have tried the case without a jury.

Q. Now, go on and state what took place during the trial of the case of Forgeus against Dakin? [*sic*]

A. In that particular case, it was very bitterly contested and a great deal of feeling aroused, and Mr. Jeter himself was attacked in that case, in the trial, by several parties—

Q. By whom? A. Well, by counsel for Mr. Dakin [*sic*]. Without going into details I will let that go at that.

Q. Well, that is sufficient? A. On the occasion when this trouble arose, I had cross-examined Mr. Dakin, and that record is offered, and not saying what happened, I am willing to have the committee read the cross-examination. When he came off the witness stand—I gave him merely what I thought was a proper cross-examination—he said something that I did not hear, under his breath.

Q. Where were you sitting at the time? A. I was sitting about where you are sitting now, as near as I can remember.

Q. Where he was sitting? A. He was sitting where Mr. Adyелotte [*sic, i.e., Aydelotte*] is sitting.

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Q. Go on. A. Well, I said to him, as near as I can recollect the words—the record is here, I submit—I said "don't you speak to me, sir". I was provoked, and he replied "Can't I look at you". I says "don't you speak to me". So about 2 or 3 min. after that I looked over there again, and he was still looking at the [*sic*], and he called me a name under his breath that I understood—

Q. That same name— A. That same name that Mr. Forgeus used here, and I raised to strike him, not to the extent that I did strike him first— I did not succeed in striking him, Mr. Knight caught me by the coattails and held me back, and I followed Mr. Dakin [*sic*], and he kept backing, I did not strike him as a matter of

fact at that time, and while I was doing that someone I did not know at the same time came in and got his arm around my neck some way and hit me two or three times on the top of the head; I turned around finally to strike this person but when I did so Mr. Knight had come to my rescue or assistance and Mr. Alzina, as I turned around I was struck from the back by some one on the other side, who was Tom Dakin [*sic*] as a matter of fact; I turned suddenly and hit him a blow as hard as I could up here on the forehead. Now, I wish to make this statement, that I regret that occurrence more than [any] act of my life, but under the circumstances I would do that again, if it was the last act of my life.

By COMMITTEEMAN LUMLEY: what did you say that case was?

A. I will explain that. Some years before Mr. Jeter was Mr. Dakin's [*sic*] attorney; there was a difference arose between the Dakin's [*sic*] as to who should be appointed administrator of the father; his brother and sister objected on the ground he was an unfit person to be administrator, that he drank liquor, and he did use liquor, it was a very interesting case; Mr. Jeter was in very poor health when this came on, and one day he came to my office and asked me if I would assist him in the trial of that case, because he was really physically una-

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ble, he told me; he also told me that Judge Smith seemed to be of the opinion that in as much as the brothers and sisters did not want Dakin [*sic*], but wanted somebody else, that their wishes should govern in the matter. And I told the Governor that my recollection of the law was that the widow was entitled to letters of administration, if she did not want to act herself she had the right to nominate another administrator, I remember the Supreme Court laid down this rule in this state — the case I speak of was the case of Sullivan. So we came in here — Mr. Lindsay was in the trial of that case.

Mr. Lindsay: What case? A. The contest of the petition of Thomas Dakin [*sic*], isn't that correct? At any rate it was decided. And this other Dakin [*sic*] case, that was a contest, came up. There was very bitter feeling. That matter was argued as to the matter of the law, and the Judge decided that Thomas Dakin [*sic*] was entitled to letters of administration, and after that Mr. Jeter and I tried 2 or 3 cases for him and were successful. Finally Mr. Dakin [*sic*], he had been deeded a block of his father's estate by his father in his lifetime, Thomas Dakin [*sic*] had been deeded more than half of the estate and the mother had been deeded the other half, and the brothers and sisters, represented by Mr. Lindsay and Mr. Netherton, were very much inclined to contest the validity of the deed of Thomas Dakin [*sic*], and we got together and had a contract entered into whereby Thomas Dakin [*sic*] agreed — and the mother signed it, an agreement whereby the mother was to deed the rest of the property to the sons, and Thomas Dakin [*sic*] waived all his right and agreed to pay one thousand dollars to his sisters, and the other brothers agreed to pay one thousand dollars to the sisters too. Afterwards Mr. Dakin [*sic*] would not carry out this agreement, and Mr. Jeter and I went he would not do that, we said we would have nothing further to do with the case. I afterwards brought suit to enforce the contract which I had drawn for those parties. It was remarked by Mr. Lindsay, Mr. Jeter and Mr. Netherton that I had no

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right to take that case. So I immediately, as soon that was made, I immediately conferred with Mr. Jeter and Mr. Knight and they assured me that was proper — I had no right to attack a contract I had drawn. I went to Mr. Forgeus and I said “Mr. Forgeus, there is some question raised here whether as a matter of ethics I should try that case, I will get you a better lawyer, I will get you Mr. Theodore Roache [*sic*], a young man in Mr. Sullivan's office, I consider him one of the best lawyers in the city, I will get him to come down here, he can try the case”. He said “I would like you to try the case because,” I think he expected it to be tried before a Jury, and he had no idea I could try a jury case pretty well. Well I says “I will do it upon one condition,” I says “Judge Skirm and I are not very friendly, have not been friends for a long time,” I said “we are not speaking, I do not like to go to his office and speak to him,” I says I will send a gentleman there and have the FAQs submitted, and if Judge Skirm says if I have the right under the morals of high ethics to take that case, I will. The gentleman went to Judge Skirm's office and came back and reported to me he had stated the facts exactly to Judge Skirm as they were, and Judge Skirm's message he brought back to me “it was not only my right, but if I was called upon to enforce the contract I had drawn, it was my duty to enforce the contract. I went ahead, and did not care anything about the ethics.

Mr. Sullivan: during the trial of that case did the opposing counsel reflect upon your conduct in taking that case?

A. Yes, sir; I will say this: Attorney Younger said in open Court in the case that he proposed to impeach Governor Jeter; he did not do it; he said he was going to do it.

Q. Impeach him as a witness. After the fracas was over what did you do? A. After the fracas was over, I can give you my best

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recollection, it was taken by the shorthand reporter, it can be read, I will give you my recollection.

Immediately, but whether it was before the fine was imposed by Judge Smith or immediately afterwards, I do not know, but I will say almost immediately before we proceeded any further with the case — I know now it was after the fine was imposed upon Thomas Dakin, that is I believe so, I arose and apologized as profusely as I could to the court and to the jury and to the people, and then and there stated I was called a vile name, as to how far I described that name at that time, I am willing to let the notes speak, that I regretted the incident very much, but I would do it again under similar circumstances — I have not changed my mind about that.

Q. What was done in relation to it?

A. I also stated that so far as I was concerned that I did not care to have the fine imposed upon Thomas Dakin, I was satisfied to have it remitted, I was satisfied that I struck him, that I was satisfied.

Q. What did the Court say after you had made the apology? A. I cannot begin to give the court's language at all.

Q. Well, substantially?

A. I know the court reprimanded the actors in that scene.

Q. Including your self? A. Including myself.

Q. And the jury brought in a verdict in favor of your client, did it not? A. Yes, sir.

Q. So much so for the Dakin episode.

The Chairman: Mr. Cassin, do you believe the court on that occasion should have imposed a fine? A. Not if he remitted it afterwards — I will state the court would have to use his own judgment; you asked me what I would do, if I believe that the name was called the attorney, I would be more inclined to find him for not

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resenting it than resenting it.

Q. Don't you think that an attorney, as an officer of the court, is much more amenable two actions of that kind, quite more than layman? A. I think so, but my mother died very shortly before this.

Q. I will ask you another question: were all these facts before the court at the time he find the two parties?

A. Well, now, Mr. Chairman, Judge Smith, what ever he saw he knows.

Mr. Sullivan: Mr. Forgeous testified also to the circumstance.

Mr. Lindsay: there was no explanation made by any of the parties before the fine was imposed except the explanation made by Mr. Knight that Mr. Bill Dakin had a hand in it.

A. Were you in that case?

Mr. Lindsay: No, I was not. I say that is the testimony as I understand it.

The Chairman: my recollection is that the Judge stated the first act he saw was when Dakin struck him.

A. One of them struck me first; it was not my fault they struck me first, it was my bad luck.

Mr. Sullivan: now, I will direct your attention two specification 7 "that said Smith has been guilty of great oppression and tyranny and mal-administration in the affairs of the conduct of his office". What have you to say in relation to that specification. Have you seen any manifestations of oppression or tyranny?

A. No, I have not. I will also say this, that in the Kohl master there seem to be some feeling between Mr. Burke and Judge Smith, but Mr. Burke was not very well at that time.

Q. In the Kohl matter: did not Judge Smith continue that case several times at the instance of George Burke?

A. I would not say; I do not know anything about it, when it comes to that.

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Q. How does the administration of affairs in this Court compare with the administration of affairs in other courts in which you have appeared? A. Well, I will say this: that with my experience that I would just as soon try a case before Judge Smith as before other Judges; there are other Judges, depending on the nature of the case, I would sooner try cases before, than Judge Smith.

Q. In the general management of the affairs of his office, how does he compare with other judges? A. I should say so far as I know I do not remember no saying that I should criticize Judge Smith for except when he decided a case against me, I always thought I ought to have won.

Q. When you feel you are right and get a decision against you?

A. I either appeal or else say something about the judge, sometimes both.

Q. What do you know about the Buelna matter?

A. Buelna?

Q. Do you know Mrs. Buelna? A. She has testified about Judge Smith sending her to me.

Q. Yes. A. I know Mrs. Buelna very well.

Q. When did you become acquainted with her?

A. About 1896, I guess, as near as I can fix it.

Q. You and Judge Smith, then a practitioner at the bar, defended a brother of hers? A. We defended a brother of hers at Hollister, Judge Brown, Presiding. Judge Dooling then was District Attorney and prosecuted the case; we tried it; the jury disagreed in the first trial and they tried him again and he was acquitted.

Q. He was charged with murder? A. He was charged with murder.

A. I had her for a client in the breach of promise case.

Q. When she called to see you to retain you in that case, what did she say about retaining you? A. I really cannot —

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Q. Did she mention Judge Smith's name to you?

A. I have no recollection she did; I remember she said something she knew me equally as well as Judge Smith.

Q. You had been very successful in the trial of the murder case where her brother was tried and acquitted?

A. I am satisfied in my mind she never mentioned Judge Smith's name; I am not certain what she said as to the truth of the matter, though I know I put up the expenses on the trial of that case with Mr. Knight.

Q. Specification eight, "that said Smith has openly expressed himself in open court in such manner as to show great disrespect for the Supreme Court of California, and calculated to bring said Supreme Court into disrepute.

A. I never heard him express himself concerning any conduct of the Supreme Court of the State of California.

Committeeman: Was there any testimony introduced by the prosecution as to that specification?

Mr. Lindsay: None at all.

Mr. Sullivan: now, I direct your attention to specification 12, in which reference is made to the Bloom Langley case in which you represented one of the parties.

Mr. Lindsay: no evidence as to that portion of that specification.

Mr. Sullivan: About the horse case, it involved a great principle.

Mr. Lindsay: on cross-examination; there was no evidence brought out by the prosecution.

The Chairman: the committee decided this afternoon that we thought inasmuch as judge Smith had been accused by all these specifications, he had a right to testify in regard to all of them.

Mr. Lindsay: and he did so.

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A. I ask the privilege of the committee to testify in reference to that case. All I know about the Boom-Langley case is this: Mr. Boom came to me to bring the case; I told him I did not care to take it, it was a Justice Court case; I told him what my fee would be for my services, I did not care, I told

him I did not care to take it, it was a Justice Court case; afterwards I asked Mr. Osborne one day if he would assist me in the trial of it, he said certainly.

Q. That is what Mr. Osborne? A. H. R. Osborne. And the case finally came on for trial before the Justice Court, Mr. Adyelotte [Aydelotte] presented the case for Langley.

Q. For the defendant? A. For Langley, and Mr. Osborne and myself presented the case for Mr. Bloom, and I will state that I thought that instructions were very strong for Mr. Langley; I do not mean to say that they were incorrect instructions, I thought they were very strong.

Q. They were strong in favor of Mr. Aydelotte?

A. I know Mr. Osborne was really put out about it, I thought Mr. Langley got the better of it, and the Jury decided against Mr. Langley – it was a horse case.

Q. It involved a horse trade? A. A horse case. I never got any fee.

Q. You still won the case. Mr. Aydelotte was a young practitioner? A. Yes; he had not has much experience as I had. It was a personal favor.

Q. What was the value of the property involved in the controversy? A. The value of the horse really were not enough to amount — a couple of hundred dollars, I would not be certain it was a question of the horse's having any value; as I recollect the suit was brought to set aside a transaction fraudulent representations on the ground of made by Mr. Langley.

Q. To recover damages? A. Yes, sir.

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Q. Were you present in court during the trial of the case of The People against Buelna. Do you know anything at all about the sentence, and the trial of the defendant in that case?

A. No, sir; I do not know enough about it to testify, I do not know anything about it. That is I know something about it, but I could not testify to it.

Q. Is there anything further you desire to say in answer to these charges directed against the Judge and indirectly made against you? A. Knot about these charges; not that I know of, I do not. There are some other occurrences that Mr. Leonard testified to here and Mr. Wyckoff.

Q. I want to ask you about another matter. Mr. Leonard has testified that during the campaign of 1902 you suggested to him he should seek the nomination for Superior Judge?

A. No, he did not testify that way, as I remember his testimony. I have absolutely no recollection of the matter of Mr. Leonard ever coming to me.

Q. You do not remember anything about. You were a strong advocate of Judge Smith before the primary and after the primary?

A. Yes, sir. I will state that I said if he succeeded at the primaries and got the nomination I would support him.

Q. If he succeeded in getting the nomination at the primary?

A. Yes.

Q. I want to call your attention to an incident which occurred at the conclusion of the, about the conclusion of the Ramirez case. That is the case in which Mr. Leonard charged one of the Jurors with being corrupt? What occurred in court at that time, just what occurred, in court?

A. My best recollection is Mr. Leonard was commencing his opening argument for the plaintiff; I am sure that is correct; it was immediately after adjournment at the noon recess, I think, two o'clock. Mr.

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Leonard arose and addressed the court and the jury, and very shortly after making his preliminary remarks, if he did make any preliminary remarks, he accused one of the jurors with being corrupt, and my recollection is the language that he used he said there was a traitor on the juror [jury], or a Judas Iscariot, I do not know whether he used those words, I am not sure, he insisted upon talking as he usually does, very strongly and forcibly, and so I arose I said "Mr. Leonard name name your man, put your hand on the corrupt juror", that is as near as I can; I insisted "to name your man, point out the juror, if there is any corrupt juror on this jury that the case should not proceed, that we did not want any verdict by a corrupt Jury." Then Mr. Leonard entered upon his argument and again referred to that and I objected, and said "I object to his arguing along that line", because I felt at the time it was an effort to try to whip the other jurors interline so they would not be suspicioned of being corrupted by the Big Creek Power Company. Mr. Leonard went on and tried the case and we got a favorable verdict, the Jerry was out a few moments and came back and were polled and were unanimous against him. After the verdict had been rendered and read and entered, one of the jurors, I do not remember — Mr. Wagner, John Wagner and old resident here arose in the jury box and in some language which I cannot repeat word for word — at any rate he demanded of Mr. Leonard to name the man who was supposed to be corrupt, and Mr. Leonard as I remember it — if I am doing Mr. Leonard any injustice in stating it the notes will correct me - Mr. Leonard said he could not do it, he did not know the name of the man; then he was asked to give the name of his informant, and he said — I won't under oath try to repeat the words, but the substance is similar to this, that he was in honor bound to this man not to reveal his name. My recollection is also Judge Smith asked Mr. Leonard to be sworn at that time, that Mr. Leonard — I would not say that — but my recollect—

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tion is Mr. Leonard refused to be sworn — he can say whether that is true or not. Afterwards, that evening, I saw Mr. Leonard go across the street with one of the jurors, Mr. Gregory, I do not know who else and Mr. Kelly, I think, one of the jurors; he came back up to the court room, he came up and there were some questions asked and answers given by the juror at that time — I prefer the record to be read as to what the language was, and the matter was continued over two the next morning for hearing. On the next morning I met Juror Gregory, I did not need him, he met me on the street, he said he wanted to come to my office and talk to me, and walked right along Cooper Street here, came up to my office and I told Mr. Lucas, the young gentleman sitting here — to come inside, that I did not want to have any conversation with this juror alone, that I wanted to protect myself, and the juror started in to make a statement and I told him that he must understand this: that I would not defend him, could not defend him if he made any statement to me, that I would not hold it privileged, that the relation of client an lawyer, client and attorney, could not exist between us, and that I proposed, if asked by the court, to put him on the witness stand and cross-examine him; about that time, before he made any statement, Governor [Jeter] came in, and then he told us, as I recollected now substantially about what he testified to on the next morning.

Q. That was the day after the verdict? A. Yes, sir; I will say furthermore, I would like to say this, I did not know Mr. Gregory at all personally before this; Governor [Jeter] and I had a misunderstanding about — when the case was commenced — he was in my office the day after the case, on the afternoon of the next day — I came up here and I accepted Mr. Gregory, and I went on and impaneled the juror; when he came in I had accepted Gregory. I will state further, I understand some of the gentlemen here are members of the bar, that the answers of juror indicated to me he was not as intelligent a juror

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as the majority of the men on the jury, that I had considered first-class, intelligent jurors. This Big Creek Company hires hundreds of men and spends hundreds of thousands of dollars, and it is quite natural has many friends and many enemies, I felt I had better take this man Gregory then run the chances of getting someone who might be an unreliable man, who would have a prejudice and bias against the company, and I took him believing that, and I so stated to Mr. Jeter at the time.

Q. You represented the defendant in the case? A. Yes, I represented the defendant in the case; I was assisted by Governor Jeter, rather there was another also, Mr. Lucas.

Q. Was he associated with you on the case?

A. Associated with me in the case. When this charge was made by Mr. Leonard I knew something about the character — I will state just exactly what I knew so this committee will get the whole transaction. I saw Mr. Gregory walk across the street just a little before the court took up, and Mr. Lilly and Mr. Lucas we came from my office over there and came to the court for the purpose of the trial, and Mr. Forgeus came up to me and spoke to Mr. Lilly first and they had some conversation, I do not know what was said, it took probably 10 seconds, just two or three words, and Lilly called me over and then Forgeus made this statement to me — I think Mr. Lucas was there and I was called aside, and Mr. Forgeus told me that Juror Gregory had come down to his office and made some kind of a statement about wanting to be friendly with the Big Creek Company, Mr. Forgeus made some answer something like he was out of the office.

Q. Mr. Forgeus was not connected with the Big Creek Company?

A. He said he had not been connected with it for over a year. I says “did he make a corrupt proposition to you”, he says “No, he did not, he wanted a drink of whiskey blown in my face, I could smell the whiskey”, that is the expression Mr. Forgeus made. I came

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up here, and Mr. Jeter was standing over at the railing near the wall here and we consulted together, and Mr. Forgeus made his statement to Mr. Jeter in my presence, it was the same he made to me, I do not know whether he used exactly the same language, but so far as what took place in his office it was just the same, I said to Mr. Jeter "what do you think about it, what shall we do". Jeter says " I do not attach any importance to it, I do not think the fellow will amount to anything or have any influence with the jury at all, I do not think it is worth paying any attention to". While we were saying that, the jurors were in the box and Mr. Leonard was getting ready to make his argument. I told the court about the matter just exactly as I had remembered it, after Mr. Leonard had finished his argument what I have stated here.

Q. Next day after the verdict was rendered were you present in court when Mr. Rich appeared?

A. I was present in court when Mr. Rich appeared.

Q. Who appeared as Mr. Rich's attorney? A. Mr. Leonard appeared, announced himself as Rich's attorney. He said he would render any assistance within his power to ferret out this corrupt proposition.

Q. Did Mr. Rich refused to be sworn in next morning?

A. The record is here, I believe he did.

Mr. Lindsay: I do not think it is worth while to take up the tome stating what is in the record.

The Chairman: I do not think so.

A. But I want to say this: I knew the character of this man Rich.

Q. By Mr. Sullivan: Mr. Rich was present during the trial of the case? A. Yes, sir; He had a suit against the Big Creek Power Company.

Q. Did the testimony disclosed that Mr. Rich told this juror to go to Mr. Forgeus's office? A. Yes, sir — I would not say for

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I do not remember — that was Mr. Gregory's version, they talked about this case, Mr. Rich advised, or something like that, to go there, and walked along with him down to the office, my recollection is Mr. Forgeus stepped out and looked out and saw Mr. Rich.

Q. When Mr. Rich appeared after the rendition of the verdict, did Mr. Leonard advise him not to be sworn?

A. I will ask you Mr. Sullivan to have the record read. I believe that Mr. Rich was guilty of tampering with that juror at that time honestly and I cross-examined with that idea in view; I have not changed my opinion cents, and he has not been put on as a witness by them.

Mr. Lindsay: Mr. Cassin, that remark —

a. I will withdraw it.

The Chairman: strike it out. A. I will withdraw it.

Mr. Sullivan: what steps did Mr. Leonard take after the rendition of the verdict as to the controversy between Gregory and Rich?

A. Mr. Leonard was very careful no error should get in the record, because he objected time and time to very [every?] question I asked.

Q. Did he object to the jurisdiction of the court?

A. He objected, I am positive of that, but the record is before you.

Q. As attorney for Mr. Rich did he advise him not to be sworn?

Mr. Lindsay: I object as holy in material.

(Objection sustained).

A. The notes are here.

Mr. Sullivan: is there anything further.

Committeeman Burke: can I ask him a question.

Mr. Sullivan: Certainly.

Mr. Burke: I understand you to say after Mr. Leonard finished his argument, or it your argument, that you told the court what had occurred? A. I came up here and told the court about that —

Q. Had transpired outside? A. Yes; I would not attempt to repeat the language.

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Q. The substance of what happened — you told him privately?

A. Oh, yes; I told him privately. I will state in my opinion there was absolutely no merit in this case at all. It was admitted in open court that the Big Creek Power Company, nor its agents, nor its lawyers, or anyone connected with it in any wise suspicioned Mr. Leonard.

Mr. Sullivan: I think that is all, Mr. Cassin.

A. Mr. Wyckoff made a statement that I would like to —

Mr. Sullivan: Yes, about the Rianda case; what have you to say in relation to the statement made by Mr. Wyckoff?

A. I will just say a few words in reference to the case, that is: I was employed to try the case before the jury in court, I got a fee for that purpose. When this verdict was rendered I was relieved — Mr. Duckworth employed me. He was the husband of one of the people who were interested in the property, my relations then ceased, I had nothing more to do with the case until sometime subsequent when there were was some amendment to the pleadings, with which I have nothing to do, except I came here afterwards on one occasion when some additional proof was being taken under the substituted pleadings, Mr. Torchiana conducted the questioning; I might have argued very briefly, I do not know, but not to amount to anything, the case already had been decided and the Court's mind had been made up to take the verdict of the jury, as I understand it.

Q. Then did your connection with the case cease upon the presentation of the additional proof in support of the amended pleadings?

Eight. No, — I do not so understand, Mr. Torchiana insisted on me as associate, but Mr. Duckworth came over to my office with Mr. Torchiana asked me to come back in the case and go to the Supreme Court; I had nothing to do with preparing these findings, either set of the findings; I never saw them as a matter of fact; I had the impression that the very set of findings were filed the second time

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that had been filed the first time.

Q. Now, did you at any time from the hall way door back in two the Judge while he was on the bench? A. I will say this: I have absolutely no recollection of any such a thing as that happening in this court at any time, that I ever beckoned to Judge Smith during the trial of a case, to come off the bench, Judge Smith or any other Judge that I ever saw or known. Mr. Wyckoff says I did, that he was sitting here, and I do not wish to say Mr. Wyckoff swore to anything that was not true; I want to say this, he never complained to me about it; that if anything like that was done it was misconduct that would entail a reversal of the case, and no mention ever was made, and no record so far as I ever heard of it until he went on the stand here. I say to the committee I do not like to be put in this position at all.

Q. Were you present at any time in the Judge's chambers with Mr. Torchiana and Mr. George Burke, associate with you in the Rianda case? A. I have no recollection; my testimony is I have no recollection of ever being present. It is probable I might have been present with Mr. Torchiana, it is probable; I have no recollection I was ever present with Mr. Burke.

Q. Did you discuss the Rianda case at all with the Judge?

A. No, sir; I did not. Judge Smith decided the case after he had returned from the East, he had decided the case, he told me in the presence of Mr. Knight that he had, that is all the conversation I remember having with Judge Smith about that trial, that after the verdict of the jury was rendered Judge Smith went East and was gone for some time and the findings were not signed until quite a long time after his return.

Q. That case was an equity case, ordinarily a case tried by the Judge? A. Yes, but I wanted a jury, it was an equity case, but I wanted an advisory verdict, because I thought that the equities

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were with my clients, or Torchiana and Dickerman's client.

Q. Do you know who demanded the jury in the case?

A. I believe we did; I will take Mr. Wyckoff's word for it, we demanded a jury in that case.

Mr. Wyckoff: I think we did, I am not sure.

A well, I do not know; the minutes of the Court will show. I am inclined to think we did.

Mr. Sullivan: now, Mr. Cassin, you were the attorney for the plaintiff in the case of Trafton against Quinn, that is named among the cases? A. I was attorney for Mr. Quinn.

Q. Attorney for Quinn? A. Yes, sir.

Q. That was a contested election case, was it? A. Yes, sir.

Q. And the returns showed Mr. Quinn was elected by a small majority? A. By four votes.

Q. Prior to the trial of that case the election law, the ballot had been amended had it? A. Yes, sir.

Q. In what respect?

Mr. Lindsay: Don't you think we have been over that so the committee understands it?

Mr. Sullivan: I think so. There was one point argued in the case as of considerable importance?

A. Yes, sir.

Q. That is the admissibility of the ballots? A. Yes, sir; that point was. It is, briefly stated —

The Chairman: I think Mr. Sullivan, if the gentleman of the committee will agree with me, we will not go over that again. I would like to ask Mr. Cassin what day did the case begin?

Mr. Lindsay: The second of July.

Mr. Sullivan: that was the conclusion or the beginning?

Mr. Wyckoff: Yes, that was the beginning, it took two days, began on second of July and the new law was then in force.

A. The new law was then in force, but it had not become applicable

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until after the day of election as the Supreme Court had held.

Q. And the Supreme Court held that the old law was applicable?

A. The Supreme Court held that this new law was not the law then. I wish to state this that Mr. Wyckoff made what I consider to be absolutely a fair statement on his appeal and that there were no steps taken to impede him in getting his appeal to the Supreme Court that he got it there and got the case quite rapidly. It was quite a close question.

Q. The Court decided against you as to the admissibility of the ballots? **A.** Yes, sir.

Q. The ballots having been admitted rendered it possible to get a reversal. I direct your attention to the testimony briefly of Mr. Montgomery. What have you to say in reference to his testimony?

A. I do not think I am a very good critic of my own conduct; I tried that case as I try all cases; I think I was courteous to Professor Montgomery and to all the witnesses and the Council; I think we tried that case without any dispute —

Q. He complained about your treatment of him as a witness?

A. The truth of the matter is, Professor Montgomery is a highly educated professor of electricity, but it was absolutely shown that the man knew nothing at all about the construction of lines and conducting of electricity, and we had a man here from Berkeley that had constructed nearly all the lines in the State of California, he went out and made a thorough examination of these lines and Professor Montgomery admitted to me he did not know anything about lines, the only examination he made he stood on the street and looked up at the wires, I made hardly any objection at all to any of his testimony, but when they asked him the question as an expert as to whether or not the construction of the Big Creek lines were properly constructed, I objected on the ground that his qualifications to testify on that subject were not proved, because it affirmatively appeared he never

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had any experience at all about the construction of lines and probably I said “he undoubtedly will answer they are”, if Mr. Montgomery says no, I do not, but that was my objection, that objection was sustained; I am willing to let the Supreme Court pass upon that if Mr. Montgomery cares to take it there.

The Chairman: that is in the record.

Committeeman Beardslee: was that a matter of Lyons and construction of lines? **A.** Yes, sir, about the construction of lines only.

Q. That was the physical construction of the lines?

A. Yes, Sir; the physical construction of the lines; whether the wires were properly suspended, and all that, whether they were inferior constructed lines.

Mr. Sullivan: The Professor describes your manner of cross-examining witnesses, and stated to you invariably would lead the witnesses? **A.** If I got a chance I did possibly; I do not think Mr.

Leonard complained during the case of my questions. They had a couple of boys that were eyewitnesses to the accident; they were young fellows.

Q. Is there anything further you can think of in relation to the charges made against Judge Smith and indirectly made against you?

A. I do not know of anything further.

Mr. Sullivan: That is all.

Mr. Lindsay: Before I proceed with the cross examination of Mr. Cassin, there is one matter I must insist upon, with due deference, at this time; there were a number of witnesses who testified before the court in this court on the morning of the investigation of the alleged jury corruption, among them H. W. Rich and others; it was stated by counsel that a transcript of the proceedings would be furnished and allowed to go in the record. I have not seen that record and it is not in the record, and counsel stated a while ago he did not know whether it was written up or not.

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The Witness: I believe it was written up.

Mr. Sullivan: Is Mr. Williamson here?

The Witness: I will say this: yes, it was written up; it is mislaid; we will see that Mr. Williamson writes it up for the record.

Mr. Lindsay: I thought it would be in the record before the testimony closed.

Mr. Sullivan: (To Mr. Williamson) Mr. Williamson, have you written up that record?

Mr. Williamson: Yes, sir. (Producing transcript).

Mr. Lindsay: I am glad to get it. Mr. Williamson, just one question: Does this includes the transcript of the next day?

Mr. Williamson: The day after the trial.

Mr. Lindsay: Not the evening before?

Mr. Williamson: No, sir. You had better write that up. I think you had better write that up.

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Cross Examination.

Mr. Lindsay: Mr. Cassin, you are what age? A. 37.

Q. 37. Do not think I ask you these questions impertinently?

A. Ask me any questions you wish.

Q. What is your weight? A. Well, something like 6 feet, two.

Q. Your weight? A. About 205, 6 or 7 pounds, around there.

Q. Are you in good physical health? A. Ordinarily.

Q. And have them during the last 2 or 3 or 4 years?

A. Well, I was quite sick here a year ago; I was in good health the time this trouble took place, if that is what you mean. Oh, yes, I have been for several years.

Q. I do not refer to that at all? A. I would say yes to your question.

Q. You were born in San Francisco, but you were raised in this County? A. Well, I was raised close to the County line, in Monterey County, near Watsonville.

Q. Your boyhood days were spent in Pajaro Valley?

A. Yes, sir.

Q. And with the exception of the time you were engaged in the laudable ambition of acquiring a good education, you were in the Pajaro Valley until you reach the years of manhood?

A. Yes, all my life principally.

Q. You have always had a large acquaintance in the Pajaro Valley? A. Yes, sir.

Q. and sense your removal to this portion of the county, you have formed a large, and very extensive acquaintance in the northern part of the County, have you not? **A.** Well, I should say so, Mr. Lindsay.

Q. Your temperament is that of a very positive nature, is it not? **A.** Well, that is for my friends and acquaintances to

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say; I think so.

Q. There is nothing inactive or retiring about you, and I use that word in this sentence: that you, instead of being timid are aggressive; instead of being deliberate are impulsive, instead of sharing to take any course you glory in the opportunity of taking it, if you believe it to be right?

Mr. Sullivan: I object to that complex question.

(Objection overruled).

A. I think you probably over-state it, but some I will admit, that is pretty close.

Q. If you think you are right in a matter, Mr. Cassin, you go into it slowly, no matter if you have to go through a mountain or a storm—

A. If I think I am right I stay with that proposition, but I never override a man or do him an injustice, in my opinion.

Q. No, I have not stated anything of that kind.

A. I will tell you what I would like to say?

Q. What? **A.** I would like to say, as to my character, take the people in this courtroom that know me, I do not like to say anything about myself that way.

Mr. Lindsay: No, I wish to cross-examine you.

Mr. Sullivan: we submit this is not proper cross examination; a man cannot be called upon to testify to his own characteristics.

The Chairman: what is your object in asking these questions?

Mr. Lindsay: My object in asking these questions is quite evident. I wish to state my position so far as I am concerned, once for all, in reference to Mr. Cassin in this matter. I do not believe, from my knowledge of the man that it is possible that he should be a party to any corrupt understanding with Judge Smith or any Judge alive.

The Witness: are you representing Mr. Leonard and Mr. Adye— [*sic*; i.e., Aydelotte]

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lotte [*sic*; i.e., Aydelotte] in that statement?

Mr. Lindsay: I am representing myself, Mr. Cassin, I am stating my proposition, but I wish to examine this witness for the purpose of proving by him, I do not know how else to prove it: that his nature is such, that my reason of the very force of it, he has a tendency —

Mr. Sullivan: do you claim he is a hypnotist?

Mr. Lindsay: You might call it that, if you want.

Mr. Sullivan: Is that your theory?

Mr. Lindsay: I am stating my theory.

Mr. Sullivan: That does not appear in the specifications; there is no charge of hypnotism in the specifications. We submit the counsel ought to answer the question propounded by the committee.

Mr. Lindsay: Am I not trying to. My theory is first: I want to show Mr. Cassin's nature and manner of trying a case; I am going to ask how he tries a case. And I am not going to take up much time, I did not take up much time with Judge Smith.

Mr. Sullivan: We think those questions are immaterial.

Mr. Lindsay: Ro [sic] it short, Mr. Cassin, if you are trying a case you want to win for your client, don't you?

A. I most assuredly do; I never take a case I think I ought not to win.

Q. You do everything that you think you ought to do to win your case? A. Everything that I think is right and honorable, and nothing else, Mr. Lindssy.

Q. You are also impulsive, somewhat warm tempered, are you not?

A. Well, I am impulsive, I am rather quick if I am provoked, yes.

Q. You lose your temper quickly at times and recover it as quickly? A. I never had any trouble, or any dispute with any lawyer during the long years I have practiced law, except with you and

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with Charles B. Younger, Junior; I have had a number of controversies with Judge Skirm, in my experience.

Q. That is lawyers? A. That is lawyers; and with no client that I know of.

Q. In your examination of witnesses, you say that when you believe the witness is telling an untruth, that you go after him rough-shod? A. Well, I put such questions to him as will show the jury or court that he is unreliable; I put all the questions I possibly can think of for that purpose.

Q. And in doing that you use considerable vehemence at times, do you not, Mr. Cassin? A. Well, I would rather you ask the other members of the bar, Mr. Lindsay; that is rather an embarrassing question to put to me.

Q. When you are cross examining a witness, if you believe that he is testifying to something that is not true, you are not very gentle, isn't that so, Mr. Cassin? A. I do not know, Mr. Lindsay. I am willing to abide by the reputable attorneys, what you consider the reputable attorneys of this bar. I wish to say that I do not believe any lawyer can, by bullying, when cases.

Q. I am not saying you bully anybody? A. I go at him for the purpose of determining whether he is a truthful man or not.

Kyu. That is enough of that. Before 1902, was there much talk about Judge Smith's favoritism to you, before the election of 1902?

A. I have not heard much of it.

Q. As a matter of fact before the campaign of 1902, you were quite a warm adherent of Judge Smith's, were you not?

A. Judge Smith and I were very friendly, but I have been provoked, I can recollect now, when he decided against me, I was aggrieved. In the case of Annie Smith against the City of Watsonville, where Mr. Knight appeared, I felt somewhat aggrieved; and since 1902, in a case Mr. Wyckoff knows about where he was associated with me, I

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felt quite aggrieved at the decision that I thought was erroneous.

Q. When you felt aggrieved as you have stated, you did not hesitate to express yourself?

Mr. Sullivan: we object as not cross-examination. We submit it is not cross-examination to bring out the opinion of an attorney as to such matters.

(Question withdrawn).

Mr. Lindsay: I will ask you this question: In the fall of 1902, before things had framed themselves into position, were you in favor of the election of Judge Smith to succeed himself as Judge of this Superior Court? A. Well, I will tell you at times before that, sometimes I say I did not care.

Two. Sometimes you did not care? A. Yes, sir. I want to say this. Mr. Lindsay, that at the time of the nomination of Judge Smith and before that, I mean at the primary, Judge Smith and I were on pretty friendly terms, although I had heard that Judge Smith had said some little things that did

not amount to anything enough to be important, because it was generally supposed that I was going to stand against him for the nomination; I took no offense at this.

Q. At that time your feelings was such that you would rather have supported any other man than Judge Smith?

Aid. I want you to understand my meaning—I have voted for a good many Republicans, although I am a democrat, I believe in the Democratic party; I preferred to Judge Smith at that time William T. Jeter, but I want to say furthermore, that Judge Smith's receive the nomination, and he was more indebted to me for his nomination the first time than he was the second time, because he had a lot of people who [were] for him the second time, and I want to explain how it happened.

A. I do not think that is necessary for my question.

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A. I want to say this in justice to myself. I was more instrumental in getting him the nomination the first time than I was the second time. I want to say this much: At that time there were three parties in Santa Cruz County, the Democratic Party, the Republican Party, and the Populist party, they were quite strong at that time, and before that time Judge Smith and Judge Logan and myself were discussed for the office of Superior Judge, Judge Logan was on the Republican ticket, Judge Smith on the Populist ticket and I was on the Democratic ticket. We had a three cornered fight, and a pretty close one. I think I came out second best and Judge Smith third-best. It was for the unexpired term of two years. At that time there was a fusion between the Democratic Party and the Republican Party as to who should receive the nomination for Judge, but as I remember they had no aspirants at that time; Senator Bart Burke of this County was the choice of the Democrats. There was a fusion committee of Democrats and Populists, and that fusion committee of populists voted for Bart Burke. I made up my mind that under the circumstances Mr. Bart Burke could not be elected Superior Judge in this County, and he had friends I was a personal friend to him, and so I got up and stated the proposition to get the nomination so far as I was concerned, to cast my vote for Judge Smith, and I done so write their at that time and the other Democrats followed afterwards and we made it afterwards and reported back to the Democratic convention, and I moved the report of the committee be adopted in the Democratic Convention and it was carried and Judge Smith one in the campaign; I supported him at that election, and he was indebted to me for the nomination.

The Chairman: Now, gentlemen, let us down to facts.

Mr. Lindsay: what I'm trying to get at. Now, before the election, this last election, it is a fact, is it not, Mr. Cassin—

A. If not I will say so.

Q. That you would have made the canvas for Judge of this County, and you would have accepted the Democratic nomination if you could have

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been assured of the Republican endorsement?

A. Yes, I would have accepted it.

Q. Such a proposition was made, was there not?

A. Yes, sir.

Q. And it was not accepted buy the Republicans?

A. They said they could not do that; they did not know whether it could be done.

Q. So then you did not take the Democratic nomination?

A. No, sir.

Q. For the reason you thought if Judge Smith would run independent, and there would be a Republican candidate, there would be a three cornered fight, and it was a case of diplomacy.

A. I thought it would be a case of diplomacy.

Q. And for that reason you did not take the Democratic nomination? A. I will say I would not at that time go into a hard battle for Superior Judge, because I really was ready to retire from politics. I want to make another statement in reference to that; that Charles B. Younger, Junior, came to my office and insisted I take the Democratic nomination, and offered to support me.

Q. There is no question about what he would.

A. When Mr. Leonard was a candidate for the nomination.

Q. You were somewhat angry, if not angry, displeased, because of the fact that the Republican endorsement could not be secured, were you not?

**Mr. Sullivan: I object to these questions as irrelevant, immaterial and incompetent.
(Objection sustained).**

Mr. Lindsay: After that, so far as you were concerned, you were in favor of Judge Smith for the Democratic nomination?

A. Yes; for the reason I thought he was the available candidate.

Q. You nominated him in the convention, did you not?

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A. No, sir; I did not.

Q. Did you vote for him in the convention? A. I think the secretary was instructed to cast the vote. I made no speech in the convention for certain reasons that happened at that time, or shortly after that.

Q. Just before the convention occurred? A. At the primaries I was active in the support of Judge Smith, undoubtedly.

Q. You were identified with his canvass? A. Yes, I was; indeed.

Q. During the campaign you vigorously made his fight throughout the county? A. Yes, sir.

Q. Did whatever you thought was right? A. Whatever I could, whatever was right, I believe. I did not say a word against Mr. Wyckoff.

Q. So then sets the term of Judge Smith began, under these conditions, sets that time, you have have hundreds of cases in court?

A. I would not say hundreds, I will take the record. He has decided eight cases against me.

Q. That is so far as Judge Smith is concerned. A. Yes, sir.

Q. You have lost Jury cases? A. Eight jury cases.

Q. Eight jury cases and lost three.

Mr. Sullivan: I object to this line of evidence.

The Chairman: I think we have had sufficient on that point.

Q. In the Ramirez case, you were an attorney, I believe you have so testified, that you were informed before the argument commenced on that day of the visit of Juror Gregory to Mr. Forgeus?

A. Mr. Lindsay: I was informed just exactly as I stated, there is no doubt about that.

Q. When you came into court you knew that the Juror Gregory had been down to see Mr. Forgeus, and that he was connected with the

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Big Creek Company? A. Yes, sir.

Q. When Mr. Leonard made his statement to the jury that he did, saying in effect that someone had been tampered with, you knew then of the visit of the juror to Mr. Forgeus

A. Yes, undoubtedly.

Q. When you said to Mr. Leonard "Put your hand on the man"?

A. Yes, sir.

Q. You knew then the man, didn't you?

A. I suppose it was Mr. Gregory, but I did not know, there might have been some other man.

Q. After that incident had closed for the time being, Mr. Leonard went on with his argument and you acquainted the Judge with this?

A. I acquainted the judge with this at the conclusion of the case; I did not speak to him on the bench — I spoke to him on the bench, yes, but not during Mr. Leonard's argument; he was standing there or were sitting down, and I walked around and told him just what I told you.

Q. Walked around where? A. Around here, after the jury had gone out.

Q. Told who? A. Told Judge Smith.

Q. You told Judge Smith on the bench after the jury had gone out? A. I told him just practically what Mr. Forgeus told me.

Q. So then Judge Smith was acquainted with the facts so far as you know at that time? A. Judge Smith new what I told him; if you will allow me, I was not sure what my duty was and I consulted with Mr. Jeter and I abided by his judgment, on account of the caliber of Gregory, on account of his mental makeup.

Q. I am not criticizing that at all. What I am trying to get at is this: That at the time when Mr. Rich was brought into court, it was known to you and it was known by the Judge that juror Gregory during the progress of this trial had gone to the office of the man who he thought was connected with the Big Creek Power Company and

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had made some sort of a proposition to him? A. I would say to that question, as I remember it, is about this, that I believed at that time, I believed after that time, and I believe now, that a weak minded man was directed into that office by Mr. Rich to watch the progress of this case, and that Mr. Rich was engaged in working with Mr. Rich, that Mr. Leonard came in here and was closeted in the office of Mr. Adylotte(?) [*i.e.*; Aydelotte] and that I came straight from my office—

Q. I do not care? A. That Mr. Rich went down to Mr. Leonard and he undoubtedly told him the name of the juror, and that Mr. Leonard knew it.

Q. That is what you believe. But Mr. Cassin at that time that you came into court, when you told the Judge—

A. It was long after I came into court.

Q. When you told the Judge when the jury went out, that was before Mr. Gregory had explained anything about it, wasn't it?

A. Yes, sir. It was certainly.

Q. At that time you had no reason to believe that Mr. Rich had sent Mr. Gregory down to Gregory's office, had you?

A. No, I had not.

Q. What I am trying to get at is this: what was the necessity for grilling Mr. Rich, and why wasn't a little of the process applied to Mr. Gregory? A. Mr. Lindsay you are assuming something, the record is here and it will show Mr. Gregory was put under cross examination, and I cross examined him, and that Adylotte cross examined him, and that all the attorneys at the bar were invited to cross examine him.

Mr. Sullivan: In the same manner? A. Mr. Adelotte cross examined him fully, and Mr. Gregory testified all about meeting Rich, and whether he testified before Mr. Rich or not, I do not know.

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He did, I believe.

Q. You said in your direct examination you knew something about Rich's character, something about Rich had a suit against the Big Creek Company. Notwithstanding the fact that this man Gregory had told Mr. Rich that he was going to try and get something for himself out of this case, and that Mr. Rich had acted that he did, as he had informed one of the attorneys in the case, that's something of that kind was going on — if that were the fact, instead of being guilty of any crime, or a legitimate subject of any grilling, he ought to have been praised, had he not? If Rich did not send Gregory to Forgeus's office, wouldn't the fact — Gregory's conduct would be reprehensible, wouldn't it?

A. That question is not a fair one. If Mr. Rich had nothing to do with Gregory going there and did not talk to him improperly about the trial, that certainly would not —

Q. You did not know anything of that kind occurred before Mr. Gregory made his statement?

A. Gregory told me his statement before he came into court. I knew all about Gregory's version.

Q. And the truths of the matter is that you adopted and believed in Mr. Gregory's statement and acted under that belief?

A. I did: I believed he was and imbecile.

Q. You do not know whether he is an imbecile?

A. I say he is.

Q. If you believed he was an imbecile, why did you keep him on the jury? A. I explained just exactly why I kept him on the jury; I believe he was a man that would have absolutely no influence with the jury; I wanted a good jury that would render a just verdict; I did not want to take chances on getting somebody that might work, attack the Big Creek Company. Mr. Jeter criticized me for having him on the jury as a matter of fact.

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Q. Why you would not think that he was just exactly in accordance with what you considered a good juror, and imbecile?

A. I would rather have eleven honest man and one imbecile then to have eleven honest men and one enemy.

Q. You would take chances with an imbecile whom you thought was against me? A. I admit that, a man who had no influence with the jury.

Q. I will ask you this question: Didn't Mr. Leonard state after he came back that evening, after seeing Mr. Rich, he gave the name of his informant and the name of the juror, that Mr. Rich had stated to him that this proposition of that juror was made to him by that juror not In the St., but in his office on the 24th of October, in the presence of Frank Seger? A. Well, the record is here. I will say my best recollection of it that Leonard made some statements substantially, and that Frank Seger will come here and swear he did not hear this conversation at all.

Mr. Lindsay: I move that be stricken out.

The Chairman: Strike out that part of the answer.

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TESTIMONY
OF
BENJAMIN K. KNIGHT,

Sworn.

Mr. Sullivan: Q. Mr. Knight, What is your profession?

A. I am in attorney-at-law.

Q. Where do you reside? A. In Santa Cruz.

Q. How long have you resided in Santa Cruz? A. All my life.

Q. How long have you been engaged in the practice of your profession?

A. It will be ten years this summer.

Q. Do you occupy any official position in this County?

A. I am District Attorney of the County.

Q. How long have you been District Attorney? A. Six years.

Q. Were you associated with Mr. Cassin in the suit of Forgeous vs. Dakin? A. Yes sir.

Q. Do you remember the fracas which occurred during the trial of that case?

A. I do, yes sir.

Q. Where were you sitting on that occasion?

A. I was sitting to Mr. Cassin's left; he was sitting about where he is now; I was sitting about in your position; Mr. Forgeous was to my left.

Q. Did you observe Mr. Dakin after he left the witness stand?

A. Yes sir, I did.

Q. Did you notice him say anything?

A. Well he was sitting at the end of the table here; next to me was Mr. Younger, and then came Mr. Cassin and myself. Mr. Cassin was conducting the examination at this time, and I believe at the time that the fracas occurred; but he had conducted the ex-

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amination of that witness, and as Tom Dakin sat at the end of the table there, I could see him talking under his breath — could not distinctly hear what he was saying, although I could understand from the motions of his lips and the expression on his face that he was calling names; and finally I heard Mr. Cassin say “Don't you called me names” or “Don't you talk to me in that way” or words to that effect, and Tom Dakin spoke up and he says “Well I have got the right to look at you haven't I?” Mr. Cassin says “Yes, but you have not got the right to call me names, or no right to talk to me in that way”. As he did so, Mr. Cassin got up out of his chair and I saw him come over in that direction, and I got hold of his coat and hung onto it, and I spoke to him, I says “Never mind him; don't pay any attention to him Charlie”. And undoubtedly he did not hear me, there was no response at all, and finally I let go of his coat, and in the meantime Tom Dakin had got up out of his chair, and started to back up in front of the jury; he had his hands up this way (showing) and Mr. Cassin came running around the table. As Mr. Cassin got to the end of the table here, I saw a man come over the railing I thought it was Mr. Al. Alonzo [sic; Enoch Alzina]. As he got to the rail he came very hurriedly and put his left arm around Mr. Cassin's neck from behind, and started to hit him on the top of the head; after this I jumped up to get into it, and there were two or three blows struck. In the meantime Mr. Alonzo[sic] came running through the gate there and he caught hold of Bill Dakin and pulled him back, and as he did so I saw Mr. Cassin strike Tom Dakin. And in this connection I wish to state that immediately when Bill Dakin took hold of Mr. Cassin's

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neck and hit him on top of the head, Tom Dakin advanced towards Mr. Cassin and struck him from behind. It was at that time that I went to Mr. Cassin's assistance. Just as soon as Mr. Alonzo had started back the Court criticized us for our conduct and reprimanded us, and Mr. Cassin got

up and stated that Tom Dakin had called him a name, and stated it so that the Court understood the name that was called, and the Court find Mr. Dakin — Mr. Tom Dakin — and Mr. Cassin said, as I recollect, as he did not want Mr. Dakin fined on his account, stating that he regretted the occurrence very much indeed, and apologizing to the Court. Then I got up and stated to the Court, that if there was any guilty man that should be find it was Bill Dakin and the Court asked me why; I told him I saw him, over the railing and grabbed hold of Mr. Cassin around the neck, and strike him from behind, and the Court find Bill Dakin.

Q. State what you know about the Buelna case after the conviction of the defendant.

A. Well after the conviction of the defendant, I was served with a substitution of attorneys by Mr. Aydelotte, substituting Mr. Aydelotte in the place of Messers. Houck and McPherson; and sentence was set down on the Court's calendar for Friday — I forget the day that Mr. Aydelotte had served me this substitution of attorneys. A day or two before that, I think it was Thursday, Buelna was to come up for seconds, Mr. Aydelotte said he wanted to go to San Francisco, and he wanted to know if the case could go over; and I told him that I would have no objections. So it was agreed that the case was to come up on Monday. On Friday morning I was going up the street — I presume gentlemen of the Committee if I am permitted to state —

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Q. (interrupting) Proceed until there is and objection made.

A. Very well. I met a gentleman on the street, I can name him if you wish; he asked me the status of the Buelna case; I told him Adyelotte had got the case now, and was going to make a motion for a new trial, if it was denied he was going to appeal the case — that is what he had stated — and this gentleman told me that Buelna's mother had come to him and said that — Mr. Lindsay:

(interrupting) We cannot go into hearsay.

A. After having this conversation with this gentleman I went to Judge Smith's chambers, and told him I had been informed that Buelna did not want a motion for a new trial made, and ask him what to do, and he said he would leave it to me. I immediately told the Sheriff — that is about all the conversation I had with Judge Smith's — I told the Sheriff to bring Buelna up in Court, and when he came up in Court he was sitting over near the railing, I got up and informed the Court what had been said — this was in open Court, and the conversation that took place is in detail in the records.

Mr. Lindsay: Q. In the presence of Buelna?

A. Yes sir.

Mr. Sullivan: Q. What did you say to the Court in the presence of Buelna as District Attorney?

Mr. Lindsay: The record is in.

Mr. Sullivan: This part is not in the record as introduced.

The Chairman: I sank the Committee would like to hear that.

A. I stated in open Court that I had been informed from a source that I knew was reliable, that the defendant wish to have his

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sentence that morning; that his mother had gone to this person and stated to this person that — I might as well mention the name, it is Governor Jeter — that the situation was so great a strain on her she could not stand it, she knew there was no hope for her boy, and that she wanted it over as soon as she could, and that her boy was willing to have sentence passed on him that morning, and really insisted upon it. She further stated that she wished that we would bring him up in Court for sentence to be passed on him that morning. I turned around to Buelna and ask him whether or not that was true, and she also stated that her boy had signed some paper but no one told him, that he

did not know what he had signed at the time; that at the time he signed this paper he was willing to sign most anything in order to get out of this trouble if he could — he did not know what he signed when Aydelotte got substitution of attorney, and he said positively and unequivocally, that he did not want Aydelotte in his case, did not want any motion for a new trial, he was willing to have his sentence than, and said he did not want Aydelotte to have anything to do with his case whatever; so I made this statement to the Corked and I turned around and asked Mr. Buelna the questions categorically, I was very anxious to have the record clear in order it could not be afterwards stated we took an undue advantage of the defendant. I went into it as clearly and as thoroughly as I could. Further then that I wish to state that after Buelna was sentenced — before he was sentenced — I had a conversation with Mrs. Buelna -- she asked me what I thought he would get, I told her on account of the aggravated case that he would undoubtedly get the limit of the law, that I could see no salvation for him that undoubtably the limits of the law would be imposed on him.

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Q. Did you tell her what the limit was?

A. Yes sir, I told her not less than five years and it might be life. At the time I had this conversation with her I was talking to her about two other cases that were to come up, various cases, about the Buelna case, and I wish to state further in this connection several that I had conversations with her after the sentence; after Buelna had been sent to State's Prison and sent away from here, and had been there for several days, in reference to her going to San Quintin, during these conversations she never wants said to me to me or intimated there was any promise or any inducement held out to her son to waive a new trial, that he would get a light sentence. During the last three conversations with her she never once said to me as she testified, and said absolutely nothing about it

Q. Did you notice her get down on her knees in Court as the Court was imposing sentence?

A. I believe she did when the sentence of the court was about to be imposed. I know she got up out of her chair; I don't know whether she was kneeling.

Q. Did she make any protest when the Court imposed the sentence of ninety years on her son?

A. Absolutely none.

Q. Made no statement to the Judge?

A. Not to my knowledge; I was in Court at the time.

Q. Do you know Mr. Adylotte?

A. Yes sir, I know him.

Q. How long have you known him?

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A. I have known him ever since he has been in Santa Cruz.

Q. Seen him frequently?

A. Yes sir, quite frequently.

Q. In Court and on the streets? A. Yes Sir

Q. Do you know his general reputation in this community for truths, honesty, and integrity?

A. I do.

Q. What is that reputation? A. It is bad.

Q. Do you know Mr. Charles M. Cassin? A. Yes sir.

Q. How long have you known him?

A. Oh I have known him ever since 1891 when he first came here. I believe.

Q. You have been in cases with him, Mr. Cassin, have you?

A. A good many cases, yes sir; we have tried a good many jury cases together. Almost all of them were jury cases. Outside of criminal cases of course, I have tried as District Attorney of the County — all the civil cases were tried before juries, with the exception of one, I believe, I have either then with him or he has been with me.

Q. Have you noticed the manner in which he tried these cases before the jury?

A. Yes sir.

Q. How does he handle the cases?

A. He handles them to my satisfaction, I don't here [sic] any complaint made.

Q. And to the satisfaction of his clients? A. Yes sir.

Q. Have you noticed any undue favoritism shown by the Judge to Mr. Cassin in trying cases?

A. No Sir; I wish to state Mr. Sullivan in this connection that Cassin and I have had cases and have been opposed. We have had

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jury cases, and we have had several contests where there was not any jury; of course the Court has ruled against me and against Mr. Cassin, and I have always reserved an exception.

Q. How has the treatment of Mr. Cassin by the Court, how does it compare with the treatment of other attorneys in the trial of cases?

A. I think it is about the same.

Q. Judge Smith treats you just as well as he does Mr. Cassin doesn't he? A. Yes sir.

Q. According to the ethics of the profession what is Mr. Cassin's conduct in the trial of cases?

A. He always conducts himself Internet able, dignified, manner; I never heard any criticism of the way he conducts his cases, or of the way he examines his witnesses.

Q. He has the reputation of being a logical and honorable lawyer?

A. Yes Sir; certainly, no question about it.

Q. Is it possible for him to enter into a compact with the Judge? A. Certainly not.

Mr. Lindsay: No accusation of that kind was made in these charges.

Mr. Cassin: Several newspapers have made it.

CROSS-EXAMINATION.

Mr. Lindsay: Q. Did Mrs. Buelna ever make any statement to you contradictory of the fact that Judge Smith agreed to let her son off lightly if he would not move for a new trial?

A. How do you mean? How do you mean "contradictory"?

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Q. Did she ever say that he did not?

A. The proposition was never mentioned in our conversation.

Q. She simply did not convey that I did to you in that regard.

A. She did not make any reference to it in my conversation with her. In this connection she came to my office, at least on that occasion she was sitting there in my office crying, and felt very badly, and she would tell me things about her boys that perhaps she would not speak to others.

Q. That was before the conviction?

A. That was before and after the conviction; in fact she came to me and asked me if I would ask the Judge to sentence him to San Quentin rather than to Folsom for the reason she said she wanted to live in San Francisco, where she could be near the boy. I told her I would ask the Judge to sentence him to San Quentin.

Q. You cannot locate the time that that took place?

A. Well not more than that it was before sentence was passed, of course.

Q. Now Mr. Knight, you are District Attorney of the County?

A. Yes sir.

Q. How long have you then District Attorney?

A. I think you went out of office in 1898; I succeeded you on the first of 1899.

Q. Before you were elected District Attorney, you had considerable experience in the practice of the law?

A. Yes, I had a very good training under you, three years.

Q. You are a graduate of Michigan University, Law Department?

A. Yes sir.

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Q. And by reason of your experience as District Attorney you have become very familiar with criminals. Now I will ask you this question Mr. Knight. At the time that Louis Buelna received his sentence, who was his attorney?

A. Why Mr. Aydelotte, or not Mr. Aydelotte but Mr. McPherson and Mr. Houck.

Q. By what authority?

A. By the defendant getting up and stating in Court that he repudiate it Mr. Aydelotte as his attorney, and did not want him to have anything to do with his case. I think the man had that right.

Q. I did not ask that at all.

A. You ask me by what authority and I was just finishing my answer. I think the defendant in a criminal case has the right to get up in the open Court and stayed before the Court that he doesn't want an attorney, or revoke a substitution of attorney.

Q. What is the object of having an attorney for a man accused of crime if the man is just as competent to take charge of his own case?

A. How is that?

Q. What is the object, what is the reason for a man accused of crime, for a criminal, to be represented by an attorney, if he is just as confident to take charge of his own case?

A. I don't think he was just as competent as Mr. Aydelotte, but Mr. McPherson and Mr. Cassin were just as competent in my opinion.

Q. At that time Mr. Aydelotte was his attorney of record wasn't he? A. Yes Sir.

Q. The defendant have an attorney — the Statute gives the Judge

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authority to appoint an attorney for a man accused of a crime when he has none, isn't that true?

A. Yes Sir, the Court did it in this instance.

Q. The Court in this instance appointed these gentlemen to represent this defendant at the sentencing, practiced attorneys, did he? A. Yes.

Q. I will ask you the question, under the circumstances of this case, a man convicted of a palpable crime, when his attorney of record had been told both by the District Attorney and the Judge that sentence would be deferred from Friday to Monday, what harm could there have been to have allowed the sentence to go over until Monday?

A. The only harm that I knew of in this instance, would be that Mrs. Buelna have testified that on the time preceding, in the Wyatt matter, she had \$100.00 to pay those attorneys, and if it went over until Monday perhaps Mr. Aydelotte might have got the \$100.00 himself.

Mr. Beardslee: Q. I would ask the Council of both sides if they would have any objection to the Committee asking Mr. Knight, as he is District Attorney, and was District Attorney at that time, what the nature of the crime was.

Mr. Lindsay: I am perfectly satisfied that the District Attorney they state it at any time.

Mr. Beardslee: Outside, I mean.

Mr. Lindsay: Yes.

Mr. Beardslee: there has been so much talk about it. Mr. Sullivan: I am perfectly satisfied.

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Mr. Sullivan: You have no objections.

Mr. Lindsay: No I have no objection to the Committee making any investigation they please about this matter, none whatever.

Mr. Lindsay: Q. I am going to ask you this one question Mr. Knight. Doesn't the District Attorney in a case where he is prosecuting, doesn't he want to convict? And want to see there is no error in the record?

A. Well that is what you always contended when you were District Attorney.

Q. You have always contended that since then?

A. Yes sir, I had my training under you, I could not help it.

Mr. Sullivan Were you his deputy? A. Yes sir.

Mr. Lindsay: Oh yes, Mr. Knight was in my office and I am very proud of it.

The Witness: I wish to return the compliment, I am very proud too.

Mr. Lindsay: Q. You have testified Mr. Aydelotte's reputation is bad? A. Yes sir.

Q. That is rather a serious accusation.

A. I know it is and I thought of it considerable.

Q. I am going to question you about that. A. Yes sir.

Q. Mr. Aydelotte is an attorney at the Bar of this Court is he not? A. Yes sir.

Q. He is a practitioner entitled to practice in all the Courts of California? A. I believe he is.

Q. A man of family? A. Yes sir, I believe he is.

Q. He has a wife and two children? A. Yes sir.

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Q. He is a member of the Episcopal Church of this city?

A. I don't know what church he belongs to.

Q. And he is a choir leader is he not?

A. I don't know anything about that, I don't attend church very often. Is

Q. You say his reputation for truth is bad.

Mr. Sullivan: For truth honesty and integrity.

Mr. Lindsay: Q. That means you have talked to people.

A. Yes Sir, lots of them.

Q. Who are they?

A. Well many of them are the credit towards in the case of Frank K. Roberts vs. Julius Herters [sic, Haesters] — Mr. Roberts, and Mr. Chittenden, and Mr. Walty. I have heard Mr. Forgeous; Mr. Lilly; Mr. Osborn; Judge Skirm; that is all I can think of just now.

Q. With the exception of the last two you have named, they are creditors of one of the Hesters [sic; Haesters]? A. Yes sir.

Q. And Mr. Aydelotte As an attorney was involved in that litigation was he not?

A. Yes sir he was on all sides of it.

Q. He represented Mr. F. W. Billing at one time?

A. Yes sir; he prepared for Mr. Billing a certain bill of sale.

Q. Prepared for Mr. Billing a certain bill of sale? A. Yes sir.

Q. After his services for Billing were rendered he represented Hesters?

A. No, he represented Roberts; he got a \$500.00 note from Hester for services that he claimed to have been rendered, and then went to these creditors and got them to join in a suit to replevin this property that had conveyed by this bill of sale, that he had drawn up as attorney for Mr. Billing.

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Mr. Sullivan: he prepared a bill of sale from Hester to Billing?

(Objected to and objection sustained.)

Mr. Sullivan: Q. When you say Mr. Aydelotte acted on all sides of the case what do you mean by that?

(Objected to and objection sustained.)

Mr. Burke: Q. Did you hear these people you have just mentioned to discuss the reputation of Mr. Aydelotte for truth, honest is and integrity?

A. They discussed it and talked about it.

Mr. Atkinson: Q. Was there any other matter accepting the one referred to that you heard the reputation of Mr. Aydelotte discussed over?

A. Yes there was.

Q. By home and what was it?

A. It was in reference to the Anderson litigation, the Anderson divorce case in reference to property rights.

Q. I don't want the details.

A. It was the Anderson litigation, Anderson vs. Anderson.

Mr. Aydelotte: Under the circumstances, I trust that the Committee will give me an opportunity to be heard.

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TESTIMONY

OF

WM. T. JETER,

Sworn.

Mr. Sullivan: Q. Governor, where do you reside?

A. In Santa Cruz City.

Q. How long have you resided there?

A. Well nearly the force of a century.

Q. What is your profession? A. Lawyer.

Q. How long have you been engaged in the practice of your profession? A. About twenty-four years.

Q. Ever occupy any public positions? A. Yes sir.

Q. What positions?

A. Well I have been a member of the Town Council here, District Attorney of the County, and was for a time Lieutenant Governor of the State.

Q. How long were you Lieutenant Governor of the State?

A. From 1894 I think or 1895, October 1895 for the balance of that year and three succeeding years up to 1899 or 1900.

- Q. You are President of one of the Banks of Santa Cruz are you?**
A. Yes, two banks, the Bank of Santa Cruz County and the Santa Cruz Bank of Savings and Loans.
Q. Separate Banks? A. Yes sir.
Q. Do you know Judge Lucas F. Smith? A. Yes sir.
Q. Have you observed his conduct during his career as Judge of the Superior Court? A. Yes sir.
Q. Have been before him on many occasions? A. Many occasions.
Q. Have you noticed the manner in which he conducts the affairs of his Court?
A. Why I think fairly, orderly.

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- Q. As and upright, honest, and conscientious Judge?**
A. I should say so.
Q. Have you noticed the manner in which he treats Mr. Cassin when pleading before him?
A. I have.
Q. Has he treated Mr. Cassin in a manner different from that which he treated other counsel?
A. No, not in my judgment.
Q. Does he treat you or the other attorneys at this Bar in the same manner he treats Mr. Cassin?
A. I have never seen any treatment on the part of the Judge towards any of the attorneys that was not proper — no sort of different treatment in presenting cases — in presenting cases to the Court.
Q. And in his rulings and orders and decisions, have you noticed any partiality shown to Mr. Cassin? A. Nun whatever.
Q. That was not shown to others?
A. On the contrary there was one case I have particularly in mind, in which I was interested and Mr. Cassin there, in the litigation between the Santa Cruz Capitola and Watsonville Railway, and the Santa Cruz Electric Railway, in which Mr. Cassin was employed to represent interests on the side I was interested in the Santa Cruz Electric Railway; I thought in that case Mr. Cassin was in the right and got the worst of it; he made application for an injunction.
Q. You have seen Mr. Younger try cases before him have you?
A. I have.
Q. Mr. C. B. Younger? A. I have been associated with him a good many times.

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- two. Do you know in 1900 there was some trouble between him and Mr. Younger on the grounds of some contempt on the part of Mr. Younger? A. Which Mr. Younger?**
Q. C. B. Younger Sr. A. Yes sir I do.
Q. The contempt proceedings growing out of the case of Younger vs. Moore? A. Yes sir.
Q. Since the trouble between Mr. Younger and Judge Smith, how has Judge Smith treated Mr. Younger in the management and disposition of the business of the Court?
A. Just the same as he would any attorney at the Bar.
Q. Has he treated him with the same fair consideration he treated Mr. Cassin? A. Yes sir.
Q. Have you ever seen any indications of oppression and tyranny on the part of the Judge against any persons appearing before him? A. No, none whatever.
Q. Were you present in Court during the trial of the Dakin case?
A. Yes, I was a witness.
Q. You were a witness; you were not one of the counsel of the case were you? A. I was not.
Q. You were subpoenaed as a witness on behalf of whom?
A. I think for the plaintiff.
Q. Did you notice the fracas that occurred during the trial?

A. Yes sir.

Q. Describe it as briefly as you can Governor.

A. Well my position in the matter was a witness simply as to the custody of certain papers, contracts, that had been left in my bank with and endorsement; and I think that I rather regarded that I was the custodian of them personally, rather than as an official of the Bank, on account of certain things connected with

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them. I know it was brought out in the cross-examination at the time at any rate, that they were kept in the Bank and I was called as a witness to produce them here in court. After I had been examined by the plaintiff in regard to these papers, and cross examined — I think the cross examination was nearly over, not quite complete, could not have been complete though because I was still on the stand, when Mr. Cassin, he was sitting almost where he is now, I should say a little further along, and Mr. Younger about where Mr. Lindsay is, and Mr. Dakin further along — that table was over that way, and there was a little more space in their — the witness stand here. The first that attracted my attention was Mr. Cassin speaking to someone and saying “I don't want you to speak to me — talk to me.”

Q. You heard Mr. Cassin say that did you?

A. I did, yes sir. That is what attracted my attention to him. I might say that he was very much irritated; I have known Mr. Cassin quite a while, I have known him very well. Dakin replied “Well I can look at you can't I in a casual way” and Mr. Cassin repeated what he had stated before “I don't want you to speak to me, I don't want you to talk to me.” And the next thing Mr. Cassin commenced to get out of his chair, and Mr. Dakin started to rise — all this happened very quickly from the time it commenced.

Q. Were you sitting where you are now?

A. No sir, in the witness stand. I was sitting there right in that chair, right facing the jurors, and someone came in from the outside – that was this Bill Dakin — he sat there in the Court Room outside, he came over the railing and got in so quickly, really I did not know, I did not observe him until I was in the mix-up. Mr. Cassin was in the act of striking him

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or in the attitude of striking, and Dakin had backed up in here, this way, east end of the bar, and Cassin have not hit him. The next thing I noticed was Cassin, some person came in from outside and took part, and Cassin's back was turned almost towards him towards Bill Dakin, and then Bill Dakin struck him from behind, at any rate Mr. Cassin did not strike at Tom Dakin until after he had been struck, and the shorthand reporter who occupies this place, he was down there assisting and trying to get these people separated, and Mr. Knight, he was associated with Mr. Cassin in the trial of the case, was also in the group, and the deputy sheriff came in and order was restored. Immediately after order was restored, the parties, particularly Mr. Cassin, turn to the Court, and the Court made some appropriate suggestions, reprimanding this sort of conduct. I don't know what he said. And Mr. Cassin made a full and complete apology, such, as I think, what the other witnesses have stated. He said it was more than ordinary; he apologized to the Court fully and completely in keeping with the ethics of the profession.

Q. Do you believe from your observation of what took place before you, that Mr. Cassin was justified in making the attack on Mr. Thomas Dakin?

Mr. Lindsay: I object as calling for the opening and of the witness.

(Objection sustained.)

The Witness: A. Mr. Cassin's apology was made to the Court, and then as Mr. Knight testified here, the Court imposed a fine, and he imposed a fine on Tom They can, and then Mr. Knight, as he testified here mentioned that Bill Dakin was more to blame than the other party, and the Court fined him. I don't now recollect whether the fines were remitted at that time or not. But I do

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know that Mr. Cassin, either at the time he was on his feet, or during the time he made his apology to the Court, explained to the Court immediately afterwards to not fine these parties, and to let the matter pass so far as they were concerned.

The Chairman: do you know if all these facts were before the Court before administering these fines?

A. I saw Mr. Cassin at once that these parties were separated, I don't hardly think that he took his seat as I recollect the matter, he was in the act of taking his seat, he did not sit down and rest but addressed the Court, and apologized as soon as he could recover from his excitement.

Q. Did he explain to the Judge provocation?

A. He explained to the Court the provocation, and apologized to the Court for his conduct.

Q. Before the fine was imposed?

A. Yes sir; he stated he felt very deeply the mortification of having permitted himself, even under great provocation to have such a scene in Court.

Q. You know Mrs. Buelna, mother of the defendant Buelna in the case of the People vs. Buelna?

A. Yes sir, I have known her a great many years.

Q. Did she call upon you after her son was convicted and before he was sentenced?

A. Yes sir. She called on me —; it might be interesting to the Committee to know that Mrs. Buelna had been unfortunate in having trouble with other children getting into trouble during the six years I was prosecuting attorney here, I had occasion to see her a great deal, and converse with her, and she had

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been in the habit of coming to me at times when she was in trouble, and we would talk in a friendly way; I never acted as her attorney in any way, but I think it was the morning of the trial of the case, I remember she mentioned those attorneys from Salinas who had conducted the preliminary examination having failed to appear and had not come, and she came in my office in the Bank, and had a pocket book in which she said there was \$50.00, I did not see the money; I told her I could not take her case and did not know whether she had the money, she said she had, she undoubtedly did. She told me what she would do to get more money if I would take the boy's case, I told her I could not possibly do it under any circumstances, and it was not worth her while to talk to me about that; she went on and asked me if I would do what ever I could, I told her I would be glad to do what ever I could, at any time, in the way of assistance. She came to me a time or two during the progress of the trial, and asked me something — I don't recollect all these things, and after the verdict she came and told me that Louis had signed a paper, she did not know what it was, and I inferred from what she said it was this substitution that has been mentioned here of attorneys, she mentioned Mr. Aydelotte's name in conjunction with it. She said Louis did not know what he was signing when he signed that paper, he did not want anything done in his case, and then she asked me if I would please see the Court and ask the Court and District Attorney, I think she asked me to see the Court; I told her the proper one to see would be the District Attorney. Well she told me that Louis was ready to take his sentence, that he did not want Mr. Aydelotte, did not want to do anything further in the case, and at the same time asked me if I would see the Court, and ask him if he would sentence him to San Quentin prison giving

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as a reason — she had a little girl with her, four or five years old, I don't know but I think there were some other girls; I know that the impression was that her family could go with her to San Francisco to live, and be near the prison if he was sent to San Quentin, and where the girls could have employment, and where she could live nearby and visit him, and that would not be the case if he went to Folsom. And I came to Court and asked him, I stated what she said to me, just in the words as she explained as near as I could repeated. And I think that the District Attorney had already made that request, and I think the Court said he intended to sentence him to San Quentin prison. The lady told me at that time, I think on a previous occasion she asked me if I would do what I could to get the Court to impose a light sentence; I replied from what I had heard about the matter, although I did not know anything about the case only what I noticed in the newspapers, it was one of great aggravation, and I had very little hope that anything could be done by appealing to the Court. She certainly did not expect a light sentence. I think I stated to the Court the same time that I told him that she wanted the prisoner to be sent to San Quentin, that she asked me to ask the Court to impose a light sentence, but I don't think— I didn't say anything more about that then to mention the fact that she asked me to do it.

Q. How long before sentence was imposed did she ask you to ask the Court to impose a light sentence?

A. She was at my office — came to see me nearly every day; it was during banking hours usually; I think the morning of the sentence I promised I would go over with her to the Court Room which I did; I walked with her up to the Court-Room here at

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ten o'clock in the morning of the sentence, and sat alongside of her. She occupied a seat about where those gentlemen are in the rear their, that is next to the railing, and I sat down next to her, and sat there and heard what took place in the Court, and the defendant received his sentence, and the mother — I heard some questions asked of the defendant — she muttered some kind of a prayer — when the defendant responded to the questions of the Court he standing up at once, and she immediately got down with her back towards the desk here and her face towards the chair, and she was occupying an attitude of prayer, and remained that way until the sentence was pronounced.

Q. Did she at any time inform you that Judge Smith had promised her he would impose a light sentence on her boy?

A. No mention of any such a saying whatever.

Q. Have you ever heard she ever claimed that? A. No sir.

Q. Until this affidavit was presented here?

A. No sir, I never did.

Q. You were present in Court were you during the trial of the Ramirez case?

A. I was an attorney in that case.

Q. On which side of the case?

A. I was associated for the Corporation with Mr. Cassin.

Q. You remember what took place when Mr. Leonard opened his argument? A. Yes sir.

Q. What did he say in reference to the jurors?

Mr. Lindsay: This is simply repeating testimony that has been repeated; anything that the The governor would say would be cumulative.

The Chairman: I think it is on that point.

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Mr. Sullivan: Q. You heard Mr. Cassin's version of what happened did you not? A. Yes sir.

Q. Did Mr. Cassin testify about the affair just as it happened?

A. Substantially the same as I would testify; my recollection is that Mr. Leonard's language was rather in a dramatic way in his opening address; when he 1st started to address the jury he mentioned it pained him and grieved him to see that there was a Judas in the box, some other words of like import, and then went on with his argument, but Mr. Cassin he said "I demand you to name the juror".

Q. Did Mr. Leonard strive to prevent an investigation into the facts at that time?

A. At that time he went on and commenced his argument.

Q. I mean afterwards? A. Yes.

Q. You say your testimony would be substantially the same as given by Mr. Cassin — it will save time —

A. (interrupting) I don't wish to take any more time than is necessary.

Q. If you like you can have a very few moments.

A. I think it was the day before this trial commenced, I went to Mr. Cassin's office to go over the jury list with him, we looked over the names, taking such as we thought were what we would retain, and I objected to taking Gregory, I have known him for a good many years, because from the nature of the man, I got the impression in some way or other that he was extremely biased. And I came up in Court at two o'clock and the jury was not yet complete, I think they sent out for a special venire, and among those he had passed and accepted was Gregory. I at once ask him why he had kept him and his remark to me was in substance he says "I think you will agree with me he is

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such an old fool, it would be better to keep him on the jury than to take the chances of somebody that might be objectionable after our challenges were all exhausted." On the day of the argument I proceeded with Mr. Cassin and Mr. Lilly and saw a gentleman going into the Court Room; I saw a young Rich and Gregory standing in the corridor of the Court House below, just the other side of the main entrance; Rich was standing with his back towards the doors, just inside of them, with his back towards Gregory and his face towards me, and was gesticulating with his index finger, was talking very earnestly to this juror; I did not hear what he said. It was almost time for Court to convene; I thought it was very peculiar he would be talking to a juror, and I noticed Rich around the Court Room all the days of the trial; and I came on upstairs and Mr. Cassin came upstairs, and Cassin stated what took place there; and Mr. Forgeous also told me to one said [*sic*] and stated to me what was said. I know I was very much surprised when Mr. Leonard made that statement in his opening argument. I know in my closing argument I made no reference to this matter whatever.

Q. You are familiar with the manner in which Mr. Cassin practices law of course, are you not?

A. Yes sir, I have been associated and opposed to him too.

Q. Does he recognize fully the ethics of the profession?

A. I never have known, I don't know of any attorney with as high a standard in the ethics of the practice of law then Mr. Cassin. In all I have had to do with him in consultation before the Court, or anything else, he is scrupulous in his manner and tries to conduct himself in keeping with the ethics of the profession.

Q. Is he scrupulously honest?

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A. Scrupulously honest, courteous, and all that kind of thing, except under such circumstances as perhaps makes any person aggravated; there are some attorneys that seem to provoke opposition and criticism.

CROSS-EXAMINATION.

Mr. Lindsay: Q. Governor your duty as President of the Santa Cruz Bank of Santa Cruz County, and the Santa Cruz Bank of Savings and Loans, together with the legal services that you render these corporations and other corporations in which you are interested, occupy most of your time do they not?

A. Yes, occupy my time pretty fully.

Q. So of late years, so far as the general practice of the law is concerned you have not participated in many contested cases in the Courts?

A. Sense 1898 my business that I have to a degree, is attending to the legal business connected with my banks and other corporations, and that has mostly occupied my time; it was in connection with that fact that I became seriously sick at that time, for a long time, and had a very slow recovery, and that compelled me to relinquish the general practice of the law, but I have been in Court a great deal of my time, and I have had some cases that I would take, but usually employed or had some person connected with me in contest at cases during these years — the last five years.

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**TESTIMONY
OF**

C. E. Lilly, Sworn.

Mr. Sullivan: Q. Mr. Lilly what is your occupation?

A. I am connected with the Big Creek Power Company of Santa Cruz. Myself being in the capacity of manager and secretary.

Q. Where do you reside?

A. I've reside in Santa Cruz.

Q. How long have you resided in Santa Cruz?

A. Something over twenty years.

Q. Do you know William Aydelotte? A. I do.

Q. How long have you known him? A. Oh I should judge I met Mr. Aydelotte soon that after he came to town, I don't know just how long it is.

Q. Do you know his reputation for truth, honesty, and integrity in this community? A. Yes sir.

Q. What is his reputation? A. Bad.

Q. Would you believe him under oath in a case in which he was interested?

Mr. Lindsay: It is not necessary to go that far.

Mr. Sullivan: That is all.

CROSS-EXAMINATION.

Mr. Lindsay: Q. Mr. Lilly you are Manager of the Big Creek Power Com. are you not? A. Yes sir.

Q. Have been for a number of years?

A. Well for a couple of years.

Q. Before that time you held a responsible position with that Corporation? A. Yes sir.

Q. Mr. Aydelotte has been an attorney for people who have

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brought cases against the Big Creek Power Company has he not?

A. Yes sir.

Q. In some of these cases a good deal of feeling was engendered was that not so?

A. I don't know as there has been any particular feeling.

Q. Well some feelings at any rate. A. Yes sir.

Q. You remember this action, for instance of F. W. Billing vs. The Big Creek Power Company?

A. Yes.

Q. Mr. Billing the plaintiff was represented by Mr. Aydelotte wasn't he? A. Yes sir.

Q. And in other matters Mr. Aydelotte has been retained against the Corporation? A. Well there are some litigations pending.

Q. There is some litigation pending now? A. Yes.

Q. There are two actions instituted to recover damages against the Big Creek Power Co. and other defendants?

A. I believe there are, yes.

Q. You are one of those defendants? A. I think so.

Q. That is in both of these cases? A. Yes sir.

Mr. Sullivan: Q. Whom did you ever hear discuss the question of the reputation of Mr. Aydelotte?

Mr. Lindsay: Well that is all.

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Mr. Sullivan: Mr. Eagan.

The Chairman: Is this another character witness? Mr. Sullivan: Yes.

The Chairman: I don't believe the Committee wants to go into this matter.

Mr. Lindsay: I submit the matter to the Committee.

The Chairman: (After consultation with the other members of the Committee.) Mr. Sullivan, the Committee has decided they do not care for any more character witnesses either for the prosecution or for the defense.

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TESTIMONY
OF
H. V. TRAFTON, Sworn.

Mr. Sullivan: Q. Mr. Trafton what is your business?

A. I am the Sheriff of the County.

Q. The County of Santa Cruz?

A. Of the County of Santa Cruz.

Q. How long have you been Sheriff? A. Two years and a little over.

Q. Do you know Mrs. Bulena? A. Yes.

Q. Mother of Louis Buelna? A. Yes.

Q. Do you remember the day Louis Buelna was sentenced?

A. I do.

Q. Immediately after the sentence where was he taken?

A. I took him down from the Court Room here and she went down with me, I took him into my private office. Q. How long did they've remain in your private office?

A. From an hour to an hour and a half.

Q. Did his mother make any statement to the effect that the Judge promised to impose a light sentence upon her son?

A. She did not say anything at all about any promise, about the Judge imposing a light sentence on her boy.

Q. Did not express any disappointment? A. No sir.

Q. Immediately upon the imposition of the sentence you took him down with you? A. I did.

Q. The mother accompanied you? A. She did.

Q. You say that they remained in your office about an hour and a half?

A. About an hour and a half; I thought I would give them a good opportunity to talk, because I was going to take him away the next morning, and I knew down there all the chance she would get to talk would be through a screen between them.

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Q. He made no statement relative to the heavy sentence imposed upon him?

A. He thought he got a pretty good sentence.

Q. Did she express any disappointment?

A. No, nothing said about it; they were both crying. Q. Did the defendant say it was understood that a light sentence would be imposed upon him? A. No.

Q. Did she say anything about any arrangement with Judge Smith that was made with the Judge to impose a light sentence upon him?

A. She came and asked me what I thought there was in the boy's chances of getting out on parole, or getting him pardoned; I told her I didn't think so.

CROSS-EXAMINATION.

Mr. Lindsay: Q. Who was present with them in your private office?

A. Nobody but these two and me.

Q. Nobody else? A. No.

Q. Did they converse together? A. I did.

Q. You understand the Spanish language?

A. I understand a little. It was a rule, when I first took him in the jail that their conversation had to be in English and in my presence.

Q. Did they talk in English? A. Yes sir.

Q. You were present at the time? A. I was.

Q. So anything the mother might have wanted to state to her son in private it could not have been done. A. It could not.

Q. What you mean by your testimony is that they did not confide to you any statement to the effect that Judge Smith had made a promise to Mrs. Buelna, which was not kept.

A. No sir.

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Mr. Sullivan: We have quite a number of witnesses here, character witnesses — Judge Skirm, he is not here; he has been in daily attendance and Judge Story, but I think we have sufficient evidence with what is offered, and we are satisfied to close the case for the defense.

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DEFENSE CLOSED.

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The Chairman: Have you closed the prosecution?

Mr. Lindsay: I wish to say one matter, I really believe it is my duty, in view of the attack that has been made upon Mr. Aydelotte -- we have subpoenaed no witnesses in that regard, and as this matter is an investigation before a legislative Committee, and not a trial before a Court or jury or any tribunal of that nature — I am willing to leave with you and to hear your consideration, in view of the hour and the time, the evidence that was given against him, and without producing any evidence in rebuttal.

Mr. Sullivan: If the Committee would permit us to continue the introduction of testimony impeaching the character of Mr. Aydelotte, we certainly would not have any objection to the continuing of those appearing for the purpose of enabling Mr. Aydelotte to defend his character, believing that would be only justice, but we are denied the right of introducing further testimony as to his character, and of course we will insist upon both sides closing.

Mr. Lindsay: Very well. I requested counsel, and I now ask the reporter whether that transcript has been given him of the Rich investigation. With my personal thanks to the Chairman and members of the Committee for the extreme courtesy and impartiality and the fair manner in which you have treated me, I will take my seat.

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The Chairman: Gentlemen, I think that on behalf of the Committee I can say that I feel we have imposed upon you in keeping you up so late. We trust that you don't believe we have pressed this unhearing [sic] with undue haste, or tried to deny you a fair prosecution or a fair defense; but you understand our situation; the charges were filed up so late in the session that we necessarily have to have some time to consider them all, and we feel that it is distinctly due to the parties concerned here, and especially the defendant and the prosecution that we make some kind of a report during the legislature. This is a time in the Legislature when the members should all be there. I thank you all for the courtesy and pleasant manner in which you have conducted these proceedings, and we also wish to express to the people of Santa Cruz our appreciation of their kind treatment toward us while here, and we trust that we may meet again under more favorable circumstances. With that, gentlemen, the hearing is closed.

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[Transcriber's Note: The pagination of the original typescript bears number 181 at the top left corner of this page, and hand-written number 107 at the bottom left corner of this page.]

[Transcriber's Note: The Chairman's statement on page 232 draws attention to the fact that Judge Smith was never tried by the Senate. The recommendations of the Assembly did not reach the Senate before the Legislative Session ended.]

[Transcriber's Note: Page 232 is the last page of Volume 3.]

The Attempted Impeachment of Judge Lucas Flattery Smith
by The Assembly of The State of California.
Feb. 3, 1905 - March 19, 1905

Compiled by

Stanley D. Stevens
2021

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Section 7

Index to Biographies of Persons Mentioned in the Impeachment Hearing

Biographical Sketches of People Mentioned in the Impeachment Hearing Transcripts

The Attempted Impeachment of Judge Lucas Flattery Smith

by The Assembly of The State of California.

Feb. 3, 1905 - March 19, 1905

**In the Matter of the Investigation of Charges Against
Honorable Lucas Flattery Smith
Judge of the Superior Court of the County of Santa Cruz,
State of California, praying for his Impeachment.**

**Before a Special Committee of Investigation
consisting of Assemblymen H. S. G. McCartney (Chairman),
Thomas E. Atkinson, R. L. Beardslee,
Aubrey M. Lumley and John J. Burke.**

In Three Volumes:

Volume I — Testimony on behalf of the Memorialists.

Volume II — Testimony on behalf of the Defendant.

Volume III — Testimony on behalf of Defense.

Ellsworth F. Duden, Reporter.

**The volumes from which this transcription was made are from
the Donald Younger Collection, MS59,
Special Collections, University Library, University of California, Santa Cruz.
They contain the Testimony of F. A. Hihn,
Charles B. Younger, Sr. and Charles B. Younger, Jr.,
and many other prominent citizens of Santa Cruz County,
including several Members of the Santa Cruz County Bar.
Each volume bears a notation that they were presented to Charles B. Younger Jr.,
with the Compliments of Assemblyman “Hon. R. L. Beardslee.”**

**Biographical Sketches of People Mentioned in the Impeachment Hearing Transcripts
are Provided in a Table of Contents — Part 1 & Part 2**

Transcribed, Annotated, Corrected, and Indexed by

Stanley D. Stevens

**Librarian Emeritus
University of California at Santa Cruz**

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The Attempted Impeachment of Judge Lucas Flattery Smith
by The Assembly of The State of California.
Feb. 3, 1905 - March 19, 1905

Compiled by

Stanley D. Stevens
2021

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Section 8

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(I:141; II:26-27, 46) [If the reference doesn't reveal the information you seek, use your Find command.]

Paragraph breaks in the text are shown thus: ¶

A

Alzina, Enoch (Santa Cruz County Dep. (Frank) Alzina, 1st Sheriff) Enoch was father was born in Spain. Settling in Blackburn. Francisco was elected 1850. He built a house on the Mission house in Santa Cruz. It was here that and died there in 1943. Enoch served Board of Supervisors adopted a *Santa Cruz Sentinel* December 31,



Sheriff; son of Carlotta Gonzalez & Francisco L. born in Santa Cruz on November 19, 1867. His Santa Cruz and became a clerk for Alcalde William Sheriff of Santa Cruz County upon its founding in Plaza at 109 Sylvar Street, today's oldest frame Enoch lived with his mother after his father's death, the County Court House for over fifty years, and the Resolution in his honor upon his death. Sources: 1943, p. 1, col. 3.

Arnold, John H. *see Leonard, John H. p. 43*

Atkinson, Thomas Emory (Assemblyman) Republican, represented San Francisco in the 36th Session (1905) of the California Legislature. He was born in July 1, 1853, in Bordentown, New Jersey to Samuel and Margaret A (Webster) Atkinson from Maryland. His was a Certified Public Accountant. In the 1905 organization of the Legislature, Atkinson was a candidate backed by San Francisco political boss Abe Ruef for Speaker *pro tem* of the Assembly, but he lost to F. A. Cromwell of Petaluma. According to the St. Louis Post-Dispatch (Jan. 30, 1940 22:1) He was an "instructor in legal procedure at the University of Missouri Law School. He was appointed technical director of the committee of 54 lawyers, legislators and judges, appointed by the State Supreme Court to recommend improvements in the Missouri code of civil procedure."

Aydelotte, William Mack (attorney) Residence, 15 Ocean View Avenue; office, 6 and 7 Leask Building, Santa Cruz. Born in Yellow Springs, Ohio, September A. (Kearns) Aydelotte. Married November 10, California in September, 1901. Received his early Terre Haute, Indiana, and later attended the Department), receiving the degree of B. L. by the Supreme Court of Indiana in 1896, and by 1902. Member of the firm of McBride, Denny & from 1897 to September, 1901. Practicing alone Santa Cruz Emporium Company, doing business at Brookdale, Santa Cruz County, California. Member of the Marion and University clubs of Indianapolis, Indiana. Member of Masonic fraternity, York Rite and Shrine. Republican. (*History of the Bench and Bar of California*. Edited by J. C. Bates. San Francisco: Bench and Bar Publishing Company, Publishers, 1912. p. 218 (with portrait) ¶ *see also Hysong/Hysung, Jacob P.*



14, 1873. Son of William and Minnie 1898, to Winifred Hysung. Came to education in the public schools of University of Indianapolis (Law therefrom in 1896. Admitted to the bar the Supreme Court of California in Aydelotte, in Indianapolis, Indiana, in Santa Cruz to date. President of

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Bahrs, George Henry (Attorney-Judge of San Francisco) Bahrs was born in San Francisco on August 31, 1863, and died there on December 12, 1915. He served for six years as Judge of the Superior Court of San Francisco, beginning Jan. 1895. His obituary appeared in the San Francisco Chronicle, December 15, 1915, 3:2-3: "Attorney George H Bahrs Is Dead ¶ Served a Term as Superior Judge ¶ Funeral of Citizen Well Known in Fraternal and Political Life Will Be Held Tuesday. ¶ GEORGE H. BAHRS, a well-known attorney and a former Superior Judge of San Francisco, died at his home, 914 Page street, early yesterday morning of a complication of diseases after an illness of several weeks. Judge Bahrs had been for years conspicuous in the political and public life of San Francisco. He served as Superior Judge from 1894 to 1900 and was twice a member of the Civil Service Commission. He was first appointed a commissioner by former Mayor Schmitz and retained by Mayor Taylor. When Mayor McCarthy went into office he was reappointed to the Commission. Since his retirement about six years ago he had been practicing law. He devoted most of his time to civil cases. ¶ Judge Bahrs was almost 53 years old. He was of German descent and a native of San Francisco. He was a member of several German societies and was active in promoting their development. Among the fraternities and societies Judge Bahrs belonged to were Hermann Lodge, No. 127, F. and A. M.; Pacific Parlor, Native Sons; Aerie No. 5, Eagles; Schuetzen Verein, Verein 'Eintracht, Norddeutscher Verein, Harmonie Society, Hesperian Grove, No. 15, United Ancient Order of Druids and El Dorado Council, No. 581, National Union. ¶ Surviving Judge Bahrs are Mrs. Anna Bahrs, his widow; George O. and Irma Bahrs, a son and daughter, and Max J. Kuhl, William F. Kuhl and Mrs. H. A. Thorn Wohrden, stepchildren. ¶ The funeral services will be held at 2 o'clock Tuesday."

Baldwin, Frederick Douglas (Santa Cruz banker) He was born on April 18, 1847, in Plymouth County, Mass. He came to in 1867. On July 22, 1871, he registered to vote in Santa Cruz County, he was a 24-year-old "School Teacher" and resided in Santa Cruz. Soon thereafter, his registration was cancelled, on October 8, 1872, when he removed to Ophir, Placer County, California. Edward Martin's History of Santa Cruz County, 1911, explains why — he was a school teacher, no doubt following the job availability. When he returned to Santa Cruz County, he registered to vote again. The 1882 Great Register of Voters gives his age as thirty-three on the date of this registration, June 19, 1880. His residence then was Watsonville, and his occupation was listed as Farmer. He was later elected a Member of the Board of Supervisors for eight years. His public service is outlined by Martin: In the year 1890, as a candidate on the Republican ticket, he was elected supervisor of Santa Cruz county, a position which he filled with efficiency for four years, and in 1898 he was again the successful candidate for this position, and during both terms of four years each he gave his time and energy conscientiously to forwarding the best interests of the county. In 1904 he was chosen chairman of the Republican central committee of Santa Cruz county. He was a member of the board of freeholders who framed the present city charter, as he was also of the former board, which drafted the preceding charter. Wise, conservative judgment has made Mr. Baldwin's opinion in financial matters command the consideration of all with whom he is associated in the banks with which his name is identified. In 1900 he was made a director of the City Bank of Santa Cruz and also of the City Savings Bank, and in 1902 he was elected president of both institutions, the City Bank having since then been changed from a state bank to the First National Bank of Santa Cruz.

Beardslee, Robert L. (Sr.) (Assemblyman, Republican) Robert Beardslee was born on July 12, 1868, in San Joaquin County, California. He attended public schools and graduated from San Joaquin Valley College. He

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was admitted to practice law. On November 8, 1904, he was elected to represent the 23rd Assembly District, which encompassed the City of Stockton (now renumbered the 17th Assembly District). He died on March 15, 1926, in Stockton. “Robert Lewis Beardslee, Sr. (1868 – 1926) was a Republican city attorney of Stockton, California and state legislator who served as the 36th Speaker of the California State Assembly in the early 1900s. Robert Beardslee was born in 1868 in San Joaquin County, a rural California county east of the San Francisco Bay Area. He attended public schools and graduated from San Joaquin Valley College. He was admitted to practice law and then served as the City Attorney of Stockton, California in 1905 and 1906. On November 8, 1904, he was elected to represent the 23rd Assembly District, which encompassed the City of Stockton (now renumbered the 17th Assembly District). Beardslee served in the Assembly until 1911, including service as Speaker of the Assembly during the 1907 session.” (Source: Wikipedia)

Beatty, William Henry (Chief Justice, California Supreme Court) (February 18, 1838 – August 4, 1914) was the 15th Chief Justice of California from 1889–1914. Previously, he was Chief Justice of the Nevada Supreme Court from 1879–1880.) ¶ “CHIEF JUSTICE BEATTY. ¶ The distinguished Chief Justice of the California Supreme Court was born at Monclova, Lucas county, Ohio, on the 18th of February, 1838. Although born in Ohio, he has always considered himself properly a native of Kentucky, because his father was a citizen of Kentucky, and he was taken to that state at a very early age, and resided there until he was fifteen years old, when he followed his father to California. He arrived in California in March, 1853, and lived in Sacramento until 1855, when he returned to the eastern states, attended a preparatory academy for a year, and then spent two years at the University of Virginia, during the sessions of 1856-57 and 1857-58. In September, 1858, he returned to Sacramento, California, studied law in his father’s office, and was admitted to practice in the Supreme Court of California, at the January term, 1861. In the spring of 1863 he went to Lander county, in eastern Nevada. When Nevada was admitted to the Union as a state, in 1864, he became Judge of the District Court in Lander county, and held that office under successive re-elections in Lander and White Pine counties, until the 1st of January, 1875, when he became an Associate Justice of the Supreme Court of Nevada, holding that office from 1875 to 1878, inclusive, and the office of Chief Justice during the years 1879 and 1880. He was re-nominated, but was defeated for re-election. At the close of his term he took up his residence in Sacramento, practicing law there until January, 1889, when he became Chief Justice of the Supreme Court of California, being elected to fill the balance of the unexpired term of Chief Justice Morrison. He was re-elected in 1890 and holds the office at present under that election. His term will expire in January, 1903. ¶ During the time that Judge Beatty was District Judge in Nevada a great many cases were tried before him, the most important of which were mining cases. The only two cases known as the Eberhardt case, tried at Austin, in 1868, and the Kentucky vs. the Raymond & Ely case, tried at Pioche, in September and October, 1873. These cases were important on account of the great value of the property involved, and the eminence of counsel engaged on either side, as well as the time consumed in the trials and the distinguished reputation of the experts who testified, but the cases otherwise presented no features that were not common to many others of less importance. Probably, as the books run, the Chief Justice never tried any case that could be properly denominated a *cause celebre*. ¶ During the time he occupied the District bench of Nevada there was an immense amount of litigation in the District Courts of Lander and White Pine counties, upwards of six thousand cases going to judgment during the ten years he was on the bench, of which probably about one-third were contested cases. There were about one hundred and twenty appeals to the Supreme Court from the judgments of the Chief Justice, and he was reversed about thirty-five times. ¶ As exemplifying the quality of the Chief Justice as an exponent of legal science,

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perhaps the case of Havemeyer vs. Superior Court, etc., is to be pointed to above many others which bear the peculiar impress of his genius. The case is reported in 84 Cal. 351. It grew out of the suit of the State against the American Sugar Refining Company. It was tried in the Superior Court of San Francisco, Hon. William T. Wallace hearing and deciding it. The judgment declared a forfeiture of the defendant company's corporate franchise, and imposed the statutory penalty of \$5,000. An appeal was taken, a "stay-bond" of \$10,000 being given. Notwithstanding the appeal, an application was made by the other side for the appointment of a receiver. Judge Wallace appointed such receiver, in the person of the respected and able lawyer, since deceased, Patrick Reddy; and directed the latter to take possession of the defendant's property, especially mentioning in his order certain premises as part of such property. ¶ Havemeyer and others claimed to have purchased and taken into possession the very property so specifically mentioned in Judge Wallace's order. They petitioned the Judge to rescind his order, and to direct his receiver to proceed by action to recover the specified property of the corporation and subject to the jurisdiction of the court in the main action. ¶ Judge Wallace denied their application, and they prayed the Supreme Court for a writ of prohibition against the Superior Court, Judge Wallace, and Receiver Reddy. This matter in the Supreme Court was ably and learnedly argued by counsel on both sides. Judge Wallace himself appeared and made an argument — a motion having been pressed to punish him and Receiver Reddy for contempt in disregarding the alternative writ of prohibition issued by the Supreme Court, which motion and the application for a peremptory writ of prohibition were heard at the same time. ¶ Chief Justice Beatty delivered the opinion of the court. It was concurred in by five other justices — all who had taken any part in the hearing of the case. For clear statement of facts and legal propositions involved, the opinion is a model. It is an exhaustive discussion of the principles of law and the statutes and decisions bearing upon the rights and obligations of stockholders in corporations, in cases of this kind; the power of the court to appoint a receiver in the case at bar, and the attempt of Judge Wallace to dispose summarily of the property claimed by the petitioner, in a suit to which they were not parties. ¶ The decision was that the lower court had no power to appoint a receiver in that case, that its order naming Mr. Reddy receiver was void, and that the effort to deprive petitioners of the property in dispute, of which they were in possession, claiming to own, was in violation of constitutional rights, because it would have been depriving them of property without due process of law. ¶ Incidental questions of procedure were handled in a masterly manner in this opinion of the Chief Justice, as well as the suggestions presented by the respondents, that the petitioners were "bad men," and therefore should be denied the equal protection of the laws. Upon the question of contempt the decision of the court was against Judge Wallace and his receiver. A nominal fine of \$10 was imposed upon each, it being recognized that the "offenders," in their violation of the order of the court, had acted in "good faith." ¶ This was a case, it seems in which *ignorantia legis excusat*. ¶ We recall a discussion which we had over this able judicial paper and its author, with that observant and critical mind of the San Francisco bar, Mr. Henry H. Reid. "The opinions of Chief Justice Beatty," said Mr. Reid, "are in general characterized by clear statement and cogent reasoning from legal rules and adjudicated cases. They command the respect of those who are compelled, sometimes, to dissent from the conclusions drawn. Among the best examples of Judge Beatty's capacity for lucid statement of facts, and of legal exposition in his opinion in the case of Fox v. Hale & Horcross Silver Mining Company, 108 Cal. 369. His description of mining processes is a delight to the reader, who has a general knowledge of the subject, but who is yet not an 'expert' in that line; while his statement and application of the law have been questioned only by those whose misfortune it has been to be on the losing side." ¶ On the subject of our mining laws and customs, the Chief Justice is frequently referred to, and quoted, by Judge Davis in his elaborate article in this History. ¶ In the summer of 1897, the San Francisco *Examiner* interviewed many public, and public-spirited, men, on the subject of their boyhood

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days, and as to what lingered in memory as the principal charm of their childhood — that was the idea, we forget the journal’s phraseology. On this head see the sketch of General Barnes. Chief Justice Beatty’s response, which we pigeon-holed at the time, was as follows: ¶ “When I was a boy I live in the country and liked hunting and fishing better than anything else. To do one or the other was by long odds my first choice whenever I had a whole day, or even part of a day to myself. If for any reason fishing and hunting were both out of the question (on account of bad weather or a crippled gun, or exhausted ammunition). I cannot remember any other sport or occupation that was a second choice. It was anything to get through the day, and generally it was a dull day at the best. This statement should be qualified by saying that it relates to ordinary times, and does not embrace those rare occasions when the circus or traveling menagerie came to town. Then, of course, the thing was to go out on the road to meet the circus, escort it into town, superintend the erection of the tent, go to the afternoon performance, and, if the necessary financial arrangements could be effected, to take in the evening performance also.” (Shuck’s *History of the Bench and Bar of California*, Los Angeles, Commercial Printing House, 1901, pgs. 658-660.) ¶ “Hon. William H. Beatty. It does not come into the experience of every man, worthy though he may be, to serve his fellowmen long and adequately in high office and, in passing off the scene of life, leave behind him a record of noble and far-reaching achievements. Such was the imperishable fabric of the life story of one of California’s most distinguished jurists, the late Hon. William Beatty, chief justice of the Supreme Court of California. For a quarter of a century he filled this exalted position, one that placed him ever in the public eye and he bore its closest scrutiny with unruffled calm, amazing efficiency and incorruptible integrity. ¶ Judge Beatty was born in the Village of Monclova Lucas County, Ohio, February 18, 1838. His parents, Henry Oscar and Margaret (Boone) Beatty, were natives of Kentucky, and while he was yet an infant they returned to that state and his early boyhood was spent there. In 1853 he accompanied his parents to California, the long journey being made by way of the Isthmus of Panama. Subsequently his father became a lawyer of much prominence in California, and as the son gave early indication of mental ability and preference for the law, his father provided him with educational advantages. In 1856, although but eighteen years of age, he was deemed ready for college, went back East to his father’s alma mater, and spent the next two years in the study of law in the University of Virginia.¶ In September, 1858, Mr. Beatty returned to California and became his father’s law partner at Sacramento, where he continued until 1863, when he went to Nevada. In those days the legal profession had fewer representative practitioners the caliber of the young lawyer in their midst, and in 1864 he was elected judge of the Seventh Judicial District and continued in that office until 1874, when he was elected associate justice of the Supreme Court of Nevada, taking his seat in January, 1875. Judge Beatty continued on the Supreme bench of Nevada until 1880, during the last two years of his term begin chief justice.¶ Shortly after retiring from the Nevada high court Judge Beatty returned to California and resumed the practice of law in a private capacity, but not for long, for his talents were too great to be obscured and in 1888 he was elected chief justice of the Supreme Court of California, which office he filled continuously until the time of his death, which occurred at his home in San Francisco on August 14, 1914. Judge Beatty had the unique distinction of having served two great commonwealths of the Union in their highest judicial office and with such efficiency that honor and renown will always crown his name. His opinions as chief justice in California are to be found in ninety volumes, Volumes 77 to 166, inclusive, covering a period of distinguished service unequalled in judicial history. His long term of faithful public service, together with qualities that characterized him, sturdy integrity, a natural conception of right and justice, unflagging industry and personal honor, made him one of the great men of his time and his death an irreparable loss to California. ¶ Judge Beatty married in 1874 Miss Elizabeth M. Love, of Salisbury, North Carolina, who survives, together with one son, Henry Oscar Beatty. Two grandsons also

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survive, they being children of a beloved daughter, now deceased.¶ Judge Beatty was a member of the Bar Association of San Francisco. The degree of Doctor of Laws was conferred upon him by the University of California, and he belonged to the Phi Kappa Sigma Greek letter fraternity. He was a member of the noted Sutter Club of Sacramento, and of the University, Pacific Union and Southern clubs of San Francisco. Dignified but never unapproachable in his judicial capacity, those who were permitted his confidence and friendship in social circles found him rarely companionable, kindly without condescension, and generous, tender and considerate in time of trouble or distress.” (Millard, Bailey, *History of the San Francisco Bay Region*, Chicago-San Francisco-New York: American Historical Society, 1924. Volume III, pgs. 373-375).

Beck, Thomas (former CA Secretary of State, Senator) His roots were in Dublin, Ireland, where he was born in 1829. Coming to America at the age of 17, he was to settle in Illinois and marry Emmeline Short, daughter of Stephen and Nancy Short. In 1852, the young Becks, along with the Short family, crossed over the plains to California, first settling in Santa Cruz. A carpenter by occupation, Beck was also identified as an architect; in 1873, he designed the San Luis Obispo County Court House. He was superintendent of construction of the 1894 Santa Cruz County Court House, and many other structures in this county, but there is much more to his story. Thomas Beck had won the senatorial contest as a Democrat against great odds. The *Pajaronian* was a staunchly Republican paper favoring the Republican candidate, Dr. Thomas Flint of San Benito County. The contest had run hot and heavy with Beck winning by a narrow margin. Flint contested the outcome but, on Sept. 21, 1871, the decision was handed down that Beck was the winner. He represented Santa Cruz, San Benito and Monterey counties in the 19th and 20th sessions of the State Senate. In 1875, he was elected Secretary of State and served to 1880. He was also Appraiser of the Port of San Francisco. Physically, he was small in stature but commanding in appearance; a quiet man who was independent, honest and was possessed of a finely honed sense of humor. “Mr. Beck was one of the keenest minded men in California and withal a good fellow and a good friend. His genial countenance, his hearty hand shake, his inimitable stories, will abide in the memory of tens of thousands of his fellow citizens. The deceased was a man far above the average in intelligence, with a prodigious memory, he quoted poetry by the page on occasion. He was quick to see a joke, and as true as steel to his friends, and dying, he leaves son, and daughters in Watsonville and friends all over the State to mourn his loss.” (*Santa Cruz Surf*, Oct. 3, 1910.) Thomas Beck died on Oct. 2, 1910.

Bennett, Marcus Percival (El Dorado County Superior Court Judge) He was the son of James and Sarah (Heselden) Bennett; he was born at Peabody, Massachusetts, July 22, 1854; he prepared for college at Chauncy Hall School, Boston. He left for California in April 1877, with a sojourn in Denver, Colorado, for nearly a year and a half in the law office of Jerome and O’Brien. In California, he was admitted in the bar, July 16, 1879, and practiced law in Placerville from October 1880. He was formerly the district attorney of El Dorado County. He was elected judge of the Superior Court of El Dorado County on November 4, 1890, for a term of six years, and re-elected for a similar term November 3, 1896. He resided at Placerville. He died on January 15, 1925, in Los Angeles, at the home of his daughter, Mrs. R. C. Risser. The *Sacramento Bee* reported his death as follows: “FORMER EL DORADO COUNTY JUDGE DIES IN LOS ANGELES. PLACERVILLE (El Dorado Co.), Jan. 15. Judge Marcus P. Bennett, for twenty years judge of the superior court of this county, died last night in Los Angeles at the home of relatives. He was 72 years old. Judge Bennett was a pioneer resident of El Dorado County. He was largely responsible for changing the Placerville-Lake Tahoe road from a private toll road to a state highway, being one of the first judges in the United States to rule against toll-house owners. Last year Judge Bennett and Mrs. Bennett made a gift of the

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former Recreation Park, for years used for races, baseball games and other events, to the people of El Dorado County. The deed was presented to the supervisors last July with the express stipulation that the tract comprising more than 12 acres, should never be used for camping, school house or commercial purposes. A request also was made that no trees or foliage now growing on the property should be removed except under dire necessity. The gift was made as a memorial to the son of the Bennetts, Marcus Bennett, Jr., who died in 1904 when four years old. The board of supervisors renamed the park the Marcus Bennett, Jr. Park. Judge Bennett came to Placerville forty-one years ago, following his graduation from the Harvard Law School. He served three terms as district attorney up to 1890, when he was elected superior judge. He served on the bench until 1902, when he was defeated for re-election by Prentiss Carpenter. Carpenter died within ten days after the election and former Governor George C. Pardee appointed Bennett to succeed himself and he remained on the bench until 1904, retiring to engage in the practice of law for ten years. Two brothers of the judge, Jacob and Henry Bennett, were forty-niners and became wealthy. Besides the widow, five daughters survive, one of whom, Mrs. Max Baer, resides here, the wife of a merchant. The Bennetts were in Los Angeles on a vacation trip." (*Sacramento Bee*, Jan. 15, 1925, p. 10).

Besse, Milton (Santa Cruz County Sheriff) Long experience, excellent judgment, and particular aptitude for the important responsibility of sheriff of Santa Cruz county rendered Mr. Besse an eminently fitting acquisition to the preservers of law and order in the state at the time of his election to the office in 1894. His associates in a minor capacity were deputies J. P. McMullen and E. Alzina; deputy H. W. Trafton of Watsonville, and deputy A. L. Seidlinger of Boulder Creek. Mr. Besse was born in Pescadero, then in Santa Cruz but now in San Mateo county, November 4, 1862, a son of Samuel H. Besse, and grandson of Samuel and Mercy (Dexter) Besse. He moved to Santa Cruz county in 1879. (Guinn, J. M. *History of the State of California and Biographical Record of Santa Cruz, San Benito, Monterey and San Luis Obispo Counties*. Chicago: Chapman Publishing Co., 1903. p. 674-675)

Bias, Harry James (Notary Public, Santa Cruz) Harry James Bias is the oldest of six sons of John B. Bias, the grocer. He was born and raised in Santa Cruz and educated in our public schools. He then studied law, and at the early age of 21 was licensed by the Supreme Court as an attorney and counselor. He has been Justice of the Peace of Santa Cruz Township since April, 1901., and during that time has acquired the reputation of being one of the most efficient magistrates in the State, being one of a very few who have passed the Supreme Court test. Judge Bias is earnest, ambitious and thoroughly conscientious, and the endorsement of all good citizens assures his re-election. (*Santa Cruz Surf* 1906 Oct 27 1:4)

Billing, Frederick William. He was born in Germany and came to New York City, where he resided. Before coming to Santa Cruz Billing spent many years in Salt Lake City, where he had large mining interests. Billing and J. Q. Packard, in 1899, bought the William Kerr estate, which is now Pasatiempo. The Big Creek Power Company was established by Fred Wilder Swanton in 1896, was purchased in 1900 by Billing and Packard. In 1904, Billing petitioned the U. S. District Court to declare Julius H. Haesters a bankrupt. Haesters had been conducting the Villa Fontenay, near Glenwood in the Santa Cruz mountains, then owned by Billing. Haesters' liabilities were about \$9000 and assets nominal. Billing died on the morning of July 23, 1914, after a short illness at his beautiful home on the Scotts Valley road. He was survived by his wife, Mrs. Wilhelmina Billing, daughter Mrs. Bertha Coope, and granddaughter, Mrs. MacKenzie Gordon.

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Bishop, Thomas Benton (of the firm of Bishop, Wheeler & Hoffler) A prominent San Francisco attorney, he was a member of the Board of Freeholders to create the City Charter in 1880. He had registered to vote on June 5, 1866, at age 25. He was native of Massachusetts. ¶ The San Francisco Call of February 8, 1906, published his obituary on the front page, with his portrait. ¶ Wikipedia provided the following data: “Thomas Benton Bishop (1840 – February 8, 1906) was a well-known and successful San Francisco attorney. ¶ Bishop practiced law as Garber, Thornton & Bishop; Garber, Boalt & Bishop; Garber & Bishop; Bishop & Wheeler; Bishop, Wheeler & Hoefler; and as Bishop, Hoefler, Cook & Harwood. ¶ In 1890, Bishop acquired one third of Rancho Dos Pueblos in Santa Barbara County as payment for a lawsuit by the heirs of Nicolas A. Den against Colonel W.W. Hollister (1818 - 1886). Bishop took title of the ranch and renamed it Corona del Mar. The balance of the ranch went to the Den heirs. Bishop did not spend much time at the ranch as he lived in his palatial home in Pacific Heights in San Francisco. ¶ In 1892, Bishop acquired Rancho Sisquoc in Santa Barbara County. In 1894, Bishop argued the U.S. Supreme Court case California Powder Works vs Isaac E. Davis over title to Rancho Cañada del Rincon en el Rio San Lorenzo in Santa Cruz County. ¶ In 1895, Bishop acquired 3,000 acres (12 km²) of Norris land (after a divorce case in which Bishop's law firm represented Margaret Norris) in San Ramon. The San Ramon Bishop Ranch raised cattle and sheep and was planted to hay, grain, diversified fruit crops and walnuts. Bishop's Shropshire purebred sheep earned numerous awards. The Ranch was partially irrigated from an underground aquifer and at one point possessed the world's largest single orchard of Bartlett pears. ¶ Josephine Hall Bishop (1841 - 1917), wife of Thomas Benton Bishop, collected and maintained her own private museum on Washington Street in San Francisco.”

Bloom, Irvin Thompson (Bloom vs. Langley) “I. T. Bloom, Pioneer Lumber Mill Man Of County Dies. ¶ Irvin T. Bloom, picturesque pioneer Santa Cruz lumber mill operator and one of the oldest members of Santa Cruz lodge of Odd Fellows, died early this morning following a several months' illness at the Odd Fellows Saratoga home. ¶ Born at Curwensville, Pa., 80 years ago the 27th of this month, Mr. Bloom came alone to Santa Cruz county about 1876. Working n [sic] various capacities in the county's lumber camps, he later acquired extensive timber holding in various capacities in the Bloom's sawmill on the present southern boundary of California Redwood park in the Big Basin. ¶ Abandoning operations at the Big Basin mill shortly after the turn of the century, he established a second mill on the Gazos creek, where he conducted lumbering operations until about 1915. On retirement from active life he established his residence at 116 Laurel street, where he remained until a little more than a year ago. ¶ He is survived by three daughters, Mrs. Ida Caesar of Oakland, Mrs. Lucile Steffensen of Newman, Miss Sarah II. Bloom of Berkeley, and by two grandchildren, Dorothy Bloom of Berkeley and Mina Jean Recca of Santa Cruz, and one sister, Mrs. Edward Moore of Curwensville, Pa. ¶ The body was to be brought to the Wessendorf mortuary here this evening. Funeral arrangements had not been completed this afternoon.” (*Santa Cruz Evening News*, September 6, 1935, 1:7); In the case cited in the Impeachment Hearing, Bloom vs. Langley, “The case took up the whole day in court, and [was] brought by Mr. Bloom on the grounds that Mr. Langley sold him two horses which he misrepresented.” (*Santa Cruz Sentinel*, Wednesday, October 14, 1904, 3:7) [For more citations about Irvin Thompson Bloom and his family see the Index to *The Mountain Echo* (Boulder Creek, California. October 24, 1896 — December 23, 1916, compiled by Stanley D. Stevens.

Brown, George (Judge) (presided in Hollister murder trial of Frances Buelna's brother, ca. 1896) “George Brown, Esq., a pioneer of California and a highly respected citizen of San Benito, San Benito County, was born in England, July 11, 1827. At the age of eleven years he left home, and from that time forward took

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care of himself. In 1846, at the outbreak of the Mexican war he enlisted in the United States Navy at Boston, being assigned to the ship *Cumberland*, which ship joined the Gulf Squadron, commanded by Commodore Connor and afterward by Commodore Perry. He served all through the Mexican war, was present at the important engagements at Vera Cruz, Tabasco, Tuspan and Alvarado, and was honorably discharged at the termination of the war. In 1850 he located at Fall River, Massachusetts, where he was employed in an iron mill until 1854, when he came to California, making the journey from the East to San Francisco via the Nicaragua route.¶ Upon his arrival in the Golden State Mr. Brown sought the gold mines of Shasta and Trinity counties, and was engaged in mining until 1865. That year he located in Watsonville, Santa Cruz county, and turned his attention to farming, remaining there until 1869. In November of that year he located in the Dry Lake district, San Benito county, on a fertile farm of 320 acres, his present home. Besides this property he also owns 940 acres of untilled land. He has been prominently identified with the best interests of this county ever since he settled here. He held the office of Justice of the Peace eight years, and for a number of years was Postmaster of San Benito.¶ He was married, in 1853, to Miss Catharine Kennedy, in Fall River, Massachusetts. She was a native of England, and a woman of rare domestic qualities. She died, leaving, five sons and one daughter, namely: John, Joseph, George W., P. F., Kate M. and W. K., all of whom now occupy honorable positions in life.¶ Judge Brown, as he is familiarly called, has a wide circle of friends, and is highly esteemed throughout San Benito County.” (*A Memorial and Biographical History of the Coast Counties of Central California*, by Henry D. Barrows & Luther A. Ingersoll. Chicago: Lewis Publishing Company, 1893. p. 229-230.)

Brown, Thomas Jefferson (former law partner of Judge Lucas F. Smith) “Thomas Jefferson Brown (July 24, 1836 – May 26, 1915) was a Justice of the Supreme Court of Texas from May 1893 to May 1915, serving as Chief Justice from January 1911 to May 1915. Throckmorton's law partner, Thomas J. Brown, ... participated with Throckmorton... Thomas, who served as an associate justice of the Texas Supreme Court for over twenty years was serving as Chief Justice at the time his nephew, G. A. Brown, became a lawyer.¶ Born in Jasper County, Georgia, at the age of ten Thomas J. Brown moved with his family to Washington County, Texas. He attended the schools of Washington County, and received an LL.B. from Baylor University, in 1856, passing the bar exam the following year. He served in the American Civil War as a second lieutenant, and later captain, in the Twenty-second Texas Cavalry. After the war, he returned to the practice of law. He served in the Texas legislature from 1888 to 1892, in the Twenty-first Texas Legislature and Twenty-second Texas Legislature. While there, Brown "focused his energies on establishing regulations to curb corporate aggression and led an effort that resulted in the creation of the Texas Railroad Commission." He was a Texas district court judge from 1892 to 1893. In 1893, he became an associate justice of the state supreme court of Texas, until January, 1911, when Chief Justice Gaines resigned and Brown was appointed chief justice.” (Wikipedia)

Buck, George H. (Judge of San Mateo County) “George H. Buck is a native of Maine, where he was born in 1847. He had the good fortune to start in life with a broad and liberal education. During the earlier years of his manhood he had charge of Gorham’s Seminary and Academy in Maine. His mind later took a legal turn, and, believing that the bar afforded him a large field for a successful career, he entered the office of Woodbury & Ingalls, of Boston, Massachusetts, as a student of law. He was admitted to the bar in that state in 1871. For some years he held the position as associate attorney for the Indianapolis, Cincinnati and Lafayette Railroad, which position he resigned in 1874. Turning his steps westward, he came to California and located in the thriving city of Redwood. In 1882 he was elected district attorney of San Mateo county,

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which position he held through successive re-elections, until 1890, when he was nominated and elected Superior Judge of San Mateo county. He was re-elected to the same position in 1896, upon the Democratic ticket in a strongly Republican county. Nothing could illustrate better Judge Buck's popularity and the high esteem in which he is held by his fellow citizens.¶ The Judge is an influential leader of the Red Men's order, as well as of the Druids, I. O. O. F., and other fraternal societies. He is well known in San Mateo county, having practiced law there some years before his elevation to the bench. He is a man of sincerity and of rare probity of character, and is strongly intrenched in the regard of the people." (Source: *History of the Bench and Bar of California*, by Oscar T. Shuck. Los Angeles, Cal., The Commercial printing house, 1901. pgs. 671-672.) His biography published in an earlier work provides much of the same data, but the following was of particular interest: Buck was born in Harrison, Maine. He worked as attorney for the railroad for three years, but his health compelled him to seek a milder climate so he moved to California in 1875. In the fall of 1882 he was elected District Attorney, succeeding himself in 1884, 1886, and 1888. In the fall of 1890 he was elected Judge of San Mateo County to fill an unexpired term, and reelected to a six year term beginning January 1, 1891. He was married July 14, 1892, to Miss Elizabeth King, of Redwood City, the daughter of Henry King. (*A Memorial and Biographical History of the Coast Counties of Central California*, by Henry D. Barrows & Luther A. Ingersoll. Chicago: Lewis Publishing Company, 1893. p. 344-345.)

Budd, Joseph Henry (San Joaquin County Superior Court Judge of Stockton). "STOCKTON, February 23, 1902. Joseph H. Budd formerly the best-known jurist on the Pacific Coast died tonight at 9:30 o'clock after an illness extending over several weeks. Though over 80 years of age he possessed remarkable vitality and this combined with his strong will power has kept him alive for the past two or three months. Several times the physicians have given him up but he has rallied and in a few hours appeared stronger than in weeks previous. The past two or three days he has been gradually sinking and it was seen that the end was near. His son, John E Budd has been within call of late and tonight when Judge Budd passed away his wife and son were present. Ex-Governor James H Budd is in Washington, D. C., acting as one of the commissioners appointed to urge the passage of the Chinese exclusion bill. He will return at once and the funeral arrangements will be delayed till he is heard from. Joseph H. Budd Was born in Pleasant Valley, Dutchess County, N. Y. on January 17, 1822. His parents were of the old English stock and had resided in New York State for many years. He graduated from Williams (Mass.) College in 1843 at the head of a large class, studied law at Poughkeepsie N. Y. and was admitted to the bar in 1847 when he moved to Janesville, Wis. He practiced law there and in June 1849, married to Miss I. M. Ash at Magnolia, Wis. In July 1868, Budd came to California by way of the isthmus and settled near Sacramento but soon removed to Woodbridge, San Joaquin county. Two years later he came to Stockton and purchased the General Connors home at the corner of Channel and Sutter streets where he continued to reside until his death. His connection with the celebrated *Moquelemos* grant litigation gave him considerable prominence in the State and he also had charge of many other Important cases. He was elected City Attorney of Stockton twice and in 1887 he was elected Judge of the Superior Court. At each succeeding election he was returned to the bench though as a rule the other Judge was a Republican. In the fourteen and a half years he was a Judge he decided many big suits and few of his decisions were reversed by the Supreme Court. Judge Budd had a wide reputation as a jurist and his decisions have been extensively quoted as they are known to be based on sound judgment and law. For about three years he had been engaged in compiling a book of civil remedies and forms under the code of this State. The publication is in press now and will be issued about March 1st. In his last days he



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often expressed the wish that his life be spared till he could see the book. Even after he was ill for several days he refused to go to bed, and twice he surprised his friends by appearing on the bench to hear cases when it was believed that his life was hanging in the balance. His great will power and determination to keep up prolonged his life many days. A wife and two sons ex-Governor James H. Budd and John E. Budd survive him.” (*San Francisco Chronicle* Feb. 24, 1902) ¶ “Judge Joseph H. Budd was born in Dutchess county, New York, January 22, 1822. His father was a farmer. He is of German descent on the side of his mother. He is a graduate of Williams College, Massachusetts, and studied law in Poughkeepsie, New York. He practiced his profession as a lawyer first in Janesville, Wisconsin. Removing from that state to California in 1857, he settled in Stockton in 1860. While engaged in the practice there he was elected a Judge of the Superior Court of San Joaquin county in 1888, for an unexpired term. He has been twice re-elected to the same office for full terms. The Judge is the father of Hon. James H. Budd, who has been a member of congress from California, and the Governor of the State. His other son is one of the regents of the California State University. He has no other children.” (Oscar T. Shuck, *History of the bench and bar of California*. Los Angeles, Commercial Printing House, 1901, p. 675, including portrait.)

Buelna, Frances (mother of Louis & William Buelna) She is the subject of much controversy in the Impeachment of Judge Smith. The Transcript of the Hearing provides adequate detail on her role in this matter. ¶ Volume I: Affidavit 9 A. ... in which said Hon. Lucas Flattery Smith made the following statement: “Mrs. Buelna, I pity you very much, and I promise you I will do all within my power for your boy, keep very quiet, don’t say a word to any one, and tell your boy not to ask for a new trial and I will sentence him very lightly”; that affiant relying upon said promises of said Judge, informed her said son, Louis Buelna, of the statements made by said Hon. Lucas Flattery Smith, and advised him, her said son, Louis Buelna, to not ask for a new trial, upon which advice, and by reason of the said promises of said Hon. Lucas Flattery Smith, said Louis Buelna in open Court waived the right to move for a new trial, and agreed that sentence he passed upon him, whereupon said Lucas Flattery Smith, Judge of said Court, disregarding the promises made by him to affiant, sentenced said Louis Buelna, the son of this affiant, to ninety years in the State Prison at San Quentin. Frances Buelna.”

Buelna, Louis (*aka* Lewis or Louie) [Louis was well known in court matters, e.g.:] “Arrested for Assault on Car” Judge Harry J. Bias on Monday issued a warrant for the arrest of Louis Buelna, a fisherman of this city, on charge of assault and battery, the complaint having been sworn to by E. W. Gregg, a conductor on the Santa Cruz Electric Railway. ¶ The arrest is an outcome of an argument between the two men as regards the ethics of smoking in the presence of ladies on an open car. ¶ On Sunday night about 10:30, Buelna, while riding on Gregg’s car, was smoking. Gregg ordered him to stop as the smoke was annoying ladies seated near him. According to Gregg’s story Buelna refused to desist. High words led to a fight and Gregg received a heavy blow on the jaw before he succeeded in putting Buelna off the car. The conductor alleges that in addition to delivering the blow, Buelna hit him on the lip. The defendant plead not guilty and was released on his own recognizance.” (Source: *Santa Cruz Sentinel* August 30, 1904, 3:6) ¶ One month later, Louis is charged with the rape of the woman for which is charged and convicted, and sentenced to 99-years in prison. The account is summarized in the court hearing for impeachment of Judge Smith, and constitutes one of the Specifications for Impeachment. ¶ “GIRL CHOKED TO UNCONSCIOUSNESS ¶ AND MOST BRUTALLY ASSAULTED ¶ LOUIS BUELNA CHARGED WITH CRIME AND TAKEN INTO CUSTODY. ¶ Stays Out All Night in a Boat On the Bay---The Girl Is Now in a Precarious Condition. ¶ Sheriff Trafton Thursday took Louis Buelna into custody charged with one of the most serious crimes in the

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history of the court's docket, and one which, in all probability, if proven to be true, will place him behind the bars of a State's prison for many years to come. The crime with which Buelna is held to answer is rape, which it is alleged he committed Wednesday evening on a young girl of unquestionable character. The story begins Tuesday afternoon when the young woman in question accompanied by two more of her girl friends, who are all employed at a hotel as waitresses, took a trip to the wharf with the intention of spending the afternoon fishing. It was while the young women were thus engaged that Buelna and another young man, returning from a fishing trip, pulled alongside the wharf and commenced a conversation with the fishing party, during which they offered to take them Wednesday afternoon about two o'clock out on the bay in their two row boats and give them a chance to fish as well as to give them an opportunity of witnessing them pull in their nets. This was a sight the girls had long desired to witness and only hesitated, thinking it would be impossible for them to return in time to go back to work, which commenced at five o'clock, but this fear was soon dispelled, as both the young men promised to have them safely back at the appointed time. Wednesday afternoon, at the appointed hour, the girls were there and ready for the trip, and little time was lost in getting started. Two of the young women were in Buelna's boat, while the other girl took a seat in the remaining one, and they started rowing towards Port Rogers. ¶ While a short distance from that port Buelna, under the pretence that his boat was too heavy and in danger of capsizing, requested one of the young ladies to take a seat in the other boat, which she finally did. ¶ Then, it is alleged, the man began his atrocious work and endeavored to entice the girl. She refused positively to have anything to do with him, and he then threatened to throw her overboard if she did not acquiesce. Still determined that her good name should not be tarnished, the girl refused, whereupon the brute, becoming enraged, climbed to her end of the boat and choked her into unconsciousness. ¶ It was while she was in this condition that Buelna, it is alleged, took advantage of her, and succeeded in accomplishing his purpose. ¶ Both parties remained out all night, and it was not until Thursday morning, at nine o'clock, that the boats were again anchored at the wharf, and the girl had an opportunity to escape and tell her story, alleging three separate assaults had been committed. ¶ A warrant was immediately issued and Buelna taken into custody and held under \$2,000 bonds, which not being forthcoming, he was given a berth in the county jail. (*Santa Cruz Sentinel*, September 30, 1904, 1:3-4)

Buelna, William (Willie) (Louis' half-brother) Mention in Volume I:191 the Hearing of the Impeachment. MR. LINDSAY. [speaking to William M. Adyelotte] Proceed and state what you know. A. "I was sitting in my office one evening at work, when a gentleman came to my office and introduced himself as Willie Buelna, or William, I think that is the way he styled himself, and said that he had heard I would take his case. ["his" case, *i.e.*, his brother Louis' case] A. I made arrangements with him to prosecute an appeal, and to do the necessary work for a motion for a new trial in the case of Louis Buelna who had just been convicted."

Burchard, Daniel W. (San Jose attorney) Holding a prominent and important position among the public officers of this county, is Mr. Daniel W. Burchard, attorney at law and assistant district attorney. His father was the Rev. John L. Burchard, for ten years a member of the Missouri Conference of the Methodist Episcopal Church. While he was the subject of this sketch was born, and came with his parents to California in the same first at Marysville, remaining there four years, and afterwards 1868 he was sent to Gilroy, where Daniel attended school. After a four years' residence here, his father returned to Marysville, when he was appointed Indian agent at Round Valley. In 1872, the family removed to Oakland in order to afford the children better educational advantages. After passing through the schools of Oakland, Daniel went up to the



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reservation, where he taught school and studied law. In 1879 and 1880 he studied law in the office of Henley & Johnson, of Santa Rosa, the senior member of that firm being Hon. Barclay Henley, late member of Congress from First District. Mr. Johnson is now attorney-general for the State. Mr. Burchard was admitted to the Bar nine days only after attaining his majority, and first "hung out his shingle" in Washington Territory. He remained there but a short time, when he returned to California, and for three years practiced law in Hollister, serving one year as city attorney. Removing to San Jose, he entered into partnership with Moore & Moore, and on the election of Howell Moore to the office of district attorney he was appointed deputy. Mr. Burchard is a hard worker, as can be gathered from the fact that he has appeared in fifteen-hundred cases since he began practice, six-hundred of them being criminal cases. It is noteworthy, also, that, although so young a man, he has been connected with many cases involving heavy interests. Among these may be noted the congressional election contest of Sullivan *versus* Felton; the senatorial contest of Ryland *versus* Conklin; a number of homicide criminal cases in which the final penalty was inflicted, and others. On March 6, 1881, Mr. Burchard was married to Miss Cora, the eldest daughter of Hon. Rush McComas, the county treasurer. They have four children: Marcie, Mary, Ernest, and Ethel. Mr. Burchard's family is of Scotch and German extraction and is fully represented in professional and intellectual pursuits. His father is a thoroughly self-made man, educating himself for the ministry by his own efforts, and passing his life in the service of the Methodist Episcopal Church. His mother is a native of Virginia, a descendant of the pioneers who first settled in that State. His only brother is Dr. L. S. Burchard, of Oakland, and his only sister is the wife of C. H. Twombly, the San Francisco capitalist. (*via Google: Pen Pictures From The Garden of the World or Santa Clara County, California, Illustrated.* - Edited by H. S. Foote. Chicago: The Lewis Publishing Company, 1888. p. 96). ¶ "Daniel W. Burchard is a native of the state of Missouri, and was born about forty-five years ago. His father was one of the pioneer ministers of the Methodist Church, and arrived in California with his family when our subject was a child. ¶ Mr. Burchard obtained a good classical and legal education which enabled him to commence practice as soon as he arrived at his majority. ¶ He located first in Hollister, San Benito county, where he was soon selected as city attorney. After a few years he felt impelled to remove to a larger field, and went to San Jose. There he soon entered upon a successful career at the bar. For six years he was connected with the district attorney's office, during which time the interests of the county, civilly, were faithfully guarded, and society also well protected from criminals. After leaving his official duties, Mr. Burchard opened up offices as a general practitioner, and in addition to civil business, achieved a state reputation as a criminal lawyer. Quite recently his practice outside of San Jose became so large as to compel him to remove to the Metropolis, with his family, consisting of a wife and four children. Continued success has attended him in San Francisco, and promises to follow him to the end." (Oscar T. Shuck, *History of the bench and bar of California.* Los Angeles, Commercial Printing House, 1901, p. 792, with portrait.)

Burke, Bart (attorney/postmaster/ Senator) (*aka "Jere"*). Bart Burke was born in Richmond, Wayne Co., Indiana, in 1845. He entered a law office to fit himself for the practice of that profession in 1861, but the following year found him a volunteer in the Union Army where he served "during the war." Returning in 1865 with his honorable discharge to his native state he completed his studies and engaged in the stern battle of life. With the natural instincts of an American for politics his active interest led to his selection for two terms as chairman of the County Committee. Mr. Burke was at this time, in the early seventies, resided in Liberty, Union County, Indiana. A vacancy occurring in the office of Prosecuting Attorney, he was appointed to fill the vacancy, and afterwards elected to the same office for two terms, his commission being signed by one of Indiana's most noted governors "Blue Jeans" Williams. This office was one corresponding in its functions to our District Attorney although its scope was wider, covering a judicial district composed

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of two counties. In 1880 a vacancy occurred in the Judgeship of this district and the appointment of Mr. Burke was strongly advocated, but the Governor declined to create a vacancy in one office to fill another. In the succeeding election the solid delegation from his own county favored his nomination for Circuit Judge, but was over-powered by the larger vote of the other county embraced in the district. It was shortly after this event that the precarious health of his wife decided him to remove to California, whither he came, bearing with him high testimonials from the Indiana State Bar Association and many eminent clients. This is a very meager outline of some of the salient points in a career, creditable alike to the candidate who seeks the suffrages of his fellow-citizens and the party by whose approbation and endorsement he is placed before the people. Mr. Burke came to Santa Cruz in the spring of 1882, bringing with him an invalid wife looking for a lengthened lease of life in our "glorious" climate. The blush of health rapidly returned to Mrs. Burke while he won favor with the people and practice in his profession. At the next election after he had acquired citizenship (in 1884) Mr. Burke was strongly urged for the office of District Attorney and lost the nomination by only one vote. Unlike many a defeated candidate, he did not "sulk in his tent," but accepted the Chairmanship of the County Central Committee unanimously tendered him, and did valiant service for his party during the campaign which followed. Mr. Burke continued in the practice of his profession until appointed Postmaster of this city by President Cleveland. His service in this office has been a signal success so universally conceded as not to require mention here. From the time of his advent in Santa Cruz Mr. Burke was recognized as one of our most wide awake and public spirited citizens, and he has been ever ready to "lend a hand" to aid in every enterprise for the promotion of the general good. To the ability displayed and the popularity won during his eight years' residence among us is due his advancement, and his candidacy for this high office; but there are those who might desire to know and whose right it is to inquire as to Mr. Burke's pre-California record, the more especially as he is pitted against a pioneer opponent. The SURF has sought this record and presents it with confidence to the public and with congratulations to the candidate. Bart (*aka* Bartemus Burke) died in November 1913, in Berkeley, California, and was buried at the Holy Cross Catholic Cemetery, Colma, San Mateo County, California, on April 24, 1914.

Burke, George Patrick (former defense attorney; his affidavit was all about Judge Smith who referred to him as "that drunken lawyer of yours") The *Santa Cruz Evening News*, on October 9, 1917 (3:1-2), reported his death, as follows: "The death of Attorney George P. Burke, announced in last night's News, is the subject of an interesting article by James G. Piratsky in the *Watsonville Pajaronian*, from which the following is taken: "George P. Burke was born in the city of Dublin, Ireland, the son of George and Sarah Burke. His father was a printer, the foreman of the composing room of the *Dublin Freeman*, a leading Irish journal in those days. When a boy, [the] deceased as employed in certain capacities around the paper and he was wont, in latter days, to boast of having been a printer at one time. Leaving Ireland in 1883, he came to California, and entered the employ of Judge George Tyler at San Francisco (then one of the leading jurists on the Pacific coast), as shorthand reporter, clerk and law student. He applied himself arduously to the study of the law and graduated from the Hastings law college. During his studies with Judge Tyler, the latter took up the fight on behalf of Sarah Althea Hill against Senator Sharon, and prosecuted the case to a successful conclusion before Judge J. F. Sullivan. This was one of the *causes celebre* of the state and attracted national attention. About August 1889, he came to Watsonville, opened law offices, and his legal ability becoming recognized, he soon built up a practice that made him widely known in this section. He possessed a legal mind could readily grasp the various angles of any legal problem submitted to him, and was very successful. His briefs were models of clarity of reasoning and elegant diction, and his mind was stored with legal

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authorities that he called to memory without an effort. Burke possessed a ready Irish wit coupled at time with sarcasm that made his appearance in court an event, and in the early days of this city, when life was not so strenuous as now, business would almost be suspended as nearly every one would drop everything else to crowd into the local justice court, when it was announced that George P. Burke would cross swords with Lesser, Julius Lee, Frank J. Murphy, J. Edward Marks, District Attorney Carl Lindsay or other legal luminaries that flourished hereabouts in the middle 80's and the 90's. In those days there was much legal business. In one year in this county, it is related, that he cleared up \$30,000 -\$15,000 from one; \$10,000 from another case, and \$5,000 from his general practice." ¶ Burke's Mass Meeting. EDITOR SURF: George P. Burke, of Watsonville, a prominent democratic attorney, addressed a great number of citizens of Santa Cruz, on Cooper Street, last evening, his topic being the Judgeship of Santa Cruz County. He spoke from the standpoint of a democrat, saying that he was supporting the democratic nominee for Governor, and a majority of the democratic nominees on the democratic ticket; but could not support Lucas F. Smith because he believed him to be unqualified for the high office of Superior Judge. Contrary, to the expectation of some people, Mr. Burke did not descend to abuse, but spoke in a gentlemanly way, and fortified his remarks by reading from the records of the Court. His talk was a convincing one and seemed to have a great effect on his audience. A number of hoodlums, not one in ten of whom had a vote, attempted to break up the meeting by shouting and hooting, but they were quickly suppressed, and the large concourse of citizens present expressed with one voice the sentiment that in this free county, it was a very poor cause which would resort to such methods to prevent a discussion of any candidate's public career. The meeting dispersed with enthusiastic cheers for H. C. Wyckoff, the next Superior Judge of this County. FAIR PLAY."

Burke, John Joseph (Assemblyman, Committeeman, Republican) He was born in Oakland, California, July 19, 1878; he received his education at St. Joseph's Institute, West Oakland, and at the Santa Clara College, from which institution he graduated; in 1904 he was admitted to practice law, and took up his profession in his native city; elected Member of the Assembly from the Forty-ninth District, November 8, 1904, and re-elected November 6, 1906; he died on January 19, 1907, of meningitis. When his death was announced in the joint meeting of the California Assembly and Senate on January 21st, "there was suppressed emotion in the chambers ... because every person present knew that one of the youngest,, brightest, heartiest and most eloquent of the members had passed away forever." (Oakland Tribune)

Burson, Ada E. (Burson vs. Green case) Ada E. Burson (Mrs. Henry C. Burson), of Vermillion, Indiana, in 1900 Census. She was 36, born in Maine in January, 1864. Her husband was 55, born in Indiana in October 1844. They had one daughter, Ruth, was was born in Indiana in August 1898. By 1912, she was a resident of San Jose, California, a resident of 354 Lincoln Ave.

C

Cassin, Charles Michael (attorney) Residence, Santa Cruz; office, Leonard Block, Santa Cruz. Born in San Francisco, January 10, 1868. Son of Michael and Annie (Daly) Cassin. Married August 24, 1896, to Catherine Josephine Murphy. Attended the public schools of California and later Santa Clara College, receiving the degree of B. S. in 1888, and the University of Michigan, from which he received the degree of LL.B. in 1891. Admitted to the bar of Michigan, in 1891 and to the bar of California in 1892, since which time has been actively engaged in the practice of law in Santa Cruz. City Attorney of Santa Cruz, 1893-94. Member of the N. S. G. W. and B. P. O. E. fraternities. First president of Santa Cruz County Bar

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Association. Democrat. Cassin died in Los Angeles on February 10, 1933. (Source: History of the Bench and Bar of California. Edited by J. C. Bates. San Francisco: Bench and Bar Publishing Co., Publishers, 1912. p. 253) (with portrait)

Chummy [unidentified]

Cleveland, George C. (Assemblyman) “The Hon. George Cleveland, representative in the general assembly of the state of California, a veteran of the Spanish-American war with a record of service in the Philippines and a veteran of the World war with an overseas record, is today a prominent rancher in the immediate vicinity of Watsonville in Santa Cruz county and one of the best known men in that community. Mr. Cleveland was born in the ancient and picturesque city of Skowhegan in the beautiful valley of the Kennebec in Somerset county, Maine, March 19, 1874, and is a son of George S. C. and Julia (Drumy) Cleveland, both members of old families in the Pine Tree state and whose last days were spent in California. This is the Cleveland family from which sprang Grover Cleveland, twenty-second president of the United States. Upon the completion of his military service Mr. Cleveland returned to his old home on the Watsonville ranch and in 1904 was elected to represent his district in the lower house of the California general assembly, serving one term. As chairman of the committee of the house which had to do with the development of the state’s horticultural interests Mr. Cleveland was able to secure some much-needed new legislation along that line, his practical experience as a horticulturist giving him an insight into the needs of that department that proved valuable to his confreres on that committee. In the campaign of 1920 he again was elected to represent his district in the lower house of the state legislature, was reelected in 1922 and again in 1924, and is thus now [1925] serving his fourth term and third consecutive term in that legislative body.”

Cooper, James Addison (California Supreme Court Justice). James Addison Cooper served from April 1905 to January 1911. He was born on November 19, 1831, in Mason County, Kentucky. He died on September 18, 1911, in Lewis County, Washington. He was buried in the Morton City Cemetery, Morton, Lewis County, Washington. His father was Alfred M. Cooper, his mother was Nancy M. Dickson Cooper, and their children included Mamie Alice Milligan, Nellie Ann Yana, Robert Edgar Cooper, J. Albert Cooper, and William A. Cooper. (Source: Find-A-Grave website 2-21-2021.)

Cooper (Mrs.) -- William M. Aydelotte remembered that “Mrs. Cooper” came into his office about an estate case.

Corey, Walter A. (Constable) *see* **Kelly**, Walter A. 39

Cox, Albert - m. Dec. 24, 1891, at Aptos; Addie B., daughter of Mr. and Mrs. M.C. Clark of Aptos; at Residence of Bride’s Parents; he was of Santa Cruz. He was aged 28; native of N.Y.; she was 17, native of Kansas. ¶ Mr. Peter Paul Hartmann, in his testimony (Volume I:45) was asked about certain persons to whom he shared a document with; his answer was: “Mr. Albert Cox,” among others. Cox was identified in the *Santa Cruz Sentinel* on July 20, 1900, 3:1, as follows: “The firm of Cox and Stevens, No. 3 Mission St., will hereafter be conducted by Albert Cox; on March 29, 1901, 3:1, as the proprietor of Fagen’s Cyclery, 3 Mission St., Santa Cruz. And as the Agent for C. M. Hatcher, Gold Dollar Oil Co., San Francisco, at the same 3 Mission St. address. On October 4, 1905, the *Santa Cruz Sentinel* (6:4) reported that “Albert Cox Takes A Big Contract, will get out six million feet of lumber for Coast Dairies and Land Co.: A contract has

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been made between the Coast Dairies and Land Co. and Albert Cox of this city, for getting out 320 acres of virgin timber near the San Vicente canyon and for cutting the same into lumber. There is estimated to be between six and seven million feet of lumber in the tract, enough to keep a good-sized mill running two or three years. Mr. Cox is to erect the mill, which is at present stored in the Chace lumber yard in this city, and will also run the mill. He expects to employ over forty men and to have it running by November 1st."

D

Dakan, Elmer (Estate of) (Source: *Santa Cruz Sentinel*, June 2, 1935, 5:1) Elmer Dakan Celebrates His 75th Birthday. Elmer Dakan of 545 Mission street, father of Dr. George H. Dakan, dentist, Elmer Dakan Jr., of the Connally Chevrolet company of this city, and Mrs. Harold Wright of Hanford, celebrated his 75th birthday anniversary Saturday with an elaborate dinner tendered by him and his sons. All day Saturday Mr. Dakan was busy receiving congratulations on all sides from his many friends in this city. He is enjoying the very best of health and with an elastic step that belongs to a man in his 30s. Mr. Dakan surveyed the city of the Holy Cross with eyes sparkling with joy and satisfaction, as he recalled his boyhood days spent at the old farm house of his father, which is still standing on the Swanton tract, located at a spot opposite the West Cliff drive hotel. It was here he first saw the light of day 75 years ago and as a child remembers how he used to joyfully watch the ships go sailing by on the bay and listen to the tinkle, tinkle of the cow bells, as the herds were driven home at eve tide to be milked. The Dakan farm comprised what is now known as the Swanton tract, with many more adjoining acres. It was on this seaside farm that Dakan grew to sturdy manhood and built up such a wonderful constitution that now makes him a "young man" at 75. He always believed in hard labor and if he were not following the farming or cattle business he was engaged in teaming or other out door labor. Thus, he has "kept fit" all these years. The Dakan family is outstanding in Santa Cruz county history, his father, Elmer Dakan, being the second sheriff of Santa Cruz county and the old family home was at one time located on what is now the site of the Elks' building on Pacific avenue. Sheriff Dakan, often recalled the trying period in 1859 when he crossed the plains for California from Council Bluffs, Iowa, to land in Santa Cruz and be chosen to serve as sheriff during one of the most trying periods of early-day law enforcement in California and especially through this section of the state." He died December 2, 1899, at Soquel, aged 69.

Dakan, Margaret (Mrs. Elmer Dakan) (Estate of) Widow of Elmer. Died Dec. 28, 1901, at Soquel; aged 73; native of Iowa. Came to California in 1859, crossing the plains. Buried at Cypress Lawn. Survived by Mrs. S. M. Nichols, Lompoc, Sarah Dakan, San Francisco., Eugene, Elmer, Thomas, William.

Dakan, Sarah. A native of Iowa, she was 47 at the time of her death in San Francisco. She never married. Her parents were Margaret and Elmer Dakan.

Dakan, Thomas Benton (butcher, born on August 2, 1865 in Santa Cruz County, California, the son of Elmer and Margaret M. Sloane Dakan; he died on May 5, 1917, in San Jose, California.) "Specification III of the Charges for Impeachment against Judge Lucas F. Smith stated: "That on or about the 19th day of April, 1904, during the trial of a case in which one Thomas Dakan was a defendant, which was being tried before said Smith as judge of said court, and a jury, said Smith suffered said Cassin, who represented the plaintiff, to commit an unprovoked assault and battery upon the person of said Thomas Dakan, without punishment or

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reprimand and punished said Dakan for defending himself against the assault of said Cassin.” (Source: *Santa Cruz Surf*. February 17, 1905, p. 2:1.)

Dakan, William. “Mr. Cassin struck one or two [blows], Thos. Dakan one or two and Wm. Dakan one. Mr. Cassin struck Mr. Dakan first with his fist. Thom Dakan then struck Mr. Cassin. After Mr. Cassin and Mr. Dakan came to blows Wm. Dakan stepped in.” (Source: *Santa Cruz Surf*. February 17, 1905, p. 2:1.)

Dennison, George (killed William H. Moore in Edward Briody’s saloon) {Compiler’s Note: Only one newspaper account has been found that refers to this killing:} “*THE SALINAS TRAGEDY*. ¶ Edwin M. Dennison Shot Dead by Byron A. Downey on Monday Last. ... created some commotion in Santa Cruz, where the deceased man was well known. He is a brother of George Dennison, the slayer of William Moore, and who yet resides here. ...” (*Santa Cruz Weekly Sentinel* Apr. 11, 1874, 3:6). ¶ The George Dennison — William H. Moore shooting took place in 1871. But there was an earlier even reported by the *Santa Cruz Weekly Sentinel* (Dec. 19, 1868, 2:3): “Shooting Affair.—Last Saturday night [Dec. 12th], near Bennett’s mill [Eben Bennett, near Felton], Mr. William Moore, a well-known citizen of Santa Cruz was shot and dangerously wounded. It is understood he was on his horse at the time, and there are various rumors afloat concerning the cause of the shooting, which we withhold for obvious reasons. The ball entered just below the left shoulder-blade, and lodged, it is supposed, in the opposite lung. At this writing, Mr. Moore is in a critical situation. Several arrests have been made, and yesterday, an examination of the suspected parties was had before Justice Montgomery. As the Court, at the request of counsel, excluded the representatives of the press, we are unable to give the result.—*Journal*.”

Denny, Caleb Stone (Mayor of Indianapolis – former law partner of William M. Aydelotte) (Denny was born on May 13, 1850, Monroe County, Indiana – he died on March 24, 1926) was the 15th and 17th mayor of the city of Indianapolis, Indiana. Denny first worked as a teacher and librarian before completing a law degree. He served as the assistant attorney general of Indiana from 1873 to 1875. In 1885, Denny resigned his position of city attorney to try to obtain the Republican nomination for mayor of Indianapolis. He ran successfully against incumbent mayor John L. McMaster and won the subsequent election by only 60 votes (out of approximately 18,000). Denny was reelected in 1887. He chose not to run in 1889 and Democrat Thomas L. Sullivan was elected as mayor. In 1892, Denny returned to politics and defeated Sullivan. He served a single term.” (Source: Wikipedia)

Dickerman, Albert (Justice of the Peace) ALBERT DICKERMAN. Residence and office, Watsonville. Born in Masonville, New York, March 26, 1840. Son of Nathaniel and Mary Ann (Ferry) Dickerman. Attended Norwich and Oxford Academies, New York; Geauga Seminary and Oberlin College, in the state of Ohio, and the Union Law College at Cleveland, Ohio. Admitted to the bar of Michigan, at Hillsdale, August 1866. Practiced at Hillsdale, Michigan, from August, 1866, to March, 1883, and at Muskegon, Michigan, from March 1883, to January 1894, when he moved to Watsonville, and has continued in the practice of his profession to date. Circuit Judge of the Fourteenth District of Michigan from 1888 to 1894. Republican.” (Source: *History of the Bench and Bar of California*. Edited by J. C. Bates. San Francisco: Bench and Bar Publishing Company, Publishers, 1912. p. 293.)

Dooling, Maurice Timothy Sr. (Judge) (October 12, 1860 – November 4, 1924) was a United States District Judge of the United States District Court for the Northern District of California. Dooling was born in a

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mining camp near Moores Flat, California, to Elizabeth Mary and Timothy Dooling, Irish immigrants who were pioneers in the territory. Maurice received an Artium Baccalaureus degree in 1880 and an Artium Magister degree in 1881 from Saint Mary's College of California (in San Francisco at that time). He was a teacher at St. Mary's College from 1881 to 1883, and read law to enter the bar in 1885. He then served as a Democratic Party member of the California State Assembly from the San Benito County district from 1885 to 1887, and as a Judge of the Superior Court of San Benito County from 1897 to 1913. He received a Doctor of Philosophy from Santa Clara College (now Santa Clara University) in 1903. On July 18, 1913, Dooling was nominated by President Woodrow Wilson to a seat on the United States District Court for the Northern District of California vacated by Judge John J. De Haven. Dooling was confirmed by the United States Senate on July 28, 1913, and received his commission the same day. Dooling served in that capacity until his death in San Francisco on November 4, 1924, from a relapse caused by overexertion, after suffering influenza the previous January.” (Source: Wikipedia)

Duckworth, Flora McKinley (Administratrix, Estate of Carmen Amesti de McKinlay) Source: Leon Rowland Card Files, Box A2 [added Aug. 20, 2004] DUCKWORTH, Mrs. Samuel J. – d. Oct. 16, 1903, in Wats.; 45; born in Monterey, dtr. of Mrs. Carmen Amesti de McKinlay. (Mrs. S. Rianda apparently a sister). Mrs. S. J. Duckworth was Flora McKinlay Duckworth.

Duckworth, Santiago J. (Plaintiff in Duckworth vs. Watsonville Water & Light Company)

Santiago J. Duckworth was born in Monterey, June 13, 1865. At the age of six years he lost his father, and with his two older brothers was sent to the Watsonville Orphan Asylum, then in charge of the Franciscan Fathers, where he was educated. In 1883 he accepted the office of chief operator in the Federal Telegraph service of Mexico in the State of Sonora. This responsible position he filled for term of three years, when he resigned and returned to Monterey, where he established a real-estate and insurance business in company with his brother, B. E. Duckworth. He is a prominent member of the Young Men's Institute, being District Deputy of Monterey county, and having represented Institute No. 57, at the Grand Council held in Stockton, September 1888. He belongs to an old family and is a natural and talented orator; has taken an active part in political campaigns, addressing citizens in Monterey county. ¶ The father of our subject was named Walter Duckworth, an Englishman by birth. He arrived in California, in 1829 and was a sailor by occupation. In 1832 he was one of the forty-five foreigners to resist the revolutionary movement of Eschendia against the legitimate authority of the Mexican Government, in California, at Monterey. Mr. Duckworth followed various occupations in Monterey, keeping a store and teaching school at various points near Monterey. He lived in a house, not far from the presidio walls, which was for years a favorite and quiet resort for sailors and officers of the presidio. Here they had their games, drank their wines. Walter Duckworth accompanied Douglas on a trip from Monterey to San Francisco, in 1841, and probably died soon after, in 1843. He was sometimes called Santiago and was at the head of local political affairs in Monterey, in 1835. He was a man of modest demeanor and was born about 1804. He married, at Monterey, Miss Antonio [sic] Armento, a daughter of Tio Armento, owner of Point *Pinos* and a retired Mexican soldier. Dr. Francis Rico says of Don Tio Armento that "he was a generous-hearted and brave man. He saved the life of the captain of the brig *Natalia*, which was wrecked in harbor, on her return voyage from the banishment of Napoleon, on the island of St. Helena. The brig went to pieces while lying at anchor of Monterey and Don Armento seeing the peril of her crew swam to the wreck, rescued the captain by bringing him safely to shore on his back." The land that Don Armento owned included the present site of New Monterey. ¶ Our subject has proven himself worthy of the brave ancestors and is a true descendant of them. If either father or grandfather could see him

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now, they would have no reason to feel anything but proud of the representative who so honorably maintains the credit of the old and honored family of Duckworth. (Source: Barrows, Henry D.; Luther A. Ingersoll. *A Memorial and Biographical History of the Coast Counties of Central California*. Illustrated. Chicago: Lewis Publishing Co., 1893. pg. 424.)

Duden, Ellsworth Frederick Jr. (Court Reporter) Born on March 5, 1894 at Sacramento, CA; Died on March 19, 1965, in San Francisco. His wife was Lois Harvey Duden. The Sacramento Bee took notice of his death (March 21, 1965): DUDEN—in San Francisco, March 19, 1965, Ellsworth, beloved husband of the late Lois Duden, loving brother of Helen Duden; a native of Sacramento, aged 71 years. Ellsworth Duden, beloved husband of the late Lois Duden, loving brother of Helen.

E

Eagan (Mr.) (mentioned) Defense Attorney Sullivan was about to call Mr. Eagan as a character witness, but he was stopped by the chairman. So we never got Eagan's testimony. The exchange (in Volume III:51) was: "Mr. Sullivan: Mr. Eagan. The Chairman: Is this another character witness? Mr. Sullivan: Yes. The Chairman: I don't believe the Committee wants to go into this matter."

Eddy, James F. (Volume III:16) J. F. Eddy, plaintiff, vs. Mark Hudson, this case was reported in the *Santa Cruz Evening Sentinel* on August 2, 1897 1:1-2 — This case involves an unpaid debt of the T. J. Horgan & Co., that Horgan & Co. would supply and deliver to said Sing and Hy Sun [Chinamen] said goods, wares and merchandise, and the Horgan Co. would pay for same. Judgment was ruled in favor of the defendants.

Elston family (in re brother-in-law of Hubert Coke Wyckoff) Some time next month at a date yet to be announced, Frederick Wyckoff, U.C. 1897, will wed Miss Girlie Elston, 1899, of Berkeley. The young man is in the insurance business with his father in San Francisco. He, like his brother, was a favorite at college and a member also of the Delta Upsilon Fraternity. Miss Elston was a member of the Gamma Phi Beta Sorority. She is the daughter of Rev. A. M. Elston of Berkeley. — (Source: *Santa Cruz Surf* June 9, 1899, 4:2; via *Oakland Enquirer*.)

Enos, Joseph L. (Enos vs. Josselyn) Joseph Luis Enos was born in the Azores, Portugal, in 1841, and came to California in 1849. He lived in Monterey County as well as Santa Cruz, and, upon his death on Sunday, May 8, 1910, the *Santa Cruz Sentinel* reported the following: "JOSEPH ENOS PASSES AWAY ¶ At his home at 36 Mission St. Sunday afternoon Joseph Enos passed away. For 46 years he had been a resident of this county and was a popular and well known Portuguese. He was employed by the late H. M. [Harriet] Blackburn for many years and later became a foreman for the F. A. Hihn Co. When he returned to Watsonville he was street commissioner for a long period. After spending a couple of years at San Leandro, where he married, he came back to Santa Cruz to live a retired life. He leaves besides a wife, two daughter and a son. The body will be cremated at Cypress Lawn cemetery. (*Santa Cruz Sentinel*, May 10, 1910, 1:5). The Enos vs. Josselyn case was referred to in the testimony of Charles M. Cassin, when he was asked to list the cases: "Q. You have a list of the cases with you, you tried while the partnership was in existence and afterwards? A. Yes, sir. Q. Go on—before Judge Smith. A. Before Judge Smith, Judge Logan appears for the plaintiff and Lindsay and Cassin for the defendant; judgment went for the plaintiff. The next was Joseph

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L. Enos, plaintiff, vs. Warren B. Josselyn, defendant; Lindsay and Cassin appeared for the plaintiff, and the attorney for the defendant was C. C. Houck; judgment went for the plaintiff.” (Hearing Volume III:15-16)

Enright, Joseph D. (J. S. Reid vs. J. D. Knight) III:16 [this should be J. S. Reid versus J. D. Enright]: “The next next case was J. S. Reid, plaintiff vs. J. D. Knight [*sic*], defendant; attorney for the plaintiff, Charles Wesley Reed, Lindsay and Cassin attorneys for the defendant; judgment went for the defendant. . . .” ¶ “One of the foremost dairymen of Santa Cruz county, and also one of the best known citizens in his neighborhood, Mr. Enright has a ranch of one thousand acres eight miles west of Santa Cruz, upon which is conducted a dairy unequalled for neatness and thrift. From 55,000 to 65,000 pounds of cheese are manufactured yearly, and a general farming industry maintained that yields its enterprising owner a handsome additional income. A prominent Republican, Mr. Enright has taken an active part in the political undertakings of his locality, and has served as supervisor from 1894 to 1898. He is a member of the Benevolent Protective Order of Elks, and has been a member of the Santa Cruz band for the past twenty years. ¶ A native son of California, the boyhood days of Mr. Enright were spent on his father’s farm in Santa Clara county, where he was born December 7, 1867, and where he received his preliminary education in the public schools. James Enright, who was born in Ireland, emigrated from his native city of Cork to the United States, and in 1846 crossed the plains, settling in Santa Clara county. He was a prosperous farmer in the country of his adoption, and lived on his well-improved property until his death in 1894. He was a Democrat in politics, and a communicant of the Roman Catholic Church. To himself and wife, Margaret (Duncan) Enright, were born eleven children, of whom the following are living: Mary A., Mrs. Robinson; Frances, Mrs. Murphy; Margaret, Mrs. McComb; Ellen, a sister of the order of St. Dominic; James E.; Joseph D.; John B.; and Mary L. ¶ Mr. Enright [i.e., Joseph D.] received his education in the public schools of Santa Clara College, and became an excellent farmer under his father’s able instruction. He became identified with Santa Cruz county in 1892, and his present success would indicate that he had found a satisfactory permanent place of residence. His wife, Anna (Inkeep) Enright, is a native of Santa Cruz, and was born in 1868. Two children have been born to Mr. and Mrs. Enright, James and Merle.” (James Miller Guinn, *History of the State of California and Biographical Record of Santa Cruz, San Benito, Monterey and San Luis Obispo Counties. An Historical Story of the State’s Marvelous Growth from its Earliest Settlement to the Present.* The Chapman Publishing Co., Chicago, 1903, pp. 490-491.) ¶ “REID AGAINST ENRIGHT. ¶ AN APPEAL FROM THE JUSTICE COURT DISMISSED. ¶ Judge Smith’s Reasons For Refusing to Grant the Plaintiff’s Appeal. ¶ On Saturday Judge Smith rendered the following decision in the suit of J. S. Reid vs. J. D. Enright: ¶ This action was tried in the Justice Court and judgement rendered in favor of defendant, from which judgment the plaintiff appealed to this court. The defendant contends that the Justice’s court did not have jurisdiction of the subject matter, and therefore that this court is without jurisdiction on this appeal. There is also a further defense that there was no consideration for the obligation sued on. ¶ The note in suit is for \$400, dated August 16th, 1893, due three months after date, with an alleged credit of \$158.31. It is admitted by the plaintiff herein that this credit was received by the Perine corporation in bituminous rock before the note was assigned by said corporation to plaintiff for collection. In a letter offered by plaintiff and admitted in evidence, written by the defendant to said corporation, the defendant directed the credit to be applied to the payment of the interest due. This letter was written while the corporation still held the note. There was no evidence offered showing how the corporation applied the credit, but section 1479 of the Civil Code provides that it must be applied as directed by the debtor. When this action was commenced there was due as interest \$71.05. The credit of \$158.31 paid all the interest and reduced the principal from \$400 to \$312.74. This latter sum is clearly in excess of the jurisdiction of a Justice’s Court. ¶ Plaintiff, however, conceived the idea that he could confer jurisdiction upon the Justice’s Court by arranging the credit to suit the occasion, and therefore in his complaint alleged that \$58.30 was credited on the interest, and \$100.01 on the principal and brought his action for \$299.99, balance of principal, and \$12.75 balance of interest due. This was such a flagrant disregard of the law conferring jurisdiction in civil matters upon Justices’ Courts, that the counsel who represented plaintiff in this court

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offer to remit all of plaintiff's claim in excess of the Justice's jurisdiction. But that should have been done before suit was brought and can not be legally permitted here, for no order that this Court might now make could confer jurisdiction on the court below. And it clearly appearing that the Justice's court did not have jurisdiction of the subject matter of the action, this court is without jurisdiction on this appeal. It was so held in the case of Shealor vs. Superior Court, 70 Cal., 564, which is decisive of this case. As the appeal will have to be dismissed for want of jurisdiction, it becomes unnecessary to determine the question as to whether there was a consideration for the note sued on. That question can only be determined when the plaintiff brings his action in a court having jurisdiction of the subject matter. It is therefore ordered that the appeal be and the same is hereby dismissed." (*Santa Cruz Sentinel*, July 3, 1898, 3:4)

F

Faneuf, Hiram (*aka* "Hi" Faneuf) "Hiram Faneuf, a juror, was the first witness called in the Thomas Dakan case in Judge Smith's court on the 19th day of April, 1904. Faneuf was a prominent Santa Cruz plumbing supply dealer. "Faneuf Buried In Santa Cruz ¶ Funeral services were conducted Monday afternoon from Wessendorf's funeral parlors in Santa Cruz for Mr. Hiram Faneuf, 63, prominent resident of Santa Cruz for many years, who died Saturday morning in his home. Mr. Faneuf was born in Blanco district, near Salinas. ¶ At the age of 18, Mr. Faneuf went to Santa Cruz, where he was employed and later engaged in business. Active in civic affairs of that city, he served as a councilman from 1907 to 1909, and in 1921 he was appointed to the city park commission of which he was a member at the time of his death. He leaves his wife Mrs. Sylvia Faneuf; three children, Forrest and Charles Faneuf and Mrs. Christine Bardwell, all of Santa Cruz; two brothers, Col. Ralph R. Faneuf of Yountville and Mrs. Samuel C. Faneuf of San Francisco; a step-father, Mrs. Edmund Maddock of Soquel. He also leaves two step-brothers, a step-sister and four grandchildren." (Source: *The Californian*, Salinas, California, February 8, 1938, p. 3.) His biography was published in *History of Monterey and Santa Cruz Counties, California ¶ Cradle of California's History and Romance*. Chicago: S. J. Clarke Publishing Co., 1925, Volume II, p. 122, 125: H. F. FANEUF. A plumber who thoroughly understands the conditions that have made twentieth century plumbing, and twentieth century users of plumbers' products and work quite another story as compared to that of only a few years ago, is H. F. Faneuf, of 21 Walnut avenue, Santa Cruz. He carries a full stock of stoves, gas appliances and plumber supplies and novelties, and those who have longest dealth with him know best how to appreciate his dependable service. ¶ A native son now well acquainted with Californians and their ways, he was born at Blanco, Monterey county, May 29, 1874, his parents being E. R. and Nancy (Beaver) Faneuf, the former a native of Canada, the latter of Missouri. Mr. Faneuf crossed the border and came to California in early days, going first to New Castle and afterward to Blanco, where he engaged in blacksmithing and wagon making. Later he removed to Castroville, where he died in 1882. Mrs. Faneuf, mother of H. F. Faneuf, crossed the plains with her parents in 1852 and her father, who was a mason, built the first brick house in Santa Rosa — a structure that is still standing. Seven children were born to this worthy ccouple and four are still living — E. H., Sam C., J. R., and H. F. ¶ The last named attended the Blanco and the Salinas schools and found his first employment in a pump and engine shop in San Francisco. On September 1, 1890, he came to Santa Cruz and here learned the trade of plumbing in an apprenticeship under Ed C. Abraham. He then followed his trade in San Jose and Oakland, and on his return to Santa Cruz took up farming for three years at the Twin Lakes. He next worked at his trade in Santa Cruz with Byrne Brothers and on February 2, 1902, set up business for himself there. He has recently added gas appliances to his stock in trde and now carries a good line of gas water-heaters, space heaters and gas stoves, etc., in addition to his plumbing stock. ¶ Mr. Faneuf was married on October 23, 1895, at Santa Cruz, to Miss Theresa Johans. They have three children: Forest

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E. and Charles H., employed by their father, and Christine, now the wife of E. L. Bardwell. From 1906 to 1908 Mr. Faneuf was a member of the city council of Santa Cruz, and is now on the board of park commissioners. He is a past grand in Santa Cruz Lodge, No. 96, I. O. O. F, and belongs to Santa Cruz Lodge, No. 824, B. P. O. E. He is also affiliated with Santa Cruz Parlor of the Native Sons of the Golden West.”

Fargo, LeRoy Livingston was born in February 1852 in California. He was married in 1884, and resided in Santa Cruz in 1900. He was 76 years old when he died in Santa Cruz on April 16, 1928. The *Santa Cruz Evening News* (Tuesday, April 17, 1928 3:4) reported his death: “Former Santa Cruz Contractor Has Gone On. ¶ The shocking news of the death of Leroy L. Fargo, former well known Santa Cruz contractor, at the Odd Fellows’ home at [the sentence was not completed; part of the next sentence was duplicated] ... late yesterday afternoon. According to the information given, Mr. Fargo shot himself in his own room at the home about noon yesterday. He had been living at the Odd Fellows’ home for the past several years and had been visited from time to time by Santa Cruz friends who were members of the Odd Fellows’ order, to which Mr. Fargo had belonged since the inception of the order in the State of California. Emmet C. Rittenhouse visited Mr. Fargo last Saturday and reported upon his return to Santa Cruz that the old gentleman did not appear at all well and was acting strangely [*sic*]. The sudden determination to take his own life is surprising in view of the fact that only recently Mr. Fargo had made a request of the home lodge for a leave of absence from the home so he could come to Santa Cruz and had been informed that he would be given the week of the grand lodge session of the Odd Fellows, which is scheduled to be held here next month. ¶ The deceased spent virtually his entire lifetime in Santa Cruz and was once proprietor of the old Wilkins house, in its day a famous resort hotel located on Beach Hill. He later took up the carpenter trade under his father, the late D. C. Fargo, who was a pioneer of the state and a well known contractor. The father built the house now occupied by Ralph Miller on Locust street and it was there that the Fargo family lived. ¶ Mr. Fargo was married twice and is survived by two sons, Bruce Fargo of San Francisco and Frank Fargo of Wilmington. ¶ He had lodge affiliations with the Independent Order of Odd Fellows in which he belonged to all branches and was a charter member of the Santa Cruz Parlor of Native Sons and was also connected with the Maccabees. Mr. Fargo was born in California about eighty years ago. ¶ The body will be shipped to Wessendorf’s mortuary in this city and funeral arrangements will be announced later.”

Fife (unidentified) (Stuart Hills vs. Fife) Mentioned in the testimony of attorney W. M. Gardner (Volume I:128): “Q. Were you in any other case where Mr. Cassin was retained on the other side? A. Yes sir. Q. What case was that? A. That is the case of Stuart Hills against Fife. Q. Didn’t Judge Smith render a just decision in that case?” [John Stuart Hills, a native of New York, aged 32 years, died July 26th in Seabright. *Santa Cruz Evening News* July 27, 1909, 6:4]

Fletcher, George Byron (attorney of Watsonville). Fletcher played an important role in the defense of one Nathan Smith, a Negro; Superior Court Judge Smith testified about this case as follows: (on Saturday, February 18, 1905, in the County Court House) Q. That is a case where quite a number of the citizens of Watsonville petitioned you to deal leniently with Nathan Smith. A. Yes sir. Q. Now state to the Committee here, the circumstances under which you received that petition. A. Well, **Nathan was a colored man**, about half witted, that was arrested and prosecuted for cutting a fellow with a knife; he was a boot black down here at Watsonville and it appears he had an old knife that he cleaned shoes with as a boot black, and some party there, I have forgotten his name, came along and commenced to tease him about something, said that he was a little ticklish and Nathan gave him a cut across the shoulder and he was arrested and

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prosecuted for assault with a deadly weapon and he was tried here, Mr. Knight prosecuted him and **George P. Fletcher, an attorney of Watsonville, defended him**, and the jury brought in a verdict of simple assault, I believe it was. Q. Assault with a deadly weapon? A. Assault with a deadly weapon, and recommended him the mercy of the Court, so within a week or so, two or three weeks, I set the sentence, at the time the sentence Mr. **Fletcher** appeared here and when I asked if he had anything to say why the sentence should not be pronounced, Mr. **Fletcher** got up and presented this petition which has been used here in court and stated to me that about 100, he said a number of the leading citizens of Watsonville presented this and asked for a light punishment; I told him, very well, he could hand the petition over to the clerk and they called a lot of witnesses to the effect that the jury had recommended him to the extreme mercy of the Court, and while I state those things were never taken in consideration by me in passing sentence, yet from the testimony in this case I would let him off with a light sentence and thereupon sentenced him to six months in the County Jail, making it a misdemeanor charge instead of a felony; but I did not consider the verdict of the jury because I never have. Q. You mean the petition? A. The petition; when a jury recommends the extreme mercy of the Court I pay no attention to that, but consider the testimony and circumstances surrounding the case and all those things in consideration. He went out and every lawyer will remember the language, he thanked me for my kindness to him. Q. That is when you sentenced him to six months in the County Jail? A. Yes sir. Q. That was the minimum penalty you could inflict upon him? A. I believe it was, I am not sure about that; I thought it was a fair punishment for the offense he had committed. Q. What was the maximum penalty? A. Two years in the penitentiary; I could fine him, I might have made it a felony, that is a crime, that is a misdemeanor or felony according to the sentence. Q. He had no means or influence, had he, or relatives or friends outside of these people who signed the petition? A. No sir. Q. Did you state to Mr. **Fletcher** or anyone else that a petition should be circulated among the residents of Watsonville to be presented to you at the time you were about to impose sentence? A. I never did, and I did not know that a petition had been signed by anybody at all until Mr. **Fletcher** produced it, I never knew anything about it. Q. Did you at the time the petition was presented to you say either to Mr. **Fletcher** or anyone else that you would act upon that petition? A. No sir; he never heard me say so. Q. When did you first see that petition? A. When Mr. **Fletcher** pulled it out of his pocket; when the defendant appeared here for sentence, when Mr. **Fletcher** got up to argue the motion for a new trial and also asked me to be lenient; That is the first time I ever saw or heard of the petition; I did not know even that it was filed until this proceeding was commenced, Mr. Leonard hunted it up.” (Source: Hearing Volume II:11-12)

Fletcher, Henry Sibley (Watsonville banker) The cashier of the bank of Watsonville, H. S. Fletcher, was born in Minnesota in 1854, and at twelve years of age moved to Springfield, Mo., with his father Hezekiah Fletcher. Having completed his education and looking around him for a favorable business opening, in 1877 he decided to come to California, and accordingly that year found him in Watsonville. For three years he was employed as clerk and deliveryman with Charles Ford, after which he was made agent of the Watsonville station. In 1880 he resigned as agent to become postmaster, in which office he continued for four years. On the expiration of his term of office he became a bookkeeper in the Bank of Watsonville and in 1885 was made its cashier, which position he has since held, at the same time being a stockholder and director. In connection with his position, he acts as cashier of the Watsonville Savings Bank. By his marriage to Belle B. Bockius, daughter of the president of the bank, he has five children: Harriet, Henry E., Priscilla, Godfrey B. and Belle. (Guinn, James Miller *History of the State of California and Biographical Record of Santa Cruz, San Benito, Monterey and San Luis Obispo Counties, ..., Washington, D. C. Also Containing Biographies of Well-Known Citizens of the Past and Present.* The Chapman Publishing Co., Chicago, 1903, p. 278.)

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Forgeus, James Whitesides. The *Santa Cruz Weekly Sentinel*, on Saturday, July 14, 1906, (11:5), wrote of Forgeus, as follows: "J. W. FORGEUS 'THE MAN BEHIND' IN CAR DEAL ¶ AN APPRECIATION OF THE WORTH OF ONE OF THE BIGGEST MEN IN SANTA CRUZ COUNTY. ¶ While we are speaking of the benefit this city may derive through having its street car system under the consolidated ownership of a powerful group of capitalists like Martin, DeSabla and their associates, it does not seem proper to close the matter without a reference to a man whose indomitable energy and ability have made this, as well as other important deals in the recent history of this county. ¶ This man is James W. Forgeus, who has been "the man behind" in a large number of the important industrial and real estate transactions in this end of the county for the past three years. Whatever Mr. Forgeus has done for himself, and we are glad to know that he has personally profited by the various deals in which he has been engaged, there is no question but that his coming to this city has resulted in a great uplift in the development of hitherto idle or unproductive properties, which only required a man who was able to grasp their possibilities to make them blossom like the rose. ¶ One of the first big deals made by Mr. Forgeus on coming here was the selling of the Kerr property, which lain idle for years, to F. W. Billing. In this about \$50,000 was involved. Following that quickly came the purchase of the Big Creek Power Co. from Fred Swanton and his associates, in which Mr. Forgeus interested Messrs. Packard and Billing, who furnished the money to improve the big power plant up the coast, which is now worth fully half a million. ¶ The next transaction in which this Napoleon of finance figured was the development of the San Vicente Grant, of about 8000 acres, which had lain idle for probably 25 years. He put new life and new capital into the Santa Cruz Lime Co. until now it controls a practically inexhaustible supply of lime rock together with the finest timber supply in this portion of the State. ¶ Then came the sale of the Watsonville Light and Power Co., owned by Francis Smith of San Francisco, to Messrs. Martin and Lowe, who have added a splendid new power house and otherwise improved the property so that it is now work [*i.e.*, worth?] fully \$200,000. ¶ After this Mr. Forgeus bought the Santa Cruz Electric Railway and a year later engineered the consolidation of the two street railroads into the Union Traction Co., with Warren Porter as president, followed later by the deal which is reported in our columns this morning. ¶ With D. W. Johnston, his real estate partner, he purchased the big Eckle ranch of several thousand acres in Colusa Co., trading therefor in part payment a big slice of Wood's Lagoon water front in this city. ¶ But the work by which Mr. Forgeus will be known best in this city is his enthusiastic support of the Board of Trade. To this he has given of his time and money for general promotion purposes, which will benefit his interests of course, but with becoming modesty and without any seeking for notoriety, as befits a man of big things. ¶ What new project will next emanate from the intensely active brain of this human dynamo, as some of his friends call him, no man can tell." [As to Forgeus, in the Correspondence of Charles B. Younger Sr. and Charles B. Younger, Jr. there are many letters: [Record Numbers: 193-194, 709, 878, 11514-1517, 1570; (Grand Jury Foreman) 1365, 1367; ("been boring a hole in their bottoms" of banks) 2413; (Jessie E. N. Forgeus (his wife) vs. Thomas B. Dakan) 3800.1-3800-2; (Johnston assigned his right to the judgment to J. W. Forgeus in Johnston vs. Dakan) 3644-3645; 3908.]

G

Gaffey, Thomas J. (attorney) "T. J. Gaffey left last Sunday for South Bend, Indiana, where he will attend the college of Notre Dame. He will take up the law course." (Source: *Watsonville Pajaronian*, September 25, 1890, p. 3:2); "Thos. J. Gaffey graduated from the law college of the University of Michigan, at Ann Arbor, Mich., this week, and will soon return to California. He has made rapid progress in his studies since he went

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East and has graduated from two institutions of learning during that time, and with honors in each. He expects to enter a law office after his return to this State and will continue work in the study of his chosen profession. There is doubt-less a bright future before this young man.” (*Santa Cruz Surf* via *Pajaronian*, July 6, 1892 5:4). He died on April 27, 1918 at 47 years old.

Gardner, Henry Emanuel (H. E. Gardner defendant in *Marquis vs. Gardner*) I: 10, 120 Cited in Specification 7. That said Smith has been guilty of great oppression and tyranny and mal-administration in the affairs of the conduct of his office. John H. Leonard.; II: 46: MR. SULLIVAN. That fully covers specification 7, in relation to the Buelna case. ¶ A. Well, in relation to another affidavit here about *Marquis versus H. E. Gardner.*”

Gardner, Jonathan E. (Watsonville attorney, partners Hubert Coke Wyckoff & Jonathan E. Gardner, law firm, Watsonville); “John Gardner of Watsonville was today elected president of the Santa Cruz County Bar association, succeeding to the office held many years by Charles Younger of Santa Cruz up to the time of [Charles B. Younger Jr.’s] death.” (Source: *Santa Cruz Evening News*, Sept. 5, 1935, p. 1:4)

Gardner, Wilber Monroe (attorney & Notary Public). Wilber M. Gardner was born March 22, 1861, at Elgin, Illinois. When ten years of age he clerk in a general merchandise store. On account of ill health and serious rheumatic troubles he determined to come to California, arriving in San Francisco April 18, 1882. The first year was spent in traveling over the State. In March, 1883, he located at Santa Cruz, where he has since lived, excepting two years when he worked for the San Pedro Lumber Company, at San Pedro, California. During his illness with rheumatism he studied shorthand and typewriting, and followed that profession for a number of years, a portion of the time as shorthand instructor in Chestnutwood’s [*sic; i.e., Chesnutwood’s*] Business College, teaching the Ben Pitman system, and also giving instructions on the Remington typewriter. ¶ At the election of 1890 Mr. Gardner was successful as a candidate for justice of the peace for Santa Cruz Township, on the Republican ticket, and now holds that position at his office, No. 10 Locust Street, Santa Cruz, residence 204 Chestnut Avenue. He was married, September 8, 1890, to Miss Mamie E. Morriss, of Watsonville, California, and has one child, a daughter, born July 29, 1891. (Harrison, Edward Sanford. *The History of Santa Cruz County. Biographical Sketches.* San Francisco, printed for the author, 1892, p. 348.) ¶ “Wilber M. Gardner was born March 22, 1861, near Elgin, Illinois. He was educated in the public schools. At the age of fourteen he left home, to shift for himself, and enlisted as clerk in a general merchandise store. On account of serious rheumatic troubles, he determined to come to California, arriving in San Francisco, April 18, 1882. The first year was spent in traveling over the State. In March, 1883, he located at Santa Cruz, where he has since lived, excepting two years when he worked for the San Pedro Lumber Company, at San Pedro, California. During his illness with rheumatism he studied shorthand and typewriting, and followed that profession for a number of years, a portion of the time as shorthand instructor in Chestnutwood’s [*sic; i.e., Chesnutwood’s*] Business College. ¶ At the election of 1890 Mr. Gardner was successful as a candidate for Justice of the Peace in Santa Cruz, which office he continued to hold for eight years, during which period he improved his time by studying law, taking both the California course and a course from the Western Correspondence School of Law of Chicago. He was admitted to practice by the Supreme Court of this State on December 30, 1898, and on January 1, 1899, formed a partnership with Ed Martin, since which time the firm of Martin & Gardner has been practicing law at 4 Cooper street, Santa Cruz.” (Oscar T. Shuck, *History of the bench and bar of California.* Los Angeles, Commercial Printing House, 1901, p. 1025.)



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Gathy, W. B. [unidentified] In the testimony of Henry Sibley Fletcher, he was asked about Judge Smith's reputation: Q. Name one person who said he was a good judge. ¶ A. W. B. Gathy that I remember at present." (II:52) [The Reporter evidently transcribed incorrectly the name of the person named.]

Goldsby, Zachariah Nance (attorney) 41 years old at Registration to Vote on April 3, 1878; birthplace: Illinois. Residence: Santa Cruz. The *Santa Cruz Weekly Sentinel* of Saturday, July 29, 1882, (3:1) announced that "Messrs. Goldsby & Jeter, attorneys-at-law, have moved into their new and elegant rooms, SENTINEL Building, up-stairs." ¶ The *Santa Cruz Weekly Sentinel* of Saturday, September 29, 1883 (3:3) noted that "Z. N. Goldsby and Julius Lee will defend J. Joris, who will be tried next week in the Santa Cruz Superior Court for his life. Mr. Goldsby is taking a foremost position among criminal lawyers, and had he been nominated for District Attorney last year by the Republicans we believe his party would have had more chances of success." Goldsby was President of the Grand Army of the Republic in Santa Cruz County in 1881. Robert L. Nelson, in his "*Old Soldier*" wrote about Goldsby: "Zachariah N. Goldsby. Probably no name appears in more GAR events during the 1880s than that of Zachariah Goldsby. A lawyer and district attorney in Santa Cruz, Goldsby assisted in the organization of the Wallace and Reynolds Post. Goldsby subsequently moved to Oakland but would return frequently to Santa Cruz. He lived to the age of 89 and when he died in Oakland, he had his remains returned to Santa Cruz for burial in the Santa Cruz IOOF Cemetery." (His portrait is reproduced on page 27 of *Old Soldier. The Story of the Grand Army of the Republic in Santa Cruz County, California*. Santa Cruz : Museum of Art & History, 2004.)

Gregory, James B. (juror charged with contempt of court) Testimony or mention of is found in Hearing Transcripts, Volume I: 174-175: "The Court fully concurred in this request, and asked the attorney who made the charge, to be sworn and give the source of his information. This he declined to do, but shortly thereafter appeared in Court and gave the name of Harry Rich, as the person who had given him the information upon which he based the charge, and that J. B. Gregory was the juror referred to."; II: 34: "Mr. Gregory testified, as the committee will see from the official notes, that as soon as he went out Mr. Rich called him in the middle of the street here and walked up to him, he says "look here, Gregory," he says "this case is all one sided, you will have to decide in favor of the Big Creek Company", and he says "You are a big fool if you do, not make a thousand, two or three or four or five thousand dollars for your verdict", he says "You are a fool if you do not do it"; also see Volume III: 28-30, 38-40, 53, of Hearing.

H

Haesters, Julius Henry (born October 2, 1865, died in Santa Clara, California, May 24, 1940.) (In 1904, Frederick Billing petitioned the U. S. District Court to declare **Julius H. Haesters** a bankrupt. Haesters had been conducting the Villa Fontenay, near Glenwood in the Santa Cruz mountains, then owned by Billing. Haesters' liabilities were about \$9000 and assets nominal.

Hall, James Augustus (attorney) Residence and office, Watsonville. Born November 9, 1857, in Monterey County, California. Son of Richard F. and Maria Marie McCarthy, March 30, 1902. Attended the Clara College, University of California and bar of California by the Supreme Court, January



Louisa (Stinson) Hall. Married Louise public schools of Monterey County, Santa Hastings College of Law. Admitted to the 10, 1888. Began practice in Watsonville

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in 1880. Elected District Attorney of Santa Cruz County in November, 1882, and served one term. Elected to the Assembly from Santa Cruz County, November, 1888. Moved to San Francisco in 1891 and entered into partnership with C. W. Cross, under the firm name of Cross & Hall. Two years later Tیره L. Ford and Frank P. Kelly entered the firm and the name was changed to Cross, Hall, Ford & Kelly, which continued for several years. Moved to Watsonville in 1901 after spending a year and a half in Alaska. Member for several years of the Board of Education of Watsonville, California. Elected Mayor of Watsonville, May 8, 1911. Democrat. (Source: *History of the Bench and Bar of California*. Edited by J. C. Bates. San Francisco: Bench and Bar Publishing Company, 1912. Pg. 337-338. With portrait.)

Hartman, Horace G. [Incorrectly cited as Hartmann in the Transcript.] (People vs. Hartman 103 Cal. [242] [1894]. People v. Hartman THE PEOPLE, Respondent, v. HORACE G. HARTMAN, Appellant THE PEOPLE, Respondent, v. HORACE G. HARTMAN, Appellant. 103 Cal. 242 No. 21100 Supreme Court of California Decided June 26 1894 C. W. Hartman, for Appellant. The order of the court excluding from the courtroom every one but the officers of the court and the defendant deprived the defendant of a public trial, and was a prejudicial error for which the judgment should be reversed. The fact that the prosecutrix was of unchaste character is a complete defense to the crime charged in the information. The court had the right to exclude the public from the trial. The fact that the prosecutrix may have been unchaste does not render the defendant any the less guilty of the crime charged. -- People v. Hartman, 103 Cal. 242, 242-43 (Cal. 1894).

Hartmann, Peter Paul (baker, a socialist, b. 1864). HARTMAN [*sic*] WANTS POOR TO HAVE ONE THIRD ¶ ASKS THAT F. A. HIHN SETTLE ESTATE OF LATE GEORGE KOHL, GIVING MONEY TO POOR OF NATIVE VILLAGE. ¶ Peter Paul Hartmann, late socialist candidate for the assembly from this county and a grand nephew of the late George Kohl has filed papers in a contest over the distribution of his uncle's estate. Mr. Hartmann claims the estate was left in trust only to F. A. Hihn, with the understanding that after all Kohl's debts and funeral expenses were paid the balance of his estate should go to the Schultheiss and Burgomaster of the village of Rechtenbach, in Bavaria, in trust for the poor of said village. Hartmann's petition claims that Mr. Hihn has not fulfilled the terms of this agreement, which was left out of the will at the suggestion of Mr. Hihn, on account of legal technicalities, but was the subject of a promise on Hihn's part to faithfully execute the old man's wishes. ¶ Kohl sent for Mr. Hihn on his sick bed, and had the millionaire lumberman write his will, being of the opinion, Mr. Hartmann says, that no one but a multi-millionaire could be trusted to write or execute the will of a poor man. ¶ The will was written on July 30th, 1901, and Kohl died March 24th, 1902. In a previous contest over the probating of the will, Hartmann declares that Mr. Hihn admitted that he was only a trustee, and claims that as executor, Hihn has taken no steps to wind up the estate or to send money to the Burgomaster of Rechtenbach. The petition asks that F. A. Hihn be declared a trustee under the will for the poor of Rechtenbach and that Hartmann be declared the only heir at law, and that two-thirds of the estate be set apart to himself and the third to the Rechtenbach poor. ¶ The estate consists of valuable real estate on Soquel Av. in this city and cash in the hands of the executor and in bank, to the total estimated value of \$3,000." (*Santa Cruz Weekly Sentinel* August 12, 1905, 8:1) ¶ "HARTMANN'S CLAIMS ARE RULED OUT ¶ BY JUDGE SMITH, WHO GRANTED F. A. HIHN'S MOTION TO THAT EFFECT ON WEDNESDAY. ¶ F. A. Hihn, as executor of the will of the late George Kohl, who believed that none but a multi-millionaire was to be trusted to administer a poor man's estate, has made a motion to strike out the amended complaint of Peter Paul Hartmann, who is contesting the settlement of the estate. ¶ Judge Smith on Wednesday ruled on this motion, granting it, on the ground that Hartmann is not a beneficiary under the will." (*Santa Cruz Sentinel*, Oct. 19, 1905, 3:2).

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Herbert, R. W. [full name unidentified; testimony may have used R. W. in error.] (mentioned by Henry S. Fletcher II: 52) “Q. Yes. A. That I don’t know as — nobody in particular — I cannot call to my mind any particular person. Mr. White, and Otto Stoesser, Speckens, R. W. Herbert. ¶ Q. People who have had litigation in the Court? ¶ A. They might have. ¶ Q. R. W. Herbert had, hadn’t he? ¶ A. Yes; most everybody is unfortunate to run up against the Court once in a while. ¶ Q. These are all the people that you remember? ¶ A. These are all the people I remember discussing his reputation. REDIRECT EXAMINATION. MR. SULLIVAN. Q. And Mr. Herbert lost that case did he not? A. I am sure I don’t know; I think he did.”

Hihn, Frederick Augustus “When F. A. Morning News wrote of him: “It is no energy and progress, who made things way. He was not the man to give up. sun could turn him. Calamity he smiled hedge him about, he pushed forward and California that few men have done.” *Morning News*, August 24, 1913.) ¶ BY JUDGE SMITH, WHO EFFECT ON WEDNESDAY. ¶ F.



Hihn died on August 23, 1913, the Santa Cruz small task to even attempt to describe this man of come his way when they persisted in going the other When he was satisfied he was right, nothing under the at. When confronted with obstacles which seemed to blazed a path in the financial and commercial arena of (“F. A. Hihn, Pioneer Capitalist, Is Dead,” *Santa Cruz* “HARTMANN’S CLAIMS ARE RULED OUT ¶ GRANTED F. A. HIHN’S MOTION TO THAT A. Hihn, as executor of the will of the late George Kohl, who believed that none but a multi-millionaire was to be trusted to administer a poor man’s estate, has made a motion to strike out the amended complaint of Peter Paul Hartmann, who is contesting the settlement of the estate. ¶ Judge Smith on Wednesday ruled on this motion, granting it, on the ground that Hartmann is not a beneficiary under the will.” (*Santa Cruz Sentinel*, Oct. 19, 1905, 3:2).

Hills, Stuart. Mentioned in the testimony of attorney W. M. Gardner (Volume I:128): “Q. Were you in any other case where Mr. Cassin was retained on the other side? A. Yes sir. Q. What case was that? A. That is the case of Stuart Hills against Fife. Q. Didn’t Judge Smith render a just decision in that case?” [John Stuart Hills, a native of New York, aged 32 years, died July 26th in Seabright. *Santa Cruz Evening News* July 27, 1909, 6:4]]

Hodgdon (Mr.) - witness in case of Peter Paul Hartmann vs. F. A. Hihn (Estate of George Kohl) *see also* PETER PAUL HARTMANN, Petitioner, v. LUCAS F. SMITH, Judge of Superior Court of Santa Cruz County, Respondent, S. F. No. 3532, Supreme Court of California (140 Cal. 461; 74 P. 7; 1903 Cal. LEXIS 620, October 1, 1903]

Hoefler, Ludwig Mathias (of the firm of Bishop Wheeler and Hoffler [*sic*]) “L. M. HOEFLER. ¶ Here is a busy, well-established lawyer, just entering life’s prime, whose sleepless industry keeps him before the eye, and whose character has fixed him in the heart of the profession. ¶ Ludwig M. Hoefler was born in Adrian, Lenawee county, state of Michigan, in the year 1858, and came to California when he was nineteen years of age. The law having early possessed his ambition, he applied himself vigorously to the books, and in due season graduated from the Hastings College with the class of 1882. ¶ Few lawyers in California have served a livelier apprenticeship than Mr. Hoefler. Taking an important position in the law office of the late Alfred H. Cohen, and later with law firm of Garber, Thornton & Bishop, composed of John Garber, Harry I. Thornton and Thomas B. Bishop, he had the benefit of active participation in the practice and large affairs controlled by those well-known gentlemen, and the stimulus and mental discipline, so important to a young

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man, which are derived from daily association with men in the very forefront of the profession. It was no small privilege to serve the men he did. It was a great opportunity as well. No one, indeed, has ever more faithfully improved his opportunities or better deserves the success which has come to him. ¶ In 1896 the firm of Bishop & Wheeler was organized, composed of Thomas B. Bishop, Charles S. Wheeler, Ludwig M. Hoefler, Guy C. Earl and William Rix, with offices in the Hobart Building, San Francisco. Upon the withdrawal of Mr. Earl, in August, 1900, the firm was reorganized under the name of Bishop, Wheeler & Hoefler. Mr. Hoefler since the organization of the firm has been one of the busiest lawyers in San Francisco, disposing daily of a mass of work which would be appalling to many lawyers, and impossible to not a few of them. That he is able to accomplish so much, and to do it so well, is due to the fact that legal and executive ability are happily combined in him, that he is quick and accurate in his conclusions, and absolutely unfaltering and untiring in his attention to business. He is a man of phenomenal energy, while his good, easy temper and obliging manner on all occasions win for him universal favor. Those who know him well — and their name is legion, for he has a wide acquaintance over the State — yield him attachment for his broad and liberal, as well as for his unselfish nature. He is, indeed, a true friend and one of the most companionable of men. He is happily married, and has one child, a daughter.” (Oscar T. Shuck, *History of the bench and bar of California*. Los Angeles, Commercial Printing House, 1901, p. 871.) ¶ “Ludwig Mathias Hoefler, a San Francisco attorney of wide experience, has spent the greater part of his life in this city. He was born in Adrian, Michigan, August 18, 1858, a son of John Philip Hoefler, who was a native of Nuremberg, Germany, and in 1848 came to the United States with Carl Schurz and other German revolutionists. He settled in Adrian, Michigan, where he remained until 1882, when he traveled westward to San Francisco, and made his home in this city until his death on the 21st of November, 1893. A talented artist, he was widely known in Michigan and in and about San Francisco. His wife, Mary (Hofman) Hoefler, was born near Heidelberg, Germany, April 2, 1837, and when but a year old was brought to America by her parents, who settled in Monroe county, Michigan, where she met John Philip Hoefler, to whom she was later married. For many years she survived her husband, passing away July 29, 1929, at the advanced age of ninety two years. ¶ Ludwig M. Hoefler acquired his early education in a parochial school of his native town. On the 24th of December, 1878, he arrived in San Francisco and, having determined to enter the legal profession, he read law for a time in the office of Alfred A. Cohen and then matriculated in the Hastings Law School of San Francisco, receiving from that institution the degree of LL. B. in 1882. After his graduation Mr. Hoefler entered the law office of Garber, Thornton & Bishop, one of the foremost legal organizations of San Francisco at that time. On the dissolution of that firm he became a partner of Mr. Bishop and continued as such until the latter's death on the 7th of February, 1906. He is now the only surviving member of the firms mentioned. He is located at 593 Market street and is attorney for a number of corporations. He has served as president and a director of several business concerns and was local counsel for the San Francisco Breweries, Ltd., and chairman of its advisory board. ¶ In December, 1889, Mr. Hoefler was married in San Francisco to Emma Madeline Altemus, who died July 25, 1931. She was a native of this city and a daughter of John and Elizabeth Altemus. Her parents came here in the early days and their home stood on the site now occupied by the Pacific Union Club. Mr. and Mrs. Hoefler had a daughter, Edith, who is the wife of Charles Albert Vance, of San Francisco, and the mother of five children: Albert, who was born October 9, 1910; Ludwig Hoefler, born May 28, 1912; John Holbrook, August 28, 1916; Patricia, October 29, 1918; and David, January 6, 1920. All are natives of this city. Mrs. Vance was one of the star pupils at the Sarah Hamlin School and is a pianist of marked ability. ¶ Mr. Hoefler's home is at 160 Haight street, where he has resided for thirty six years, witnessing a notable change in the appearance of the locality during that period. Widely traveled, he has visited many parts of the globe and in 1921 was in Germany.

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While in that country he was prevailed upon by Dr. Walter Simmons, German minister, and Franz Ebert, president of the German republic, to become American adviser at Berlin. Upon receipt of his appointment by the German cabinet and acceptance of the post by the United States government, he furnished President Harding and other officials of the American government with accurate information regarding conditions in Germany. He was largely instrumental in keeping France out of the Ruhr district for fully a year and in securing a modification of many of the demands made by the French government, thus rendering service of great value to Germany and to his own country as well. Politically he is a democrat and has worked for the success of the party. He is a life member of all Masonic bodies, a past master of Doric Lodge, No. 216, F. & A. M., a past high priest of the chapter at San Francisco, and a life member of Islam Temple of the Mystic Shrine, while his wife was identified with the ladies' auxiliary of California Commandery, K. T. For twenty three years he has served as vice president of the Olympic Club, in which he holds a life membership, and is likewise a life member of the Press Club of San Francisco. However, he subordinates all other interests to the demands of his profession and belongs to the San Francisco, California State and American Bar Associations. (Source: *History of San Francisco, California*, by Lewis Francis Byington, Supervising Editor, and Oscar Lewis, Associate Editor. San Francisco, The S. J. Clark Publishing Company, Chicago-San Francisco 1931.)

Hoffmann, William C. (I: 69, 71): Mr. Sullivan: Q. That is a fact. I will show you this affidavit, show you one sworn to by W. C. Hoffmann on the 27th day of April and ask if you ever was [sic] that affidavit before. A. Yes sir, I think I did. (sometimes shown in transcript as Hoffman) II: 108, 113

Houck, Charles Clayton (born September 25, 1871 in Iowa, died February 16, 1955 in Santa Cruz, attorney) “Two Others Enter Race For City Commission ¶ Houck And Durden Are Candidates At The May 4 Election ¶ Charles C. Houck, former justice of the peace and deputy county clerk, a resident here for more than 60 years, filed to run for city commissioner. ¶ Judge Houck is a native of Iowa and came to Felton with his parents in 1886, later moving to Santa Cruz. He has lived at 79 Garfield street 57 years and before his retirement as justice of the peace was noted for his knowledge of state codes and other branches of law. ¶ Prohibition Days ¶ During prohibition days he was famed for collecting fines from liquor law violators and collected enough money for the county to pay his salary at one time. ¶ He is a former secretary of the Odd Fellows and a member of the Druids. County Clerk Harry Miller recalled Judge Houck started practicing law here in the late ‘90’s and the judge first registered to vote at the age of 21 in October, 1892, county records show. When Miller first began his long career as an employe of Santa Cruz county he registered papers for the old-time law firm of Warren B. Josselyn and Charles C. Houck in 1899. ¶ Resigned In 1940 ¶ After serving for many years, Judge Houck resigned as justice of the peace August 8, 1927, and was appointed deputy county clerk under Harry Miller in September, 1927. He successfully ran for office again in 1930 and returned to the bench in January, 1931. He was reelected in 1934, again in 1938, and resigned March 23, 1940. At that time W. A. Deans, the incumbent, was named to the position, county records show. (Source: Santa Cruz Sentinel, Wednesday, April 7, 1943, 1:4) His obituary appeared in the Santa Cruz Sentinel of February 17, 1955 (1:4-5): (*Santa Cruz Sentinel*, Thursday, February 17, 1955 (1:6-7) ¶ Judge C. C. Houck Dies In Hospital ¶ “Judge Charles Clayton Houck, 83, who administered justice from the Santa Cruz bench for almost a quarter of a century, died at 5 p.m., yesterday in a local hospital. ¶ Cause of Judge Houck’s death was hyperstatic pneumonia. He had been in the hospital since he fractured a hip in a fall going up the steps of his home, on the morning of January 27. ¶ A native of Iowa, Judge Houck lived in Santa Cruz county from the time he was 1 year old. His parents made their home in Felton for a year before

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moving to Santa Cruz. ¶ The widely-known Santa Cruz jurist studied law in the office of the early day “Judge” J. H. Skirm and, in his long practice, earned a reputation as one of the best informed persons on law in the state. ¶ Judge Houck took the justice court bench in 1916 and retired in 1940. He served a four-year term on the city council immediately after his retirement. ¶ As justice of the peace he was stern with traffic violators in court, and an effective out-of-court mediator for all those who came to him with domestic troubles. ¶ He was an avid baseball and prize fight fan. In his youth, as in recent years, the shrewd gentleman was a familiar figure on Santa Cruz’s main streets, observing people and sometimes chewing a cigar. ¶ Judge Houck, who attended Grant and Mission Hill schools, was graduated from Santa Cruz high school in 1892. In 1898 he married Rena Louise Rossi, daughter of a pioneer Ben Lomond family. His wife preceded him in death a number of years ago. ¶ He was a 50-year member of Santa Cruz lodge 96, IOOF, and for many years served as the Odd Fellows’ secretary. He also was active in Santa Cruz Grove 142 UAOD. ¶ He was a long-time subscriber to the *Sentinel-News* and served as a member of the Republican county central committee for many years. ¶ Judge Houck is survived by four children, Marjorie Hauselt and Francis Houck of Santa Cruz, Mrs. Barbara Foster, Los Altos, and Fred Charles Houck of Oakland; nine grandchildren and one great-grandchild.”

Houghton, Harriet Elvira (Mrs. Herbert E. Houghton) ¶ *Santa Cruz Evening News* December 7, 1907, 1:3: “APPEAL IS SUSTAINED ¶ Attorney W. P. Netherton received word this morning of a decision of the Supreme Court yesterday sustaining the appeal of the Loma Prieta Lumber Company against the decision of the Superior Court of this county in the damage suit of Mrs. Harriet Houghton of Soquel, who was awarded \$18,000 damages for the death of her husband, while working for the lumber company some four years ago. ¶ Mrs. Houghton’s husband was killed by the blasting of a stump on the Olive Springs ranch of the company, and a jury in the Superior Court awarded her \$26,000 damages. The Court cut the amount down to \$18,000, and now in the Supreme Court, has reversed the award entirely, on the ground of a technical error in the instruction of the Court. Incidentally, it held that A. W. Wyman (now Supervisor), who built the road for the Loma Prieta Company, should have been the party sued, but this point was not passed upon in the decision. ¶ Matt I. Sullivan of San Francisco, and C. M. Cassin, were the attorneys for Mrs. Houghton, and W. E. Rix of San Francisco, and W. P. Netherton, for the Loma Prieta Company.”

Houghton, Sherman Otis (attorney) His biography appears as follows: “Colonel Sherman Otis Houghton, an eminent member of the California bar for forty years, first at San Jose and latterly at Los Angeles, has a long American ancestry. The first of the line, John Houghton, came from England in 1635, landing in Boston, at the age of four years. A cousin of his had come from England a few years earlier, and it is supposed that John, whose father was not with him, was sent to join his cousin, whose name was Ralph Houghton. Ralph and John were among the founders of Lancaster, Massachusetts. John died in 1684. From him, through his fourth son, Benjamin, Colonel Houghton is descended. Benjamin was born in 1668. His third son, Benjamin, Jr., was father of Abijah Houghton, who was born in **1713**. Abijah's second son was Abijah, Jr., born in 1747. He married Mary Sawyer, and died in 1831. Abijah Otis Houghton was the offspring of this union, born at Sterling, Massachusetts, June 4, 1796. This was Colonel Houghton's father. Both Benjamin Houghtons were American soldiers in the War of the Revolution, and were among the “minute men” of Lexington. The second Benjamin, at the age of sixteen, was in the battle of Bunker Hill, in his father's company, and was there wounded twice, and recovering from his wounds, enlisted again. Colonel Houghton's grandfather on his mother's side was also a Revolutionary soldier. His (the Colonel's) mother was Eliza Ferrand, born at Hanover, Morris county, New Jersey, July 4, 1793. She was of Huguenot

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ancestry, her family belonging to a Huguenot colony which settled in northern New Jersey, which they purchased from the Duke of York, the original grantee of that region from the British crown. Pile Colonel's father, before named, we may add, was a printer in his youth, and afterwards was editor of various newspapers, among them being the *Orange County Gazette*, published at Goshen. New York. He was there initiated a Mason in June, 1818. ¶ Colonel Houghton was born in New York City, on April 10, 1828. He was educated there at the Collegiate Institute. In June, 1846, at the age of eighteen, he enlisted as a soldier in the War with Mexico—in the First Regiment, New York Volunteers. The regiment was ordered to California by way of Cape Horn, and sailed from New York in September, 1846, arriving at San Francisco on March 26, 1847. After a few days Colonel Houghton's company was ordered to Mexico, and took passage on an old bark, the "Moscow," which had been used for gathering hides along the coast for shipment to Boston. The "Moscow" sprung a leak, and the men landed at Santa Barbara, where they remained until a United States man-of-war called for them and took them to Mexico. Colonel Houghton was with the American forces in that country until the middle of September, 1848. He was then ordered with comrades to Monterey, California, where he arrived in October, in the United States ship of-the-line Ohio, the commander of which was Thomas Ap Catesby Jones, who was head of the American navy at that time. Our subject now received his discharge from the army. He went at once to the gold mines, which had been first discovered a few months before, and engaged in mining and trading for about nine months. He then went to San Jose, and settled down. He was admitted to the bar of the old District Court at that place in 1857; to the bar of the State Supreme Court in 1859, and to that of the Supreme Court of the United States in 1871. ¶ Colonel Houghton's first triumph at the bar, and his first case in the State Supreme Court, was in the very year of his admission to practice in that tribunal. It was a Santa Clara County case. *Scott vs. Ward*, set forth in the California Reports, 13th vol., page 458, decided in April, 1859. Therein he overturned the whole doctrine of the law that had obtained in this State down to that time. It had been uniformly held that a grant made to a married person was community property under the colonization laws of Mexico of 1824, and the Regulations of 1828. Colonel Houghton contended that such grants were gifts, and the separate property of the spouse named in them, whether husband or wife. He prevailed in both the District and Supreme Courts, and owed his victory to his knowledge of the Spanish language and the Spanish and Mexican laws. The opinion of the Supreme Court in *Scott vs. Ward* was a great surprise to the bar of the State. ¶ In the case of *Donner vs. Palmer*, arising in San Francisco, and involving the validity of an alcalde's grant of a city lot, Colonel Houghton overthrew the settled doctrine of the courts on another question of great consequence. The decisions had all been that an alcalde's paper delivered to a grantee, setting forth the conveyance of the land, was the real grant, while that functionary's record of the grant, entered, as law required, on his official register or record, was secondary—in effect a copy. The Colonel contended that the original entry was the primary evidence because it was a public record. The Supreme Court sustained this view. In this case, which is reported in 31st California, at page 500, the name of the alcalde had been surreptitiously erased from the paper issued to the grantee. ¶ The decision in this case so disturbed the bar of the State that many of its members petitioned for a rehearing, and that the bar be invited to attend and discuss the question. This was granted, a number of lawyers attending, and all of them taking stand against Colonel Houghton, except Sidney L. Johnson. The court adhered to its opinion. ¶ Later, in another case of the Colonel's, taken to the Supreme Court of the United States, that court decided in accordance with the doctrine laid down in *Donner vs. Palmer*. This was the case of *Palmer vs. Low*. Many pages, indeed a book, could be devoted to a mere statement of the many other important causes which Colonel Houghton has carried to a successful conclusion in his active and long career. ¶ The Colonel was elected to the national house of representatives twice, from the first district, as a Republican. His period in congress was four years, from March 4, 1871, to

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March 4, 1875. His party was divided in 1875, that is, a branch split off. He was unanimously nominated again for congress by the regular body, but P. D. Wigginton, Democrat, was elected, the Democrats sweeping the State. ¶ While in Congress, Colonel Houghton secured the first appropriation by the general government for the improvement of the interior harbor of San Pedro. This was in 1871. ¶ Colonel Houghton removed to Los Angeles in 1886, and has been in practice there ever since. ¶ His only partnership in that city was with Messrs. Silent and Campbell, as referred to in the sketch of Judge Campbell in this history. When Mr. Walter F. Haas, who had qualified for the bar in his office, became city attorney in January, 1899, he asked the Colonel to accept the position of assistant in the office, and the latter assumed the place, principally out of a desire to be of help to his student and to make his administration successful. He retired from office with his young chief in January, 1901, having rendered the city services of great value in important litigation. ¶ Colonel Houghton is always so titled, from his early and prominent connection with the State militia. He was colonel on the staff of that other distinguished lawyer, as well as law writer, H. W. Halleck, when the latter was major general of the National Guard of California, in the fifties. He had been with General Halleck in Mexico. While he was on General Halleck's staff the General and Colonel together framed the first militia law of this State. The legislature adopted it as a whole. After the great Vigilance Committee of 1856 they prepared a new militia law, which was also passed as presented. ¶ The Colonel has been twice married, both of his wives having been little girls in the ill-fated "Donner party" of 1846, when their parents perished of exposure and hunger. **The first Mrs. Houghton was Miss Mary M. Donner, daughter of George Donner, and the marriage occurred at Santa Cruz,** where she was then living, in 1859. She died at San Jose in the following year, leaving a daughter, who still resides with her father. **The present Mrs. Houghton was Miss Eliza P. Donner, daughter of Jacob Donner.** This marriage took place at Sacramento, in October, 1861. The two Donners named were brothers. Jacob was the leader of the "Donner party." By the last marriage there are living three sons and two daughters. One of the sons, Mr. Charles D. Houghton, is a lawyer of Los Angeles. ¶ Colonel Houghton keeps in splendid health and mental vigor, and is actively following his profession. Judges and lawyers alike—his contemporaries of early days and young practitioners — speak of him as one of the ablest and worthiest members of our State bar. His residence is in Los Angeles, but he owns a farm in the county." (Shuck *History of the bench and bar of California*. 1901. p. 531ff.)

Hudson, Mark (J. F. Eddy vs. Mark Hudson) *see also bio for Eddy*; "**MARK A. HUDSON.** There are few men in Monterey or surrounding counties who have a more extensive acquaintance than has Mark A. Hudson, one of the very large land owners and employers of labor in the Pajaro valley, and agent for the Pacific Steamship Company at Watsonville. A native of Jefferson county, Iowa, Mr. Hudson was born April 30, 1845 [as was his twin sister, Anna Hudson White], and is of English descent and parentage. His father, Mark, and his grandparents, John and Emma Hudson, were born in England, and came to the United States in 1816. They settled in Utica, N. Y., and in 1822 removed to Detroit, Mich., where the grandfather applied his trade of blacksmith, and where the grandparents died at the ages respectively of eighty-one and eighty-four years. Mark Hudson, the father of Mark A., also learned the trade of blacksmith in his youth, and followed the same before removing to Iowa. In the town of Libertyville, in the latter state, he established a little shop, and had every prospect of a promising and successful career. While on a trip to New Orleans he died by drowning at Vicksburg, in December, 1844, at the untimely age of thirty years. After his death his widow returned to Iowa, where Mark A. and his twin sister were born the following April. The mother was formerly Anna E. Baldwin, a native of England, and who came to the United States when nine years of age. Mrs. Hudson remained in Iowa until 1849, and came to California in 1852 with her second husband,

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Nehemiah Davis, and five children. They settled at Biddle's Bar, Butte county, Cal., and removed to Michigan Bluffs in the spring of 1853. About 1858 they came to Monterey county, where Mrs. Hudson bought a tract of land comprising four hundred acres, upon which she lived until her death in Watsonville at the age of seventy-one years. She was a good business woman, and managed to invest the large estate left by her husband to good advantage. She bought her land in this county for \$10 an acre, and it increased enormously in value under improvement. Of the children born to Mark Hudson and his wife, Hon. William George [Hudson] is represented in the following biography; Victoria is the widow of John Burland of Watsonville; Jemima is the wife of Robert Burland of this county; the twin of Mark A. Hudson is Ann, the wife of Al White, superintendent of the water-works at Watsonville. ¶ When seven years of age Mark A. Hudson came to California with his mother, and he remained at home and attended the public schools until 1865. That year he returned to the east and entered Bryant & Stratton Business College in Detroit, Mich., and upon graduating at the end of three years received a life scholarship. While in Detroit he bought soldiers' land warrants in 1872, the land being located in Iowa and Nebraska, which, had Mr. Hudson retained it, would have made him a millionaire. The climate was too cold for his residence in these states, so he sold his land cheap, and the day of his marriage in Windsor, Canada, July 17, 1867, took the train for California, where he became the agent for the Pacific Steamship Company at Watsonville, his term of service commencing in June, 1868, and continuing up to the present time. Mr. Hudson is the oldest man in the employ of the Steamship Company, and his lengthy service is the best indication of his faithfulness and many-sided ability. With his family he lives on the ten acres owned by the Steamship Company, and which contains the landing place for the steamers, known as Hudson's Landing. Mr. Hudson is a Republican in political affiliation, and fraternally he is associated with the Red Men, & Watsonville Lodge No. 110, F.&A.M. ¶ The wife of Mr. Hudson was formerly Emma Firby, a native of Ann Arbor, Mich., and born September 6, 1845. Her parents, Thomas and Elizabeth (Cheesman) Firby, were born in England, and came to the United States when young, the former being engaged in the soap and furniture business with successful results. The parents Firby died at the ages respectively of seventy-three and forty-one years. To Mr. and Mrs. Hudson have been born four children: Adelaide, the wife of James D. Trafton; Thomas F., a rancher of this township; Mildred E., wife of Frank Blackburn; and Wallace Mark, who died at the age of three years. Mrs. Hudson is a member of the Episcopal Church. Mr. Hudson is very popular with all classes in Watsonville and surrounding country, and has many friends all over this part of the state. He is rotund and jolly, and his happy optimism creates an atmosphere in which it is pleasant to dwell."

Hysong/Hysung, Jacob P. (of Indianapolis, Indiana, father-in-law of William M. Aydelotte) Winifred P. Aydelotte, born in April 1875, in Indiana; married in 1899. In the 1900 Census, William M. Aydelotte (26-yrs. old) and Winifred P. Hysong (25-yrs. old) were living with her parents, Jacob P. (65-yrs. old) & Emily A. (60-yrs. old) Hysong. *See also* Aydelotte, William M. ¶ "FORMER BRAZILIAN DIES IN THE WEST ¶ JACOB HYSUNG PASSES AWAY AT HIS HOME IN YOUNTVILLE, CAL. ¶ STARTED HYSUNG HOUSE ¶ For Many Years He was the Proprietor of Brazil's Leading Hostelry. ¶ The Times is in receipt of the Santa Cruz Surf, of Santa Cruz, Cal, containing the following account of the death of Jacob P. Hysung, formerly of his city: ¶ Jacob Hysung, an old soldier and a highly esteemed citizen, passed away yesterday at the Soldiers' Home at Yountville, Napa County. He was 76 years old, a native of Pennsylvania, and he leaves a wife, a son, Forest Hysung and daughter, Mrs. William M. Aydelotte and niece, Mrs. J. D. Ambrose. He was a member of Wallace Reynolds Post, G. A. R., and of the Presbyterian Church of this city. ¶ With his family he came here about nine years ago from Indianapolis and lived a quiet, retired life. He was a devoted father, a good citizen, a man of wide reading, who kept abreast of the movement of the

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times. ¶ Mr. and Mrs. Hysung started the Hysung House, Brazil's initial first class hotel, now known as the Brazil House. He lived in the city for many years and was a highly respected citizen and the news of his death was a shock to many of his friends in this city." (*Brazil Daily Times*, (Brazil, IN), July 26, 1913, 2:5).

I

Irwin, William (CA Governor) "William Irwin (1827 – March 15, 1886) was a California politician from the Democratic Party who served as the 13th governor of California between 1875 and 1880. He previously served as acting lieutenant governor for nine months in 1875. ¶ Born in Butler County, Ohio, Irwin graduated in 1848 from Marietta College in Marietta, where he later became an instructor. After moving to California, Irwin worked in various private industries and was eventually elected to the California State Assembly as one of two members representing Siskiyou County. He became the editor of a newspaper and then was elected to the California State Senate. He served as president *pro tempore* of the Senate and as such, became acting lieutenant governor in 1875 when Lieutenant Governor Romualdo Pacheco became governor. Irwin was elected governor in his own right that same year. He died in 1886 in San Francisco, California and was interred in the Sacramento Historic City Cemetery in Sacramento, California." (Source: Wikipedia, viewed March 11, 2021)

J

Jeter, William Thomas (attorney, *aka* Governor Jeter) "William Thomas Jeter (October 19, 1850 – May 15, 1930) was an American Democratic politician. he served as the 21st Lieutenant Governor of California. He was born in Menard County, Illinois, the third son and eighth child of William Griffin and Elizabeth McCutchen Berry. He was raised in Illinois and Missouri, worked on family's farms, and moved to California in the early 1870s. ¶ Jeter studied at the University of California, Hastings College of the Law, attained admission to the practiced in Santa Cruz. ¶ Active in politics as a Democrat, in 1882 he became chairman of the Santa Cruz County Democratic Committee. In 1884 he was elected county district attorney, and he won reelection twice. He later served as a member of the Santa Cruz City Council. He served as Mayor of Santa Cruz California from 1892 to 1894. In 1894 he was the Democratic nominee for lieutenant governor, and lost to Spencer G. Millard. ¶ In October 1895, Millard died. Budd appointed Jeter to complete Millard's term as Lieutenant Governor. Jeter served from October 25, 1895 to January 3, 1899. For many years, Jeter was president of the Santa Cruz County National Bank and the Santa Cruz County Bank of Savings and Loan. ¶ William T. Jeter died in Santa Cruz on May 15, 1930. He was interred at Santa Cruz Memorial Park in Santa Cruz." 

Jeter
his
bar, and

Johnson, Carrie (Charles F. Johnson vs. Carrie Johnson) Impeachment Hearing, Volume III: p. 16: "The next case was the case of Charles F. Johnson, plaintiff, vs. Carrie Johnson, defendant; attorneys for the plaintiff, Jeter & Makinney and J. H. Logan; attorneys for the defendants, Lindsay and Cassin. Judgment went for the defendant." "HIS WIFE SHOT HIM. Statement of Charles T. [sic] Johnson Concerning the Affair of Monday Night. ¶ By request of Mr. Charles T. [sic] Johnson, a SURF representative visited him today when he made the following statement for publications: 'None of the reports hitherto printed concerning the shooting of Monday night can be considered as coming from me as, until now, no newspaper representative has consulted with or talked with me. ¶ 'I have, hitherto, persisted in keeping silent concerning the name of

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the person who shot me, solely for the sake of my little boy [Clarence F. Johnson, 7-yrs. old in 1900 Census], now nearly five years old, upon whom I did not wish to bring disgrace. But, as so much has been said I now state that it was my wife, Carrie Johnson [Carrie P. Johnson, daughter of Laura Perry], who shot me. I was on my wheel Monday night on Market street, near the Bob Imus place. Was riding on the sidewalk and came to a turn in the walk where it is very narrow between the fence and the bank. ‘ I slowed up but should not have had to dismount only that very suddenly I came upon a woman who was coming toward me, and I saw I could not pass. I started to dismount but my hand were still engaged with my wheel when I recognized her. ¶ ‘She spoke my name and at once put a pistol to my left breast. The time book in my side pocket caused it to glance a little just before she pulled the trigger and the shot went through my arm. The shock stunned me and I fell, everything turning black for a minute or so. When I could see again she had disappeared, no one was in sight, and my arm was bleeding profusely. ¶ ‘I called sometime for help. A boy came toward me from town and I called to him that I was shot. He turned and ran back to town. As well as I could I bound up my arm and walked about ¾ of a block when I was met by the same young fellow, with three others who helped me. I fainted when I got as far as Paul Wenck’s place. They got a cab and brought me to the Pilot building where I was cared for. ¶ ‘The separation between myself and wife was caused by her. I had endured agony for five years. She said positively that I must leave the house—that it was hers and she desired never to live with me again. She compelled me to leave. This can be proven. Some time before she had me arrested and bound over to keep the peace, but all of her charges at that time were false. ¶ ‘With regard to my non-support of my child, I have tendered money for him to my wife through janitor Carney, of the I. O. O. F., but it has been refused and returned. ¶ ‘My wife has repeatedly told different parties that she would kill me; this, too, I can prove in court. ¶ ‘I have, and have had, ample grounds for divorce but I have never applied for one. My wife’s ungovernable temper and unreasonableness, which, I think, amount to insanity, have made my life unbearable. ¶ ‘I desire to say, notwithstanding all statements to the contrary, that in all this trouble no ‘other woman’ has complicated the case. ¶ ‘To my great regret I saw in one paper an allusion to my wife’s grandmother, Mrs. Laws, the mother of Mrs. Perry. I blame her for nothing. She is dead. Let the dead rest. ¶ ‘ I have borne everything for the sake of the child but I do not propose to stand up and be a target for anybody’s pistol I shall take steps to protect myself legally as soon as I am well.’ ¶ Johnson suffers from weakness and from pain in the wounded arm but is doing very well. He is at the residence of his sister, 24 Church street.” (*Santa Cruz Surf* Wednesday, June 16, 1897 (4:3). [Note: Her side of the story appears in the adjacent column of the above newspaper.]

“Alimony Reduced. ¶ A decision was rendered Saturday in the Superior Court in the case of Charles T. [sic] Johnson vs. Carrie Johnson. ¶ On January 28 the defendant was granted a divorce on her cross complaint. ¶ She was awarded the custody of the child and fifteen dollars a month. ¶ The Plaintiff asks the monthly allowance be reduced to \$7.50. ¶ Judge Smith reduced the monthly allowance to \$12 per month.” *Santa Cruz Surf* Monday, October 17, 1898 (3:2)

Josselyn, Warren Bledsoe Sr. (attorney) Warren B. Josselyn and Charles C. Houck were law partners. ¶ In the November 1898 election for District Attorney of Santa Cruz County, Josselyn ran on the “Middle-of-the-Road Populist” ticket. He earned 399 votes; Party,” ticket got 1859 votes; Benjamin K. with 2005 votes. (*Santa Cruz Sentinel* Returns of Santa Cruz County, Election [cover title: *Beautiful Santa Cruz County*]



W. P. Netherton on the “Democrat and People’s Knight on the “Republican” ticket was elected November 20, 1898, p. 4: “Official Election Tuesday, November 8, 1898.” (Source of photo: Phil Francis, author of prologue: *Santa Cruz*

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County ; a faithful reproduction in print and photography of its climate, capabilities and beauties. San Francisco : Press of H. S. Crocker Co., 1896. © by M. B. Gilbert. p. 186.)

K

Kelly, Walter A. (Constable) I:72 “Q. The affidavit of service was made by Walter Kelly. Who is Walter Kelly? A. He is a constable here. Q. Who prepared this returns of service to which Walter Kelly made affidavit?” [Is the Hearing Transcript correct, or is this **Constable Walter A. Corey**, of Branciforte precinct? The *Santa Cruz Surf* for October 6, 1894 (4:2) lists Corey as a candidate for Constable.] The *Santa Cruz Evening Sentinel* for Sep. 9, 1902 (3:1) identifies him: “Constable Walter A. Corey, for eight years a constable, is a candidate for re-election, and will come before the Republican nominating convention, he running in the Santa Cruz judicial township.”

Knight, Benjamin (Physician) Dr. Benjamin Knight was born in Mansfield, Tolland county, Conn., October 16, 1836, and was educated at the Providence Conference Seminary, at East Greenwich, R. I. Previous to the Civil war he had engaged in teaching and had begun to study medicine with Drs. Howard Okie and Wilcox, but with the demand for his services as a soldier he enlisted in Company I, First Massachusetts Cavalry, and served twenty-one months. His regiment was principally engaged in South Carolina, and after the cessation of hostilities he returned to his former home and resumed his previous occupations. The same year as his graduation from the Harvard Medical School, he married, April 8, 1869, Lydia A. Killey, daughter of James E. Killey, of Manton, R. I., and forthwith started out on a wedding trip to Santa Cruz, Cal. Possessed of remarkable general ability, Dr. Knight has not only built up a large and lucrative practice but has proved himself a politician of large resource and unquestioned popularity. He accomplished good results while a member of the city school board, and in 1879 was the unsuccessful candidate for the assembly. This slight disappointment was more than counteracted in 1882, when he was elected joint senator from Santa Cruz, San Benito and Monterey counties, and he further served as senator in 1883, was in the extra session of March 1884, the regular session of 1885, and the extra session of 1885, held during July, August and September. He was elected president *pro tem.* at the regular session of 1885, and also served as chairman of the hospital committee, later being appointed by Governor Stoneman as one of the five commissioners who located the Agnew Asylum. He was also chairman of the finance committee of the session of 1885. Dr. Knight is a man of great public spirit, large heart, and high professional standing. He is fraternally connected with the Masons, the Odd Fellows and the United Workmen, and is a member of the Grand Army of the Republic. To himself and wife have been born four children, viz: Edith, the wife of W. E. Dodge and the mother of one son, Charles P. Dodge; Ida, the wife of J. F. Stack; Benjamin K.; and Mary A., deceased at the age of seven.

Knight, Benjamin K. (District Attorney, Santa Cruz County) Benjamin K. Knight, District Attorney of the county of Santa Cruz, was elected in November of 1898 for the regular term of four years. Mr. Knight was born in the city of Santa Cruz on August 28th, 1874 and received his early education in the public schools of this city. After leaving the public school, he commenced the study of law in the District Attorney's office under C. E. Lindsay. After remaining there for about a year, he attended Hastings College of Law in San Francisco, and also took a regular course in the Law Department of the University of Michigan from which institution he graduated in July 1895. After his graduation he was appointed Deputy District Attorney by Mr. Lindsay, which position he held until he succeeded Mr. Lindsay as District Attorney. Mrs. Knight, who

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was formerly Helen Bliss of San José, is the mother of two children, Benjamin B. and Marion. (Source: Guinn, James Miller. *History of the State of California and Biographical Record of Santa Cruz, San Benito, Monterey and San Luis Obispo Counties. An Historical Story of the State's Marvelous Growth from its Earliest Settlement to the Present Time — by Prof. J. M. Guinn, A. M. ... Also Containing Biographies of Well-Known Citizens of the Past and Present.* The Chapman Publishing Co., Chicago, 1903.)

Knight, J. D. (J. S. Reid vs. J. D. Knight) III:16 [J. D. Knight is unidentified; *should this be J. S. Reid versus J. D. Enright?*]: “The next next case was J. S. Reid, plaintiff vs. J. D. Knight, defendant; attorney for the plaintiff, Charles Wesley Reed, Lindsay and Cassin attorneys for the defendant; judgment went for the defendant....” ¶ (Santa Cruz Sentinel, July 3, 1898, 3:4) [*see also* Enright, Joseph D.]

Kohl, George (Estate of) A resident of Santa Cruz George Kohl was a farmer; his birth place was at Reichtenbath [Reichenbach], Bavaria, Germany. He was born on August 23, 1823. He arrived in California on August 10, 1849. His date of death was March 24, 1902; he was 78 years old. His remains are interred in the Santa Cruz Memorial Park and Cemetery. He was a member of the Society of California Pioneers of Santa Cruz County. “... In the death of George Kohl which occurred this morning an eccentric character is removed. He is not so well known now but at one time was well known among all the old settlers. He was [78] years of age, and a native of Prussia. He came to the mines in California in 1849 and to Santa Cruz in 1853. He has always resided in East Santa Cruz on Soquel Avenue beyond Ocean street in a peculiar home surrounded by a brick wall. He refused to move the wall back when Soquel Avenue was widened. The whereabouts of his relatives is not known nor is the amount of money left by him which some claim is considerable. He has lived the life of a miser so say those who know him and some claim that much of his money is buried. At one time several nephews resided here but their present whereabouts is unknown. He at one time had a brick kiln on his place and ran a brick yard, he also teamed and farmed. He has been married but only for a short time. He married a woman in 1875[sic] but she only lived with him for about two weeks. Years ago Kohl made much of children but of late he acted very strangely.” (*Santa Cruz Surf* March 24, 1902, 4:6)

L

Lacey, Claude F. (Salinas attorney) “Hon. Claude F. Lacey, of Salinas, California, is a native of old Monterey, born September 1, 1864. He came with his parents to Salinas in 1868, and has since made this place his home. When not attending the public schools, he worked on the ranch until he was fifteen years old. At that time he began to learn the blacksmith trade. It was hard work for a boy of his age, but his fine physique demonstrates that it caused him no injury. After working at the blacksmith trade two years, he attended school for a time, devoting his leisure moments to the study and practice of shorthand writing. Becoming proficient in this, in the spring of 1884 he began reporting the court proceedings, and subsequently appointed Court Reporter, which position he continues to fill. In 1886 and 1888 he was elected a Justice of the Peace of Alisal township. ¶ As will be observed, Mr. Lacey's occupations afforded him excellent opportunities to acquire a knowledge of the law, as well as to familiarize him with its forms and practice. Making the best of these advantages and still further equipping himself for the legal profession by diligent study of the text-books, under the sagacious directions of Judge N. A. Dorn, he was admitted to practice in the Supreme Court of the State in July, 1891. In the fall of 1890 he was elected a member of the State Assembly for Monterey county, as a Republican, in which body he served on the committees on apportionment and elections, the Judiciary Committee, and the committees on public buildings, public

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printing, and counties and county boundaries. ¶ Mr. Lacey was married in June, 1888, to Miss Emma Edrington. He is a prominent member of the Native Sons of the Golden West, and was the first president of Santa Lucia Parlor, No. 97.” (Source: Barrows, Henry D.; Luther A. Ingersoll. *A Memorial and Biographical History of the Coast Counties of Central California*. Illustrated. Chicago : Lewis Publishing Co., 1893. pg. 405.)

Lane, Charles W. (Physician, b. 1836 in Maine, d. Jan. 5, 1910) “The house of Dr. Lane on the Majors property was burned to the ground yesterday morning. Dr. Lane was the man who addressed the crowd on the street last night as a Democrat when R. C. Kirby, Chairman of the Republican County Committee, started to take up a collection for him to reimburse him for the loss of his house the crowd dispersed. Five or six dollars were collected.” (*Santa Cruz Surf* Thursday, September 13, 1888, 3:1) [Dr. Charles W. Lane was a resident of precinct Santa Cruz 2 when he registered on August 11, 1888. (Source: Great Register, Santa Cruz County, 1888. “Santa Cruz Electors,” p. 42] “DEATH SUMMONS OLD RESIDENT OF OAKLAND ¶ Charles Wesley Lane Dies, Aged 80 years. ¶ Oakland. Jan. 5.— Charles Wesley Lane, who was known throughout Alameda county as “Doctor,” died early this morning at his home, 4101 Glen Avenue. He was 80 years old. Lane came to California in 1870, settling immediately in the bay cities. ¶ A daughter, Mrs. Frances Lane Leavett of Vallejo, survives Lane. His wife died about a year ago. Mrs. Lizetta Lane Whitmore of Rosedale, Wash., a sister of the dead man, was with him when he died. She had not seen him for 40 years until last September, when he summoned her to care for him. ¶ Formerly Lane owned much property in the vicinity of Glen avenue in the Piedmont district, but he disposed of all save the lot on which his home stands before his death.” (*San Francisco Call*, Thursday, January 6, 1910, 9:3)

Lane, Franklin Knight (Democratic candidate for Governor, 1902) Impeachment Hearing Volume I: Case citation: WILLIAM A. TRAFTON, Appellant, v. RICHARD P. QUINN, Respondent S. F. No. 3773 Supreme Court of California 143 Cal. 469 (June 4, 1904) COUNSEL: Wyckoff & Gardner, for Appellant. Charles M. Cassin, James A. Hall, and Franklin K. Lane, for Respondent. ¶ His biography appears in Wikipedia, the online encyclopedia: ¶ Franklin Knight Lane (July 15, 1864 – May 18, 1921) was an American progressive politician from California. A member of the Democratic Party, he served as United States Secretary of the Interior from 1913 to 1920. He also served as a commissioner of the Interstate Commerce Commission, and was the Democratic nominee for Governor of California in 1902, losing a narrow race in what was then a heavily Republican state. ¶ Lane was born July 15, 1864, near Charlottetown, Prince Edward Island, in what was then a British colony but is now part of Canada, and in 1871, his family moved to California. After attending the University of California while working part-time as a reporter, Lane became a New York correspondent for the *San Francisco Chronicle*, and later became editor and part owner of a newspaper. Elected City Attorney of San Francisco in 1898, a post he held for five years, Lane ran in 1902 for governor and in 1903 for mayor of San Francisco, losing both races. In 1903, he received the support of the Democratic minority in the California State Legislature during the legislature's vote to elect a United States Senator from California. ¶ Appointed a commissioner of the Interstate Commerce Commission by U.S. President Theodore Roosevelt in 1905 and confirmed by the Senate the following year, Lane was reappointed in 1909 by President William Howard Taft. His fellow commissioners elected him as chairman in January 1913. The following month, Lane accepted President-elect Woodrow Wilson's nomination to become Secretary of the Interior, a position in which he served almost seven years until his resignation in early 1920. Lane's record on conservation was mixed: he supported the controversial Hetch Hetchy Reservoir project in Yosemite National Park, which flooded a

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valley esteemed by many conservationists, but also presided over the establishment of the National Park Service. ¶ The former Secretary died of heart disease at the Mayo Clinic in Rochester, Minnesota, on May 18, 1921. Because of two decades of poorly paid government service, and the expenses of his final illness, he left no estate, and a public fund was established to support his widow. Newspapers reported that it was often said of Lane that had he not been born in what is now Canada, he would have become president. In spite of that limitation, Lane was offered support for the Democratic nomination for vice president, though he was constitutionally ineligible for that office as well.”

Langley, Miles Theodore (Langley vs. Bloom law suit, mentioned II: 90: “Q. Then the last case was a Justice Court case involving a horse trade? A. Yes, sir, that was another; the Jury decided that one Mr. Langley had sold two horses to Mr. Bloom, and Mr. Bloom testified the horses were not to be found.” ¶ Langley’s affidavit appears in Volume I, p. 7, as follows: “M. T. Langley, being first duly sworn, upon oath, states as follows: ¶ That he is the affiant herein and has resided in the County of Santa Cruz for about eighteen years last past; ¶ That affiant knows it is common rumor and common talk among the citizens of said County that Judge Lucas F. Smith unduly favors one Charles M. Cassin, a practicing lawyer in the Superior Court of said County, and shows said Cassin great partiality and favoritism in cases in which said Cassin represents one of the litigants, ¶ That affiant knows that said partiality and favoritism of said Judge Smith toward and for said Cassin is and has become so well known that it has created a general impression that to succeed in that Court before said Judge Smith, it is necessary to retain said Cassin. /s/ M. T. Langley.”

Lavish, Otto [*shown in transcript as Labish*] law case mentioned I: 124, 129-130, 134, 138, 140-143; convicted and sentenced to 3 months in County Jail I: 124; plea of insanity I: 129, 141; II: 34, 36 ; III: (People vs. Lavish) 11. “Otto Lavish, charged with an attempt to commit murder, was arraigned in the Superior Court this morning. He entered a plea of “not guilty” and the time of trial was set for July 30th.” (*Santa Cruz Surf* Wednesday, July 11, 1900, 4:1); Specification 7 of the indictment against Judge Smith was that “Judge Smith committed an indiscretion in the case of the People vs. Otto Lavish, when he publicly rebuked before the jury one of the attorneys for the defendant without cause.” Specification 7 was not sustained by the evidence, according to the final recommendation of the Assembly Committee. (*Santa Cruz Surf*, Tuesday, March 7, 1905, 1:4) On September 20, 1913, in Watsonville, Otto Lavish, aged 71 years, a native of Berlin, was reported dead. (*Santa Cruz Evening News* Wednesday, Sept. 24, 1913, 5:4); the *Monterey American* newspaper published a more extensive obituary on September 22, 1913, 6:1-3: “A FAMILIAR CHARACTER GONE FROM WATSONVILLE’S STREETS ¶ A Man of Iron Nerve Passes Away ¶ Story of Justice and How It Is Meted Out ¶ Saturday evening’s Watsonville Pajaronian had the following to say: Death took an early day resident of this county this morning when Otto more familiarly known as “Mike” Lavish, passed away after a short illness at his home on Rodriguez street. ¶ “Mike” Lavish was one of the most familiar characters on Main street and his person and the little perambulator in which he carried the horse-radish he sold, will be missed by many, as it was an unusual occurrence if he did not make several trips up and down that thoroughfare each day. ¶ He was a native of Berlin, Germany, and was 71 years of age. He came to this country while very young. In the 50’s and until about 1860 he lived in Santa Cruz. He then came to reside in this city he returned to Santa Cruz and entered the saloon business, that and the gaming table being his method of learning a livelihood. While residing there Lavish was at one time a member of the sheriff’s posse which was evicting people from disputed property along the Santa Cruz road. In this case one Valencia was the man being put out. During the altercation Lavish shot Valencia in the mouth with an old ball and powder pistol. Valencia was not much hurt and was able to spit out the bullet

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along with most of his teeth. ¶ On November 12th, 1864, Mr. Lavish enlisted in the Eighth California Infantry, and was a private in Company A, serving until the regiment was mustered out on October 24th, 1865. ¶ He was a determined man of much grit and will power. About fifteen years ago while out hunting southwest of town he met with an accident. The charge from his shotgun tore through his left shoulder and left the arm hanging by the cords. He picked up his gun and game and holding up the remnants of his arm he walked to town, where an amputation of the injured member was found necessary. A few days later he was up and around town seemingly none the worse for his terrible experience. ¶ A few years ago he had an altercation with a person known as "Prof." Whitfield, at whom he took five shots with a revolver, making three of the bullets take effect, although none of the wounds were fatal. In this affair he had the sympathy of the community and it was the general feeling that he should have done a better job. However, for this offense he was made to serve a short term in the county jail. ¶ Otto Lavish in his prime was a robust and handsome appearing man, and one of the most fastidious dressers of that time. He was a congenial fellow and was always known as being straight and honorable. Of late years he has been sliding down the ladder of life. He is survived by his wife, Mrs. Annie Lavish. ¶ In 1905 he joined R. L. McCook Post No. 26, G. A. R. in this city, and they will conduct the funeral services."

Lee, Julius (Watsonville attorney) "HON. JULIUS LEE. The identification of Judge Lee with the law history of Monterey and Santa Cruz counties has continued ever since 1859, when he came to the Pacific coast, leaving the old associations of his southern home and setting sail upon an unknown sea into an unknown future. He was born in Granby, near Hartford, Conn., May 25, 1829, and in childhood moved to Hiram, Ohio, with his parents, Hiram and Julia (Pomeroy) Lee. The desire of his parents, aided by his own ambition, enabled him to gain advantages not at all common in those days. In 1853 he was graduated from Allegheny (Pa.) College, after which he acted principal of public schools for two years. A better opening then came to him as professor of Greek and Latin in Washington College, in Tennessee, near Natchez, Miss. Resigning the position a year later, he took up the study of law with Hon. Thomas A. Marshall, of Vicksburg, and was admitted to the bar in 1857. For two years he continued in Vicksburg and on coming to California via the isthmus he shipped via the Horn the valuable library he had accumulated. Arriving in San Francisco June 30, 1859, he soon afterward came to Monterey, where he opened an office. Shortly afterward a vacancy occurred in the office of district attorney and he was elected to fill the same, after which he was regularly elected to the office. [Transcriber's Note: J. G. Joy, who prepared a list of "Officers of Monterey County, from 1850 to 1881" for the Monterey County history published by Elliott & Moore (1881), p. 171, identifies Julius Lee as District Attorney only in the year 1861.] ¶ During 1862, Judge Lee established his home in Watsonville, where he has handled some of the most important land and civil cases ever tried in this and adjoining counties. The Republican party, of which he is a member, at one time tendered him the office of superior judge, but the pressure of his private practice was so great that he declined the position. In 1902, he practically retired from the profession, although he still occasionally acts in consultation. In 1867, he married Marcella, daughter of O. D.[sic] Elmore, and by her he has a son, Elmore Julius. She was born in Elmira, N. Y., and was quite young when her father settled in Watsonville, where she was a school teacher during early days. (Guinn, James Miller. *History of the State of California and Biographical Record of Santa Cruz, San Benito, Monterey and San Luis Obispo Counties. An Historical Story of the State's Marvelous Growth from its Earliest Settlement to the Present Time* — by Prof. J. M. Guinn, A. M., Author of *A History of Los Angeles and Vicinity*, *History of Southern California*, Secretary and Curator of the Historical Society of Southern California, Member of the American Historical Association, Washington, D. C. Also Containing Biographies of Well-Known Citizens of the Past and Present.



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Copyright 1902, by the Chapman Publishing Co. pp. 405-406) [Transcriber's Note: W. W. Elliott's Santa Cruz County Calif. Illustrations, with historical sketch, 1879 (Indexed Edition, 1997, by Leonard A. Greenberg and Stanley D. Stevens), p. 87, indicates that Marcella Lee's father was "T. O. Elmore of Elmira, N. Y."; our research found that he was Thaddeus O. Elmore.]

Leonard, James (uncle of John H. Leonard) II:70 "TESTIMONY OF JAMES LEONARD. ¶ Mr. Sullivan: Q. Mr. Leonard where do you reside? A. I reside in Santa Cruz. Q. How long have you resided in Santa Cruz? ¶ Q. How long have you been in the County? A. 41 years or so. Q. Are you an uncle of John Leonard the memorialist? A. Yes sir."

Leonard, John H. (attorney) I: 2-3, 5, 7-12, 14, 17, 19, 22-23, 25-34, 37, 40-41, 50-53, 58-59, 62-63, 65-67, 69, 72-73, 77-80, 91, 101, 113, 115-117, 119-121, 141-145; participant in the Big Creek Power Co. vs. Ramirez; Judge Smith believed that Younger had "over-run" Mr. Leonard on the Bill of Exceptions in the Sambuck vs. Southern Pacific Co. case 22; John H. Leonard misidentified as "John H. Arnold" as attorney for administrator of Estate of Mary Mooney 120; III: 3, 6-9, 11, 13, 15, 27-30, 34, 37-40, 52-53

Leonard, Michael (II: testimony 68-69): TESTIMONY OF MICHAEL LEONARD ... Mr. Sullivan: Q. Mr. Leonard where do you reside? A. Santa Cruz. Q. In the city of Santa Cruz? A. Yes sir. Q. How long have you resided here? A. Between forty and forty seven years. Forty six or seven, along there-nearly forty seven years."

Lindsay, Carl Elmer (attorney) [Lindsay was the principal Prosecutor against Judge Smith; his questioning of witnesses appears throughout all three volumes.] "The nominee for District Attorney, Carl E. Lindsay, formerly resided here and at one time taught close law student for several years, and was Lindsay is a brainy young man, and is gifted destined to make his mark. He is an eloquent the county he will clearly show his ability to fill he will prove a vigorous and earnest prosecutor officials. Mr. Lindsay is a son-in-law of W. W. Joyce, a Pajaro pioneer, and is a brother-in-law of Judge James G. Maguioe.[sic; i.e., Maguire]" (*Watsonville Pajaronian* Sep. 25, 1890, 2:2)



Logan, James Harvey (Santa Cruz attorney/Superior Court Judge) I: 365; II: 14, 105, 109; III: 14-17, 36; "J. H. Logan, the newly elected District Attorney, brings to that office an experience of six years in criminal prosecutions, having filled the office in this county of Assistant Prosecuting Attorney, under Lee, for four years; and a term of two years in Santa Clara County, prior to locating in this county. Mr. Logan is a young lawyer of more than ordinary ability, and never found dilatory or negligent in attending to business entrusted to his care. The people have secured just what they desired, a faithful and competent officer." (*Santa Cruz Sentinel* March 2, 1872, 2:1) ¶ "James Harvey Logan, the first Superior Judge of Santa Cruz county, was born near Rockville, Indiana, December 8th, 1841. He lived on his father's farm, attending the district schools, until the fall of 1856. He then entered the Waveland Collegiate Institute of Waveland, Ind., and completed a four-year classical course in June, 1860, when he moved to Kansas City, Mo. He taught school at Independence, Mo, during the summer and fall of 1860, and the winter of 1861. The secession movement in Missouri paralyzed all business in that locality and threw him out of employment. He started

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for Omaha early in April, 1861, and went into the service of the Overland Telegraph Company, then building a telegraph line across the deserts to California. He arrived at Salt Lake in the fall of 1861, and from there he came to California by overland stage, arriving at San Jose, December 12th, 1861. Shortly after, he entered the law office of Hon. C. T. Ryland, and was admitted to the bar in 1865. In 1867 he moved to Santa Cruz and began the practice of law. He was deputy district attorney under Julius Lee, and had sole charge of the office from January 1st, 1868, to January 1st, 1872. He was elected district attorney in 1871, 1875, and 1877, and in 1879 was elected the first Superior Judge of Santa Cruz county. ¶ Judge Logan's first term on the bench ended in January, 1885. He was president of the Bank of Santa Cruz County from September 1887, to October, 1893, when he was appointed by Governor Markham Superior Judge, to fill the vacancy caused by the death of Hon. F. J. McCann [Ferdinand Jay McCann], in September, 1893. He was elected Superior Judge for the unexpired term in 1894. His last term of office expired January 1st 1897. ¶ He was a wise and faithful judge. He is now practicing law at Santa Cruz. He has a family, an elegant home, and is in good circumstances. He is of a tall figure, fine presence, genial temperament and companionable, and love to tell or to hear a good story. He is very popular and deservedly so. There is no other man in the county whose taking off would be so generally lamented. He enjoys superb health." (Oscar T. Shuck, *History of the Bench and Bar of California*..... Los Angeles, Cal., The Commercial Printing House, 1901, p. 718.)

Lucas, Frederick W. (Mr.) (III:17, 28-29) "FREDERICK W. LUCAS. The present city clerk and tax collector of Santa Cruz is also a typical pioneer of the state, and has passed through many varied and interesting experiences. Of stanch old New England stock, he was born in Plymouth, Mass., July 27, 1831, a son of Joseph and Lydia (Keene) Lucas, the former of whom was a machinist by trade. ¶ After completing his education in the public schools of Plymouth, Mr. Lucas inaugurated his business career by starting in to work in an iron works, but this plodding occupation paled into insignificance beside a consuming desire to follow the fickle fortunes of the sea. He chose fishing as the most desirable of the water enterprises of which he had knowledge, and for two years set out on many voyages in search of the finny tribe. Finally convinced that he was not to the water born, he sank his former ambition in the more absorbing desire to make a fortune in the gold fields, and his latter-day reefing of sails, and the roar of the tempest, was mingled with bright hopes of an easily acquired and monumental fortune. Therefore, Mr. Lucas set out on the sailer *Mallory*, commanded by Captain Borden, and undertook the long and wearisome voyage around the Horn, meeting with many adventures and thrilling experiences. Arriving in San Francisco September 12, 1849, he found there a queer conglomeration of houses, cabins and tents, the greater number of which were given over to gambling, the solace of rudderless wanderers in search of homes and fortunes remote from their own firesides. ¶ Accompanied by others, Mr. Lucas set out from San Francisco for the mines of Weber creek, where he encountered many hardships. At times he was successful in his mining operations, but at other times met with disappointment. He next went to Benecia [*sic*], where he spent the winter, and where he was engaged in work for the government at a salary of \$ 150 per month, including rations. Eventually he returned to San Francisco somewhat disillusioned as far as mining was concerned, but after working for the government during the spring of 1850, went to the Mariposa mines, remaining until storms interfered with living in a canvas tent. For a time he lived in Martinez and Tuolumne, in the latter county engaging with fair success in both mining and hotel-keeping. Subsequently he purchased a stock ranch in the Livermore valley, and after three years spent thereon went to the Mission of San José, and after farming there for several years, for some time was similarly engaged in the Salinas valley. A farm in the Pajaro valley became his home for a couple of years, after which he came to Santa Cruz and engaged in teaming, later taking up the

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lumber business. As a lumberman he represented such prominent firms as the Santa Clara Lumber Company of San José and the Pacific Manufacturing Company of Santa Clara, later being identified with the Grover Lumber Company for a period of twelve years. ¶ In April, 1878, Mr. Lucas was elected city clerk of Santa Cruz, which position he held one term. August 1, 1898, he was appointed to fill a vacancy in the office of treasurer and collector, to which office he was regularly elected in 1899, and still maintains the same. He has creditably held many offices of importance, among them being supervisor of Alameda county. By his marriage, July 11, 1862, with Mary A. Sylvester, daughter of Solomon Sylvester, three sons were born, one of whom, Willie V., was killed on the railroad when twenty-three years of age. George H. is a resident of Santa Cruz and Harry C. is a law student, and graduate of the Leland Stanford University, class of 1902. Mr. Lucas enjoys to an unusual degree the confidence and appreciation of his fellow townsmen, and his services in connection with municipal affairs have received hearty endorsement, evidenced by his securing a bond of \$160,000 among his acquaintances.” (James Miller Guinn, *History of the State of California and*

Biographical Record of Santa Cruz, San Benito, Counties. The Chapman Publishing Co., Chicago, LUCAS. This gentleman, whose portrait will be Cruz pioneers, was born in Plymouth, April 27, 1830.



Monterey and San Luis Obispo 1903, pages 686-687.) ¶ “F. W.

found in the group of the Santa His father was a machinist, who Mr. Lucas came to California in year. He engaged in mining on Benicia, and worked for the to the Mariposa mines, and spent

the winter of 1850 and 1851 in Martinez, in which place in 1857 he engaged in teaming. During this year a building fell on him, breaking his leg and fracturing his arm. After recovering he went to Tuolumne County and engaged in mining and hotel keeping. Subsequent to this he bought a stock ranch in Livermore Valley.

¶ He has been for a number of years engaged with several lumber companies as agent, notably, the Santa Clara Valley Mill and Lumber Company, of San Jose, and Pacific Manufacturing Company, of Santa Clara. He has been in the employ of Grover & Co., of Santa Cruz, for more than five years, and is at the present time their collector and general outside clerk. Mr. Lucas is a Postmaster Workman, A. O. U. W., and is postmaster and inspector of the Masonic Fraternity, having held the office of inspector for more than twenty years, a longer time than anyone in the State. He is also a member of the Masonic Veteran Association and a member of the Santa Cruz Association of California Pioneers. ¶ Mr. Lucas was at one time supervisor of Alameda County, and served a term as city clerk of Santa Cruz County, during the administration of David Hinds. ¶ He was married, July 10, 1862, to Mary A. Sylvester. They have two children living: George H., aged twenty-one, and Harry C., aged twelve.” (Edward Sanford Harrison. *History of Santa Cruz County, California.* Printed for the author by Pacific Press Publishing Company, San Francisco, Cal., 1892, pgs. 368-369; Portrait from p. 158, Pioneers Issue, *Santa Cruz County History Journal* No. 4, Santa Cruz Museum of Art & History, 1998)

Lumley, Aubrey M. (Assemblyman) (b. 1862, London, England; died Porterville, CA, June 29, 1940) (I: 24, 26; II: 1; III: 1, 23) “PRESS receiving as many favorable candidate for assembly. Lumley,” the Tulare Advance Advance as an organ of support to Aubrey M.



AUBREY M. LUMLEY, of Porterville

PRAISES LUMLEY. No candidate in Tulare county is press notices as A. M. Lumley of Porterville, who is a Under the caption, “The People Have Confidence in says editorially: It is with considerable pride that the Democracy asks the voters of Tulare county to give their Lumley of Porterville in the fight he is making to win back a

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seat in the state assembly. ¶ In advocating Mr. Lumley, we do so in the conscientious belief that he is the only logical candidate in the field for the position and not simply because he is a Democrat. ¶ ... Lumley came to Tulare county in 1888, ever since which time he has worked toward what he considered the best interests of the community” (*Porterville Daily Recorder*, Portersville, Tulare County, California, October 21, 1912, 2:3) ¶ “PORTERVILLE JUSTICE OF PEACE DIES. PORTERVILLE, July 8 (VNS)— Funeral services for Justice of the Peace Aubrey Lumley, 78, who died at his home here Saturday [June 29, 1940], will be held tomorrow morning at 10 o’clock at the Porterville Elks lodge. Justice Lumley was a native of London, England, and came to California shortly after his 21st birthday. He started the first Porterville newspaper in 1888, and served as assemblyman from Tulare county from 1903 to 1907.” (*Tulare Advance-Register*, Tulare, CA, July 8, 1940, 1:5)

M

Maguire, James George (San Francisco attorney & judge) (**III**: 13-14) Born: February 22, 1853 in Boston, Massachusetts, Died: June 20, 1920 in San Francisco, CA; 1882-1888: Justice, San Francisco County Superior Court; age 22. “Maguire moved public schools Joseph K. Fallon. Maguire 1877, one of 20 members admitted to the Bar by the Supreme Court of California in January 1878, commencing practice in San Francisco. McGuire then served as a judge of the Superior Court of the city and county of San Francisco from 1882 to 1888, before being elected as a Democrat to the U.S. House of Representatives for the Fifty-third, Fifty-fourth, and Fifty-fifth Congresses from March 4, 1893 to March 3, 1899. ¶ In the 1898 state elections, Maguire unsuccessfully ran as the Democratic candidate for Governor of California, losing to Republican Henry Gage. After the election, he did not seek reelection to the U.S. House. ¶ Maguire resumed his law practice in San Francisco, where he died on June 20, 1920. He is interred at Greenlawn Cemetery.” (Wikipedia. Viewed 4-22-2021) ¶ “Was in partnership with Jas. L. Gallagher, under the firm name of Maguire & Gallagher, from January, 1899, until January, 1903, and with J. T. Haux, Carl E. Lindsay and E. G. Barrett, from June, 1904, until June, 1908, under the firm name of Maguire, Lindsay, Haux & Barrett. Advocate of Single Tax, and is president of the Single Tax League. Democrat.” (*History of the Bench and Bar of California*. Edited by J. C. Bates. San Francisco: Bench and Bar Publishing Company, 1912. p. 418.)

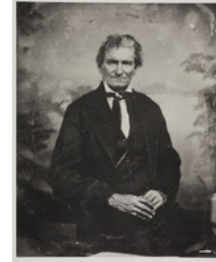


Maher, David Francis (testimony) (**II**: 3, 93-95) “Residence and office, Watsonville. Born in Watsonville, November 10, 1866. Married Marie E. Bruegel, June 23, 1897. Educated in the public schools of Watsonville, Santa Cruz, and Sacramento, California, and later the University of Michigan, graduating therefrom in 1895 with degree of LL.B. Admitted to the bar by the Supreme Court of California in the same year and to the United States District Court and United States Circuit Court. City Attorney of Watsonville from 1893 until 1903. Member of the B. P. O. E. and Mystic Shrine fraternities. Republican.” (*History of the Bench and Bar of California*. Edited by J. C. Bates. San Francisco: Bench and Bar Publishing Company, 1912. p. 418.) ¶ “Died of a heart attack on May 23, 1939, in Watsonville, CA (age 72); survived by Marie Maher (his widow) and three sons.” (Office of Alumni Records on deceased University alumni, courtesy of Attorney Alan J. Smith, of Watsonville.)

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Majors, Joseph Ladd (II: 49) ¶ “Joseph Ladd Majors was born in Tennessee on May 26th, 1804 (or 1806). His obituary gives the year as 1804, but a family Bible gives the year of birth as 1806. ... His parents, Robert and Hulda Ladd Majors, lived a primitive, dangerous life. Joseph grew up in the backwoods learning skills he would need throughout his adventurous life. ... suddenly on May 25, 1868, Joseph passed. His obituary stated that at one time he was considered one of the richest men in the state. ... Joseph Majors was later reburied at the Catholic cemetery on Road Extension ... [Santa Cruz]”. (Marion Dale Pokriots. *The Joseph Ladd story : Santa Cruz ranchero & American alcalde*. Scotts Valley, California, Dale Pokriots, 2005.)



1806. ...
frontier
away. ...
in the
Capitola
Majors
Marion

Makinney, Hampton Emmet (attorney-searcher of records) (Jeter & Makinney) (III:16-17) “H. E. Makinney, the re-elected and highly respected Superintendent of Schools, needs no word from us to make his eminent abilities known throughout this county. The people have thrice elected him to that important position, and we presume he has a life lease of that position if he but will. (*Santa Cruz Sentinel* March 2, 1872, 2:1) ¶ “The subject of this sketch was born near the town of Eaton, in Preble County, Ohio, on the thirty-first day of July, 1840. His father was devoted to the same vocation. at the age of fourteen, when Makinney entered Ballinger's qualified himself for the school near his father's farm. Miss Astoria C. Anderson, at couple immediately started well as lengthy, toilsome, and and their route lay across the California. ¶ The year 1862 was fraught with dangers and hardships for emigrants, and many travelers were murdered by Indians or perished through sickness and privation while on their way to California. But fortune was more kind to the bride and groom on their wedding tour. In September, 1862, they arrived at their destination, Placerville, California. ¶ Mr. Makinney immediately began to look for employment. His first work was hauling wood. The trip across the plains had used up the wagon, so he borrowed one from the man for whom he was working. and set out to earn his first California gold. ¶ He worked at this until he earned \$11 and thought he was getting along pretty well, when his team took a ”gee” pull and broke the pole off the wagon. The owner thought that \$11 would about pay for repairing the damages, so the account was squared and Mr. Makinney stopped hauling wood. His next undertaking was digging a cellar. He followed this laborious work until his hands were blistered and his back sore. ¶ The county examinations for teachers was held about this time, so Mr. Makinney laid down his pick and shovel and took up the pen to win the credentials that would entitle him to employment more in keeping with his taste, qualifications, etc, He began in a country school near Placerville, and was soon after engaged in a town school, and in 1865 was elected principal of the Placerville High School. He was soon afterwards attacked by a severe fever and ague, which compelled him to resign his position. He was advised to try a change of climate, and, through the influence of an Episcopal clergyman, secured a position as principal of the Santa Cruz School. He came to Santa Cruz the last of December, 1866, and filled the principalship of the school with great satisfaction



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until December, 1873. In 1867 he was elected county school superintendent, and held the office until his election as county clerk, in 1873. From 1873 to 1885 he held the position of county clerk, auditor, and recorder, when he retired from politics and engaged in his present business, abstract and conveyance, also dealing in real estate. ¶ Mr. Makinney also served on the county board of education from 1880 to 1887, served three terms as deputy district attorney, and three terms as city clerk, and one term as city school trustee. In 1884 he was admitted to the practice of law. ¶ Three children have been born to Mr. and Mrs. Makinney. The eldest, Kate V., is now the wife of Dr. K. D. Wise, of Los Angeles. His son, Fred, is his father's partner, and the younger daughter, Pearl, is also in her father's office." (Edward Sanford Harrison. *History of Santa Cruz County, California*. Printed for the author by Pacific Press Publishing Company, San Francisco, Cal., 1892, p. 305-306. Portrait from p. 136)

Marcuse *see* **Marquis**, John (Santa Cruz architect) vs. Henry Emanuel Gardner (Watsonville Attorney) (case referred to in Hearing Transcript (I: 10, 125; II: 55, 109) as Marcuse against Gardiner)

Marinovich, Philip (F. P.)(shown in transcript as Marinovitch, II: 74-75), II:64-65): During the testimony of Attorney James A. Hall, he was asked about his participation in a case involving Marinovich: Q. Did you ever get any unfair treatment on account of the Judge's leaning towards Mr. Cassin? A. No sir; of course in that Marinovitch [sic] case you speak of I was not an active attorney, I had an interest for certain parties in the case, I did not take an active part in the case." ¶ "Marinovich ... three branches of Marinovich from Pridvorje [Croatia] were in Watsonville — distantly related: Pilip P. (1864-1938; mar: Nike Pulisevich). Filip was the uncle of George and John Pekoch, and 1st cousin with John Miovich. He was also the uncle of Peter N. Marinovich (1890-1912); Siblings from Pridvorjee: Jack G. (1889-1967); married: Ida Littlejohn; Katherine (1891-1982; married: Bozo "Edward" Kosovac); Helen Marinovich from Mikulici (1893-1966: mar: Gozdenica). (The Slav Community of Watsonville, California; As reported in old newspapers (1881-1920), Edited by Thomas Ninkovich. Watsonville, California: Reunion Research, 2011, p. 780.) Å~ "P. Marinovich, Pajaro Pioneer, Passes In S. F. Å~ Rose From Emigrant To Leading Packer Of Watsonville ¶ Watsonville, Dec. 12 — Philip P. Marinovich, who rose from a Slavonian emigrant to one of the Pajaro valley's leading apple growers and packers and business men, died Sunday night at the French hospital in San Francisco, where he was taken last Thursday. He was the victim of a heart attack. Å~ He was 75 years of age. Å~ Marinovich came to the United States in 1887 and settled in San Jose January 20 of that year. A few months later he came to the Pajaro valley, which was his home until his death. Å~ At the time of his arrival Marinovich was one of four Slavonians in the valley — the forerunners of the present large colony and its descendants. He purchased apple orchards and in 1890 opened his first apple packing shed, a piece of which may still be seen at the rear of his home at 18 Alexander street. Success attended his efforts, and he rose to prominence as an apple packer, being one of the first to ship apples to Europe. He shipped the first carload of cherries, picked from the old Copeland place, to New York about 1901. Å~ He was a member of the Knights of Columbus, St. Patrick's church, a charter member and organizer of the Austrian-American Benevolent society, a director of the Pajaro Valley National bank and a director of the Pajaro Valley Cold Storage company. Å~ Mr. Marinovich retired from the fruit business about 20 years ago, passing the business on to his son, William. With the death of the son in 1925, the business was turned over to another son, Stephen. Å~ Active until his last illness, he was stricken with a heart attack Sunday night, from which he failed to rally." (*Santa Cruz Sentinel* December 13, 1938, 8:3)

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Marquis, John (Santa Cruz architect) vs. Henry Emanuel Gardner (Watsonville Attorney) (case referred to as Marcuse against Gardiner); I: 10, 125; II: 55, 109 ¶ “John Marquis was born in Glasgow and studied architecture in Scotland, moving to Wisconsin where he spent thirty-two years as a prominent architect. He later relocated to Santa Cruz, to a vineyard on Blackburn Drive, where he lived for fifteen years. The last seven years of his life he practiced as an architect in Santa Cruz, responsible for both residential and commercial work. (Santa Cruz Sentinel, May 14, 1911)” ¶ (from John Leighton Chase, *The Sidewalk Companion to Santa Cruz Architecture*. Third Edition. Edited by Judith Steen. Santa Cruz, Santa Cruz Museum of Art & History, 2005, p. 301.)

Martin, Benjamin Risdon (*i.e.*, Ben Martin, searcher of records, stenographer) ¶ “We took the transcript of the case on appeal in the case of Pylar and I checked such ones of instructions as was applicable in my opinion to the case at bar and gave them to our stenographer, Mr. Ben Martin, to copy during the noon hour; I intended to check such instructions only we had been given by the Judge in the former trial, and endeavor to check the ones he had refused to give; after I had checked however I ran a lead pencil mark through it. Q. You discovered your mistake did you? A. Yes sir, before it was copied, but Ben Martin did not, and copied it, and we did not have time to look them over carefully before the instructions were returned and we had to come back to court and they were handed to the Judge.” (Hearing Transcript, Volume I: p. 128) ¶ “Benjamin R. Martin, the eldest son of Mr. and Mrs. Ed. Martin, of Santa Cruz, was born at Watsonville June 13, 1865. He acquired his early education in the public schools of that city. His first business experience was obtained while acting in the capacity of clerk, which position he filled for two years. Ambitious of using his exertions in a larger field, he went to San Francisco, where he secured a position with M. Ehrman & Co. Subsequently he became identified with the management of the wholesale drug store of Wakalee & Co., where he remained about one year. During the last part of 1884 he accepted a position as copyist in the office of his father, who had just been elected to the responsible position of county clerk, auditor, and recorder of Santa Cruz County. Upon attaining his majority he received the appointment of deputy clerk, which position he now holds. Mr. Martin is a charter member of Santa Cruz Parlor, N. S. G. W., and was its first President. On September 8, 1890, he was married to Miss Lottie D. Kellogg, a Native Daughter, and member of Santa Cruz Parlor, N. S. G. W. Mr. Ben. Martin is one of Santa Cruz’ most estimable young men, and is a general favorite in society circles.” (Edward S. Harrison, *History of Santa Cruz County, California*. San Francisco, 1892, p. 276-277.) ¶ “Ben Martin, Auto Victim Well Known in S. C. ¶ Ben R. Martin, who has been for a number of years at the Odd Fellows home at Decoto, and who met his death on Tuesday night when struck by an automobile near Freedom, is well known in Santa Cruz. ¶ He was born at Watsonville where he attended schools and when his father, the late Edward Martin, was elected county clerk, he came over with the family and for many years served as deputy clerk. ¶ ... ¶ He was a member of Calvary Episcopal church and sang in the choir there for many years. ¶ His brother, George P. Martin, died about a week ago in San Francisco and his parents also preceded him in death. ¶ He is survived by two sons, DeLoss and Clarence, and a sister, Mabel.” (Santa Cruz Sentinel Feb. 19, 1942, 2:6) ¶ “Benjamin R. Martin, son of County Clerk Martin, was born in Watsonville, Santa Cruz county, June 13, 1865. He is Deputy County Clerk, and has resided some years in Santa Cruz. Mr. Martin is a charter member of Santa Cruz Parlor and was the first President. Mr. Martin is a married man and his wife is a Native Daughter.” (Santa Cruz Surf, Sept. 10, 1891, 3:2)

Martin, Edward (attorney, County Clerk; Deputy Recorder, Santa Cruz County) -- testimony I: 140-141, 144; II: 34-36; (Benjamin K. Knight vs. Ed. Martin, III: 16) ¶ “EDWARD MARTIN. ¶ Mr. Martin is one of the

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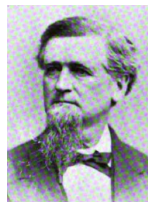
highest-credited citizens of the most beautiful and resourceful county of Santa Cruz. He was born in England, his father being Dr. John Martin. He came to California in 1851. A picturesque incident of his life-record is his plowing the first furrow in the rich Pajaro valley. Afterwards he had a bookstore and stationery business in Watsonville, and held the office of notary public and postmaster. He there acquired a home and was united in marriage to Miss Emmeline Risdon, of New York. He has been living in Santa Cruz city since 1884, when he entered upon the office of county clerk, auditor and recorder. He held this by successive re-elections, until January 1, 1899. He had been admitted to the bar by the Supreme Court in September, 1898, and began the practice of law on leaving official life. He holds, by the appointment of United States District Judge DeHaven, the position of referee in bankruptcy. ¶ Mr. Martin was a member of the last constitutional convention, 1878. ¶ Mr. Martin is well versed in Latin, French and Spanish, and has written considerably in the line of historical sketches and humorous stories, some of which are preserved in the "History of Santa Cruz County," by E. S. Harrison (1892). ¶ Mr. and Mrs. Martin have a fine home on Camino de Rey, Santa Cruz. Their children are grown up — two sons and a daughter." (Oscar T. Shuck, *History of the Bench and Bar of California*, Los Angeles, The Commercial Printing House, 1901. p 888.)

Martin, George Francis (b. Jan. 17, 1872, d. Nov. 19, 1935, mentioned in Hearing Transcript v. II, p. 67) "Rites Held for George F. Martin ~ WATSONVILLE, Nov. 22. — Funeral services were held today for George F. Martin, 63, member of an old family of the Pajaro Valley and former district manager of the California Pine Box Company. Surviving are a daughter, Frances Marian Martin of Berkeley; and two sons, Henry A. and Kenneth G. Martin." (Oakland Tribune November 33, 1935, 17:5)

McBride, Robert Wesley (Justice, Indiana Supreme Court) -- petitioned Court for admission of William M. Aydelotte to practice law in Indiana -- was Aydelotte's law partner, also with Caleb S. Denny I: 204

McCann, Ferdinand Jay (Santa Cruz attorney/Superior Court Judge) I: 17-18, 213; II: 14; III: 14-15)

"Republican Party Convention ¶ Judge Republican party of our county for past six years. His ability as a jurist State, and his honesty and integrity are a strong and growing feeling among the should not be considered in voting on



F. J. McCann is again the nominee of the Superior Judge. He has served in the office for the places him in the first rank of the judiciary of our unquestioned. He deserves a re-election, and there is voters of Santa Cruz county that political distinction the Superior Judgeship, and that the record of Judge

McCann entitles him to a re-election by a large majority." (Watsonville Pajaronian, Sep. 25, 1890, 2:1) ¶ "F. J. M'CANN. ¶ The Death of the Judge of the Superior Court of Santa Cruz County. ¶ Ferdinand Jay McCann, Judge of the Superior Court of Santa Cruz County, died yesterday, August 8th, [1893] at 6:15 P.M., at his residence on Minnesota avenue [Soquel Avenue of today], after an illness which confined him to the house but a few days. During that illness, the sympathy of the whole city and of the county as well, has centered in the beautiful home where the voiceless struggle between the forces of life and death was waged, where the devoted affection of a family and the skilled service of medical men found themselves powerless to stay the summons which had surely come. ¶ The tall, erect figure, the grave yet kindly face, the swift and seldom smile which showed a hearty appreciation of the humorous, the steadfast hold upon the right which guided judgment in all professional matters, the stately old-time courtesy which greeted all with whom he held the daily intercourse of life, the genial, sweet nature which revealed itself to those admitted to more intimate acquaintance, the keen and delicate sense of honor, all these, and much more, we have lost, in losing Judge McCann; of all these we may retain only that fragrant memory which remains after the portals

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of life have closed. Judge McCann was a native of Maryland, and was nearly sixty-seven years of age. He came to California in 1849, and practised [sic] his profession in San Francisco; later in Downieville, then in Marysville. He came, with his family, to Santa Cruz in 1867, where he has lived ever since. In 1875 he served as County Judge. In 1884 he was elected Judge of the Superior Court of Santa Cruz County, and again in 1890 — the latter term remaining unexpired. ¶ The friends and business associates of Judge McCann had for some time noted with anxiety that he was not as well as usual, but he continued faithfully in the duties of his office, holding court until the day closed on Thursday last. He looked forward with anticipations of pleasure to a vacation with a few chosen friends which was to begin within a few weeks. ¶ But on Friday he was stricken with inflammation of the bowels to which peritonitis succeeded. The attending physician, Dr. Gray [Edward Gray], was untiring in his ministrations and did all that medical skill could suggest; he was assisted by Dr. C. W. Doyle [Charles William Doyle] in consultation. But the end came quickly and was met with the same fearlessness, the same thoughtfulness of others and the same self-control which had characterized his life. ¶ Judge and Mrs. McCann had a family of nine children, all of whom survive him excepting the eldest, Underwood. The death of Underwood McCann is still fresh in the memory of a majority of Santa Cruzans and the tender affection which existed between parents and son will long be remembered. ¶ The surviving children are Miss Pearl McCann, who has been devoted to her father in his last illness; Dr. Charles McCann, now in Aspen, Colorado; Ferd J. McCann [Jr.], in Mexico; Will McCann, in London; Miss Lucie [i.e., Lucy] McCann, who will arrive today from Clear Lake, Lake Co., and Kate, Frank and Warner McCann, at home in Santa Cruz.” (Santa Cruz Surf, Aug. 9, 1893, 3:2)

McCartney, Herbert S. G. (Assemblyman, CHAIRMAN of the Assembly Special Committee of Investigation) [His references appear in the Transcript of Hearing in all volumes, under the name of THE CHAIRMAN.] “Senator McCartney was born in Springfield, Illinois, October 26, 1865, and consequently at the time of the election he will have achieved the age of 45 years. He was educated in the public schools of Iowa and Missouri, and the high school of the latter state. He came to California in February 1889, studied law, was admitted to the bar in 1895, since which time he has practiced the profession and is still in the practice. The only public office he has ever held is that of member of the legislature of the state, having served two terms in the lower branch, and on the 1st of January next he will have completed a senatorial term. He has a wife and four children, is a home and family life man. His habits are exemplary and his morals are of the highest character....” (The Rural Californian, {Los Angeles} February, 1910, Vol. 34, No. 2, p. 54-55 {with portrait}.) ¶ “Herbert S. G. McCartney, Residence, 934 West 18th Street; office, District Attorney’s Office, Los Angeles. ¶ Son of Robert J. and Margaret S. (Greenwood) McCartney. Married Alice G. McCaiden in 1896. ... In 1902 elected to the Assembly and reelected in 1904. Elected to the State Senate in 1906, from the 38th District. (Joseph Clement Bates, History of the Bench and Bar of California, 1912, p. 404.)

McCreary, Thomas Guy (Jan. 1, 1871 - June 29, 1941) (City Bank Cashier) -- mentioned in Hearing Transcript Volume II, p. 135: “on the 19th day of March, 1903, the said Lucas F. Smith wrote a letter to H. H. Miller, County Clerk, and Clerk of this Court directing the said Miller to enter an order upon the minutes striking out certain affidavits of F. A. Hihn, and T. G. McCreary, filed in said contest and cause ...”; ¶ THOMAS M’CREARY, PROMINENT LOCAL CITIZEN, SUCCUMBS ¶ Thomas G. McCreary, one of Santa Cruz’s most prominent citizens, is dead. Å The news of his death, which occurred Sunday morning at 3 o’clock at the home of his daughter, Mrs. Jean Brickey, in San Carlos where he was visiting, came as a distinct shock to this community. He died in his sleep. ¶ The body was removed to this city and is at the Wessendorf Mortuary chapel, where Masonic funeral services will be held on Wednesday morning at 10

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o'clock, conducted by officers of the lodge. The interment will be at the Odd Fellows' cemetery. ¶ McCreary was born in Canfield, Ohio, a son of a clergyman. He started in the banking business when a young man, and was in a bank at Omaha, Nebraska and then at Council Bluffs, Iowa. ¶ In 1889 he came to Santa Cruz, joining his parents, Rev. and Mrs. E. D. McCreary, and brothers, Joseph and Paul. His father was serving his first pastorate of the First Methodist church here and it was under this pastorate the church had a remarkable growth and changed its location from Mission Hill to Church Street. It was his father under whom many improvements were started. His father was sent back to serve another pastorate later and a third time to the East Side church.[Santa Cruz]. ¶ McCreary became the cashier of the City Bank and City Savings bank, later the First National Bank and the City Savings bank. He became manager and retained that position until his retirement about five years ago. It was then the Bank of America. ¶ As a young man he was athletic, was interested in the YMCA and its gym. He was especially fond of tennis and for a number of years his hobby was amateur photography. His work was that of an artist and pictures taken by him were among the finest of any in this section. ¶ It was here he was married in 1901 to Miss Frances Collins, a daughter of Mr. and Mrs. C. M. Collins, a prominent family. Her father was a leading merchant of the city. They were married at the family home at Maple and Cedar streets, the father of McCreary solemnizing the ceremony. ¶ The family home was on Cleveland avenue and Rigg street. A lover of flowers, he spent much of his time in his garden and it was always a beauty spot. ¶ In fraternal life he was a Mason and past master of Santa Cruz lodge and a past commander of Santa Cruz Commandry, Knights Templar. He was a member of the Islam Temple, Nobles of the Mystic Shrine. ¶ McCleary also was a member of the local Rotary club. ¶ He is survived by his wife, Frances McCreary, Santa Cruz; a daughter, Jean Brickey, San Carlos; a son, Bruce McCreary, Santa Cruz; and one grandson, Peter Brickey, San Carlos." (Santa Cruz Sentinel July 1, 1941, 1:6-7).

McDonald, D. J. [Full name not discovered.] A case that occurred in 1901 -- habeas corpus case, represented by John H. Leonard II: 56, 145-146 "Then the habeas corpus cases, there has been one, that was McDonald, whom Mr. Leonard represented, they released him upon my order in open court, but it was not properly before me, that the sheriff's return was not full enough to show the court had jurisdiction." ¶ "THE WRIT DISMISSED. On Saturday Judge Smith rendered the following decision in the D. J. McDonald habeas corpus case: A complaint was filed in the Justice's Court at Sacramento charging the defendant with the crime of misdemeanor." (*Santa Cruz Sentinel* October 6, 1901, 1:2)

McKinlay, Carmen Amesti de (Mrs.) (deceased) (defense attorney Sullivan introduced the case of: No. 3971. In the Superior Court of the County of Santa Cruz, State of California, ELLEN RIANDA, Administratrix of the Estate of Carmen Amesti de McKinlay, Deceased, Plaintiff, Findings and Decision -vs- WATSONVILLE WATER AND LIGHT COMPANY, (a corporation), FRANCIS SMITH and W. W. MONTAGUE, Defendants., II: 36-41) "That heretofore, to-wit, on the sixth day of October, 1901, Carmen Amesti de McKinley died intestate in the county of Monterey and State of California, and at the time of her death was a resident of the City of Monterey, in said County of Monterey, and left estate in the County of Monterey and in the County of Santa Cruz, in the State of California, leaving her surviving Flora McKinley Duckworth and Ellen Rianda, her only children and heirs at law."

McKissey, W. Ed (saloon proprietor where Peter Paul Hartmann worked) I: 46 [otherwise unidentified]

McPherson, Duncan Jr. (attorney) (I: 12-14, 18, 105-110, 114, 116-123, 199-200; II: 33, 51-52, 54, 73-75, 78, 100-101; III: 42, 45) "McPherson Funeral Held At Morro Bay ¶ Funeral services were held Friday at Morro Bay for Duncan McPherson II, 76, of 1981 Linwood St., Mission Hills, a retired attorney and inventor, and

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former owner of the *Santa Cruz Sentinel*, a Santa Cruz newspaper. He died of a heart attack Wednesday [Nov. 14th] at Morro Bay, near San Luis Obispo. ¶ McPherson had lived in San Diego since his retirement in 1923. He was stricken while *en route* to San Diego from his summer home at Mount McPherson in Santa Cruz County. The mountain had been named for him. A native of Northern California, McPherson was a graduate of Oxford University. He practiced law in Northern California. The *Sentinel* was founded by his father, Duncan McPherson, and was one of the earliest newspapers in California. It now is published by Duncan McPherson II's nephew, Frederick McPherson. ¶ McPherson is survived by his widow, Edith; a son, Duncan McPherson III of San Diego, a daughter, Mrs. Janet Gunn of Mount McPherson and four grandchildren." (San Diego Union Nov. 18, 1956, p. 20)

McPherson, Duncan Sr. (publisher, *Santa Cruz Sentinel*) (testimony II: 2, 82-86) McPherson, Duncan Sr. (publisher, *Santa Cruz Sentinel*) (testimony II:2, 82-86 "Duncan was born in New York, about 1839. He came to California in the spring of 1856 with the family of his father, Alexander (Duncan also had a brother by his first name of Alexander), His father had been a lumberman and merchant at Riga, near Rochester, NY. ¶ The father mined Michigan Bluffs before coming to Santa Cruz. Duncan, for a few months, attended the University of the Pacific at San Jose (before it moved to Stockton) and made an adventurous trip to the Frazer river mines. He hauled limber by ox-team when he traded 22-acres of logged-over land in Happy Valley (Santa Cruz County) for a half-interest in the *Sentinel* (1864). ¶ He died on February 16, 1921. The *Sentinel* passed to his son Fred D. McPherson, until his death in 1940. His son, Fred D. McPherson, Jr., took over and was publisher, then to his sons Fred and Bruce McPherson, until the paper was sold to Ottaway Newspapers, a division of Dow-Jones." (Summary by Stanley D. Stevens)



Medina, Frank Joseph (b. Nov. 1870 in Portugal) (Frank Medina vs. Joseph L. Enos) Transcript volume III: p. 16: "the next case was Frank Medina, plaintiff, vs. Joseph L. Enos, defendent [*sic*]; that was a case tried in 1897; attorneys for the plaintiff, Jeter & Makinney and J. H. Logan; attorneys for the defendant Lindsay and Cassin. Judgment went for the plaintiff in that case." ¶ This case appeared in the Superior Court as early as July 27, 1895. ¶ "A Brother's Petition. ¶ Antonio L. Sylvar petitions in the Superior Court on Monday for letters of administration in the estate of Jackson Sylvar, deceased, and in the petition says that at the time of his death Jackson Sylvar owned real property valued at about \$20,000, and personal property valued at about \$8,000. ¶ Sylvar says in his petition: "I hereby revoke a written request for the appointment of Joseph L. Enos as administrator herein, heretofore made by me and desire hereby to be appointed administrator, herein myself because I consider that I can best manage the affairs of the estate myself." (*Santa Cruz Surf*, July 27, 1895, 1:3-4); and it appears that the case was settled by: "Frank J. Medina vs. Joseph L. Enos, as administrator of the estate of Jackson Sylvar, deceased—Assignment of judgment." (*Santa Cruz Sentinel* December 25, 1907, 8:4).

Miller, Harry Edward (Deputy County Clerk & County Clerk 1921-1954) I: 11, 183; II: 117, 119-120, 122, 126 "Half Century Of Public Service Comes To End ¶ Santa Cruz County Clerk Harry E. Miller smiles benignly as he prepares to lay down his pencil after nearly 56 years of service to the residents of Santa Cruz county. He holds the record of having served the county longer than any other employe [*sic*], and probably holds a state record for longevity in public office as well. [Miller photo caption] Harry E. Miller Retires After Longest Service In History As Clerk Of Santa Cruz County ¶ By Ned Davis ¶ If Harry E. Miller, who is

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retiring after serving the county longer than any other individual in its history, had his way he would probably work busily at his desk until noon tomorrow, put on his coat, say goodbye to his staff and walk down the courthouse steps and to his home without fanfare and with a minimum of fuss. ¶ But even if many well-wishers would allow him that quiet exodus, one has the feeling that Harry Miller's departure could not be a quiet one inside the invisible walls of his memory, for a man simply does not turn his back on 56 years of service in one office without some throbbing sense of loss and withal, some release. ¶ Yet typical of this vigorous looking man of 78 is the statement he made when interviewed, "If I ever did anything that was particularly outstanding I've forgotten what it was." ¶ No doubt he has forgotten, for he has that genuine modesty of outstanding people which makes them regard the excellent and exceptional, as it pertains to their own work, as nothing more than the merely ordinary. ¶ But there are probably thousands of Santa Cruz citizens who would say otherwise. Outstanding in itself is Miller's tenure of office which makes him not only the longest-serving official in the history of this county, but probably gives him a record of public office unequalled in the state. Miller, who began his work as deputy county clerk January 3, 1899, remembers having issued marriage licenses to couples who have since celebrated their golden wedding anniversaries! ¶ And speaking of anniversaries the clerk celebrated his own Thursday, the 48th for he and his wife, the former Laura Smith. He cooked breakfast in observance of the occasion a surprise which truly surprised the Mrs. ¶ Miller was born in the Pajaro valley, near Watsonville, a son of the late Mr. and Mrs. Delmar H. Miller who came here in 1851 from New Jersey. ¶ As a deputy clerk he learned he could accomplish much more work if he dispensed with a "time-wasting" luncheon and he disciplined himself to a hearty early breakfast and a late supper, interspersed with from 12 to 14 hours of solid work. ¶ It was a discipline he had to learn for court recordings of judgments and decrees, just as lengthy then as now, had to be copied in entirety in pen and ink. Today they are typed on loose-leaf pages and bound together in book form. Furthermore, as a deputy, he served also as the court clerk though a salary ordinance provided for the employment of another man. A man of sufficient experience could not be found to fill the vacancy and so the youthful Miller took on the job and the saving to the taxpayers is estimated at more than \$18,000. ¶ But Miller was as quick to spend the taxpayers' money if he thought it would mean justice to a fellow citizen. He remembers an elderly woman, the widow of a Civil War veteran who died in combat, coming to him to see if her pension could be restored. After the death of her first husband she had remarried and was then appealing for a restoration of the pension upon the death of the second husband. A former congressman who happened also to be a self-styled expert on all subjects told her, "Lady you are wasting your time." ¶ But the county's deputy clerk thought otherwise and he began collecting records and affidavits which finally led to a restoration of the woman's pension. ¶ Miller became county clerk June 1, 1921, upon the resignation of his brother, Harvey H. Miller, and he was elected and re-elected a total of eight times. He retired this year chiefly at the urging of his family. ¶ Naturally he recalls a great number of cases in the superior court. The case he remembers most vividly was one in which a man claimed to have been deafened in an accident and was suing for damages. The trial lawyer whom Miller recalls as "a most shrewd man" kept asking the man claiming injury a series of insulting questions. And with each question the lawyer lowered his voice until a jury member was asking if the attorney could speak louder while the man who had falsely claimed deafness was answering the almost inaudible phrases with bitter vociferousness. ¶ When Miller began work in the courthouse the number of civil, criminal and special proceedings then on file was 3224. Today the number is 27,641. Probate proceedings over the same span have increased from 901 to 14,093 and a total of 1402 juvenile court proceedings have been filed since October, 1905. ¶ Miller said the number of personal injury trials has increased tremendously over the years as automobiles first made their appearances and then kept climbing in the speed and power of their performances. ¶ The longest jury trial in the court, according to the

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veteran clerk, occurred in 1906-07. The trial began late in 1906 and ended in March of the following year. The jury (with a tenacity seldom shown these days, according to Miller) deliberated 72 days and then failed to agree upon a verdict. ¶ Miller helped to organize the county law library many years ago when a San Francisco attorney offered to furnish a number of books for the county's use if Miller would provide the book cases. The books were subsequently purchased by the county and Miller became the first law librarian. The library was started with 751 books. It now has 9700. ¶ He says he remembers his many years in this capacity as perhaps his most interesting and useful occupation. Adjoining the county clerk's office, the library has been convenient at all times for quick reference to all matters concerning legal procedure in every branch of the clerk's office. ¶ Miller said if he ever had a hobby, the law library is it. ¶ Miller said he has no immediate plans upon retirement, but that he intends to "keep busy." "Best of all," he said, "will be to be once more a private citizen of this county which is a high privilege and honor." ¶ "If my good voter friends have kept me in office too long I deeply thank and blame them for it," he said. ¶ But that's the kind of blame most citizens are glad to shoulder. ¶ In addition to being a long time on his job, faithful and conscientious in the performance of his duties, accessible at all times to persons who needed his help, and hard-working, Miller has also been popular with his subordinates, the deputy clerks and clerks who work with him each day. ¶ And they are also popular with him. He has been consistently warm in his praise of their endeavors and commented, "if this office has been run with efficiency a large part of the credit should go to these people who have assisted me." ¶ Wednesday night the full staff turned out to a dinner party in Miller's honor at the Pasatiempo Inn. ¶ Their kindly "boss" was given a mantel clock by the group. ¶ Attending were Emma Rodhouse, Mathilda Rossi, Florence Muhm, Alice Myren, Dorothy Coolidge, Ellen Eagle, Sarah Jones, Janie Sammons, Grace Patrick, Wesley Barling, all of the clerk's staff; his two daughters and their husbands, Mr. and Mrs. John Larrecq and Mr. and Mrs. Willis Wood; two former deputies and their wives, Mr. and Mrs. George Kriz and Mr. and Mrs. C. R. McDowell and, of course, Mr. and Mrs. Miller. ¶ Another former deputy who was unable to attend was E. M. Hussey. ¶ Mrs. Rodhouse entertained the group by recalling many humorous incidents happening during the years she has been deputy clerk and Miss Rossi presented Miller with the clock. The inn was decorated with red carnations, complemented by red candles. ¶ Whatever the thoughts of the group were on that occasion and they were probably festive in keeping with the party, all of them will certainly feel some storming of sentiment when Miller walks out of the courthouse Monday for the last time as county clerk. ¶ No doubt they will be thinking, even with all respect to Miller's successor, in those words used many years ago for another prince of men, "We shall not see his likes again." (*Santa Cruz Sentinel*, January 2, 1955, 1:1-3 & 5-7)

Miller, Harvey Herbert (b. Feb. 22, 1868 in Oregon, d. Dec. 9, 1927 in Santa Cruz) (County Clerk 1899-1920) I: 10-11, 13, 29-32, 39, 54-55, 182-183 ; II: 110, 117, 119-120, 122, 126, 135-136; III: 8 [Note: His brother's biography is given above: Miller, Harry E.: "Miller became county clerk June 1, 1921, upon the resignation of his brother, Harvey H. Miller..."] "Harvey H. Miller, County Clerk of Santa Cruz county, was elected in 1898 for the regular term of four years. Mr. Miller is a native son of California and came to Santa Cruz with his parents at the age of two years. He spent his boyhood in Watsonville and attended the public schools there. He served four years as deputy under Edward Martin, whom he succeeded. Mr. Miller was elected County Clerk at the age of 31, being one of the youngest County Clerks in the State." (*Santa Cruz Surf* March 31, 1902, 6:6) ¶ "DEATH TAKES HARVEY H. MILLER AFTER LONG ILLNESS; POPULAR IN COUNTY, SOCIAL, POLITICAL LIFE ¶ Harvey H. Miller, for more than twenty-two years the efficient and extremely popular county clerk of this county and a member of one of the oldest families of the Pajaro valley and of this section of California, passed away at half past eleven last night at the Hanly

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hospital. His demise followed an illness of more than two years' duration, during which time the hopes of his devoted wife and family and hundreds of friends in this county, had been alternately raised and lowered as the reports of an improvement in his condition and then a setback would be give out from time to time. Mr. Miller suffered from an infection which ran through his whole system and which has baffled the skill of several physicians, both here and elsewhere, during the period of his illness. Up to the time of his death it had been impossible to definitely define just what his sickness was. ¶ A man of high calibre [*sic*] and integrity and possessed of a quiet, pleasing manner and splendid disposition, Harvey Miller in his social, political, fraternal and church affiliations, covering a half century in this county, was as popular a man as has been known in that period. He was born in Modoc county and came to Watsonville as a boy with his parents, Mr. and Mrs. Delmar Miller, in 1857. His mother crossed the Isthmus with hundreds of others who were then rushing to California under the impulse of a magic cry of gold. She married Mr. Miller in the Pajaro valley, one of the earliest settlers of the Watsonville section. ¶ Mr. Miller as a boy attended school in Watsonville when the venerable J. W. Linscott of this city was principal of the Watsonville city school. ¶ He came to Santa Cruz shortly after graduation and soon after married Miss Rosa B. McPherson, daughter of Mrs. Amelia McPherson of this city and the late pioneer newspaper editor, Duncan McPherson, and sister of F. D. McPherson, at present one of the proprietors of the morning paper. The wedding was the first to be solemnized in the present Congregational church. After the marriage Mr. and Mrs. Miller went to Missoula, Montana, where Mr. Miller engaged in business and later to Butte, Montana, where he was connected with the D. J. Hennessy company. Upon their return to Santa Cruz a few years later Mr. Miller went into politics and was easily chosen county clerk and for nearly twenty-three years, up to 1921, when he retired, he held that office, each election assuring him, through the pluralities at the polls of his recognized efficiency and popularity. The office, under his management, was extremely well conducted and since it has passed into the hands of his brother, H. E. Miller, the present county clerk, it has continued to be one of the best conducted offices of its kind in the state. ¶ In recent years Mr. Miller became a director of the Santa Cruz County National bank and the Santa Cruz Bank of Savings and Loan. He owned several pieces of valuable real estate in Santa Cruz, including the Denver block on Pacific avenue, which he built and which was sold by him in recent years. Fraternally he was one of the first members of Santa Cruz parlor, Native Sons of the Golden West and was also a prominent member of the Santa Cruz lodge of Odd Fellows, the Benevolent and Protective Order of Elks and Court Santa Cruz of the Foresters of America. For a number of years he was a trustee of the Congregational church to which denomination he belong[ed] during his entire lifetime. ¶ Following his retirement in 1921 Mr. Miller, with his wife, made a tour of the world, spending considerable time in Europe. It was upon his return from this trip that the illness which ended his life first manifested itself. ¶ He is survived by his wife, Mrs. Rosa B. Miller, who has been a faithful and constant attendant at his side during the long trying last illness and by his two sone, Clifton Miller of New York City, a member of the firm of Dillon, Reed & Co., bankers, and Douglas Miller of San Mateo, a member of the San Francisco investment house of Geary, Meigs & Co.; and by his six brother, Delmar J. Miller of Stockton, William L. Miller of Watsonville, Charles G. Miller of Hernandez, San Benito county, John W. Miller of Oakland, County Clerk Harry E. Miller of this city, Frank A. Miller of Oakland, and by his sister, Miss Mary Miller, of Watsonville. The funeral services which will be private, will be held Monday morning at the Wessendorf mortuary." (*Santa Cruz Evening News*, December 10, 1927, 6:3-4.)

Minor, Mr. see Monmonier, Charles

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Monmonier, Charles (Dec. 24, 1870 - Oct. 26, 1950) (named as “Mr. Minor” in Transcript, volume III:15) ¶ “A. For some time. Mr. Lindsey[sic] dissolved his partnership with me I think about the same time, or shortly before his last term of office of District Attorney expired. Q. He had been District Attorney for two terms? A. Two or three, I do not recall—three terms. He beat Mr. Minor [i.e., Charles Monmonier], he beat Mr. Jeter, and another name, I cannot recall the name.” ¶ “Mr. Charles Monmonier has made a commencement in olive and orange culture on his place near Vine Hill. He has already set out 300 olive and 50 orange trees this season.” (*Santa Cruz Surf*, Feb. 15, 1887, 3:1) ¶ “An Irreparable Loss. ¶ Mr. Charles Monmonier, whose house was consumed by forest fires at 2 o’clock P. M. on Monday last, lost all his personal effects, among them being many things the loss of which is absolutely irreparable. Family papers one hundred and fifty years old, a classical library of 500 or 600 volumes, ivory miniatures of his ancestors painted by masters of that day—all these and many more treasures went up in flame and smoke beside the grosser necessities of clothing, bedding, furniture, etc. Mr. Monmonier has the sincere sympathy of friends in his loss of that which can never be restored.” (*Santa Cruz Surf*, Nov. 12, 1888, 3:3) ¶ “Charles Monmonier of Sconbecque*, Vine Hill, exhibits the product of his vineyard in some capital claret, port and Zinfandel.” (*Santa Cruz Surf*, Oct. 5, 1899, 7:3) ¶ “Chas. Monmonier. ¶ Charles Monmonier is the regular People’s party candidate for District Attorney, and was endorsed at Watsonville by the Democratic Convention. ¶ Mr. Monmonier is a native of Baltimore, Maryland, of French extraction. He was educated at the College at Emmettsburg, and was graduated there, taking the degree A. M. He then studied law in the office of S. Teackle Wallis of Baltimore and was duly admitted to the bar. ¶ Coming to California in 1860 he practiced his profession in San Francisco and Marin county, and with the exception of three years passed in the East, has been continuously a resident of this State. Mr. Monmonier’s grandfather, and after whom he is named, was aid-de-camp of General LaFayette in the Revolutionary war, and was present at the surrender of Cornwallis. His father was a soldier in the war of 1812 and was one of the oldest survivors amongst the old defenders of Maryland. ¶ Some twelve years ago, Mr. Monmonier, having lost his health, bought a place on Vine Hill in this county, and devoted himself to vine growing and fruit raising. His experience in this walk of life has brought him into closer sympathy with the people, and given him broader views of life than one can attain by mere professional pursuits. ¶ He brought with him to his rural home a large and valuable library, which was destroyed by fire a few years ago, at which time Mr. Monmonier lost many literary and artistic treasures, whose value was priceless. ¶ Mr. Monmonier is in every way qualified for the responsible position for which he has been nominated. He is deeply read in the law and has been connected with big cases. He is of pleasing address, genial, affable and courteous, possessing the qualities that attract votes, and we expect to see him triumphant.” (*Santa Cruz Sentinel*, Nov. 4, 1894, 3:3) ¶ In the election results for District Attorney in November 1894, Lindsay received 1,297 votes to Monmonier, 885. (*Santa Cruz Sentinel*, Nov. 7, 1894, 3:6) ¶ “Announcements have been received from Los Gatos announcing the marriage of Charles Monmonier to Miss Sarah E. Locke.” (*Santa Cruz Surf*, May 9, 1901, 4:3). *[Charles Monmonier appears to be related to: Hubert Charles de Monmonier, who was born November 25, 1919, the son of Genevieve (1891-1982) and Eustace Basil Monmonier (1893-1982), an auto mechanic, blacksmith and civil engineer for a mining company. Although the family lived in Pearce, Arizona, Hubert was born at Genevieve's parents' home in Chicago, due to Genevieve's poor opinion of Arizona medicine. He was a descendant of Charles Felix Angeliqne de Monmonier (1763-1809), also known as the Chevalier Sconbecque (son of the Count de Sconbecque), who was born in Paris and emigrated to Baltimore around 1800, where he served as a Constable. (Wilson, Wendell E., and Marcus J. Origlieri. “Hubert de Monmonier (1919-2007) and his mineral collection.” *The Mineralogical Record*, vol. 39, no. 5, 2008, p. 397+.) Accessed 4 Apr. 2021.

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Montague, Wilfred Weed (of San Francisco; b. Oct. 5, 1827 in Cazenovia, Madison Co., NY; d. Sep. 28, 1920 in Santa Clara Co., CA) (Defendant, Rianda vs. Watsonville Water and Light Co.) I: 158; II: 42, 44-48) ¶ “W. W. MONTAGUE IS DEAD AT 93 ¶ Wilfred W. Montague, who for over seventy years was actively identified in business in this city and was postmaster of San Francisco twenty years ago, died yesterday at Riverside Farm, his California summer home for the past sixty years. ¶ Montague, who would have been 93 years of age on October 5, was identified with the Montague Range and Furnace Company up to 1917, when he retired from business life. ¶ A nephew, W. M. Robertson, is his only relative in San Francisco. A sister of the dead man died at Casanoba, N. Y, a week ago, and his wife died shortly after the fire of 1906. Since her death Montague’s household has consisted of himself and Miss Akina Wright, a favorite niece. ¶ In good health up to a year ago, Montague has been failing since that time and has been confined to his bed for the past three weeks. He will be buried in the family plot at Cypress Lawn Cemetery.” (*San Francisco Examiner*, Sep. 29, 1920, 9:5.)

Montgomery, John Joseph (b. Feb. 15, 1858, Yuba City, Sutter County, CA; d. Oct. 31, 1911 at Santa Clara; Prof., Santa Clara College) I: 159-166, 168; mentioned II: 37, 40; III: 32-33) Å “Even before the School of Engineering was founded in 1912, Santa Clara College had a distinguished history of engineering innovation. John J. Montgomery, alumnus and professor of physics, was the first to pilot a manned, controlled flight of a heavier-than-air machine—20 years before the historic flights of the Wright brothers! Å In 1883, Montgomery flew the glider he invented 600 feet and entered the annals of aeronautics history. Since he was in California, far from the publicized aviation trials taking place on the East Coast, and lacked the means to patent his invention, Montgomery’s historic accomplishment was not immediately recognized. Still, the flight did not go unnoticed. According to Alexander Graham Bell, “All subsequent attempts in aviation must begin with the Montgomery machine.” Å Following his landmark achievement in 1883, Montgomery spent the next 10 years studying the principles of flight and the relationship between the wing surface and the air. He published several papers during this time and worked on a series of model gliders before building the Santa Clara, which performed horizontal figure-eighths, well-controlled turns, and spirals, soaring nearly 4,000 feet above the Santa Clara Valley for 15 to 20 minutes as witnessed by hundreds of onlookers, including members of the press. Å In 1911, Montgomery built the Evergreen, using a design that was created to tolerate turbulence and wind gusts. A number of innovative elements were incorporated into the design, including single-wing, aft-tail layout and wheel-yoke control, a major step in aircraft control. It was in the testing of the controls on this craft that Montgomery met his untimely death from a head injury.” (Santa Clara University, School of Engineering, website viewed April 3, 2021.) <https://www.scu.edu/engineering/centennial/stories/faculty-profiles/john-j-montgomery/>

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by The Assembly of The State of California.
Feb. 3, 1905 - March 19, 1905

Compiled by

Stanley D. Stevens
2021

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References to the Volume(s) and Page(s) of the Transcripts are shown thus:

(I:141; II:26-27, 46) [If the reference doesn't reveal the information you seek, use your Find command.]

Paragraph breaks in the text are shown thus: ¶

Montgomery, Zacharia Thomas (March 6, 1825 - September 3, 1900) & Ellen (attorney, father & mother of John Joseph Montgomery) I: 160 ¶ “ZACHARY MONTGOMERY. ¶ Few men have been better known in this State, and few Californians have been better known throughout the United States, than Zachary Montgomery. His life of seventy-six years ended at Los Angeles so late as the 3d of September, 1900. He was an aggressive man, and made many enemies, but they, those who had knowledge of him, always credited him with sincerity. His name came up in a conversation which he had with Mr. George K. Fitch, the veteran Republican journalist of San Francisco, during the period when Mr. Montgomery was assailing with tongue and pen our public schools. “But Zach is honest,” observed Mr. Fitch, who had known him since early days. ¶ Zachary Montgomery was born in Kentucky, on the 6th of March, 1825. He grew up on a plantation, and prepared himself for the legal profession, but before entering on the practice he spent the year 1849 in teaching school at Rockport, Illinois. He came to California early in 1850, settling in Sutter county, and commencing the practice of law at Yuba City, across the river from Marysville. He was the district attorney of Sutter county for two terms. He was a member of the assembly at the twelfth session, which opened on January 7, and closed on May 20, 1861. The Civil War was close at hand. Montgomery was the candidate of the Southern wing of the Democracy for speaker; F. F. Fargo of San Francisco, of the Republicans; John Conness, of the Douglas Democrats, and N. Greene Curtis, Independent. Montgomery received twenty-two votes out of eighty, and withdrew his name after nineteen ballots. Dr. Burnell, on whom the Republicans and Douglas men united, was elected on the 109th ballot. ¶ For Montgomery’s secession report against pledging the credit of the State to help suppress the rebellion, had which is rich reading now, the reader is referred to the appendix to the Assembly Journal of 1861. He was a devout Catholic, and for his efforts to obtain a sectarian division of the public school fund, see the same Assembly Journal, and also the official report of John Swett (Republican), State superintendent of public instruction, in Assembly Journal of the 17th session, appendix two. ¶ We resided in the Capital city in 1861, and often looked in on the legislature. We saw the following passage-at-arms between Mr. Montgomery and the majority leader on the floor of the assembly, John Conness, which was published in the *Sacramento Union* the next morning: ¶ “Some remark was made in a speech by Mr. Conness, referring to Mr. Montgomery, which was somewhat severe, but not now recalled. “*Mr. Montgomery*—There are blackguards here. ¶ “*Mr. Conness*—I recognize one, in the gentleman from Sutter. ¶ “*Mr. Montgomery*— You recognize him as in a mirror.” ¶ Mr. Montgomery married Ellen Evoy. In 1864 he and his wife brought suit in San Francisco against Robert O. Sturdivant, on a contract he had made with them to buy a piece of land which Mrs. Montgomery’s mother had conveyed to them. They prevailed in the lower court, but lost the case on appeal. The case is somewhat interesting to lawyers. See 41 Cal. 295. ¶ In 1864 Mr. Montgomery established *The Occidental*, a weekly newspaper, in San Francisco. The plant was destroyed by a mob on April 15, 1865, on receipt of the news that President Lincoln’s assassination—as also the plants of *The Monitor*, *News Letter*, *France-Americaine*, and *The Democratic Free Press*. The proprietors of all these papers recovered damages by suits against the city. Mr. Montgomery then practiced law in San Francisco for some years, having a brief partnership in 1869-1870 with Oliver P. Evans, afterwards Superior Judge. From 1880 to 1885 he practiced law in San Diego. ¶ Mr. Montgomery kept up his fight against the public school system of the State for twenty years. One of his pamphlets issued in the seventies was entitled “Drops from the Poison Fountain.” His course in this regard brought him into get public disfavor. His appointment by President Cleveland to the office of Assistant United States Attorney-General elicited much newspaper comment.

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This was in May, 1885, and an agitation, which some asserted was led by Judge Stephen J. Field, over Montgomery's views on the public schools, created an extraordinary demand for the pamphlet just alluded to, which fairly boomed through the summer of '85. ¶ For Montgomery's letter, as Assistant U. S. Attorney-General, on "Slickens," written to the *Sacramento Bee*, see that paper of October 26, 1885, and the *San Francisco Call* of the following day. ¶ Montgomery held his public office at Washington for four years. He then engaged in law practice in that city. In 1894 he came back to this State, and settled in Los Angeles, where he practiced law until his death. He left a widow and six children. He was uncle of the Right Rev. George Montgomery, present Catholic bishop of Los Angeles and Monterey. ¶ He died suddenly, from a stroke of paralysis. The telegraphic announcement of the event added: "The State has lost one of her most picturesque and widely known pioneers." Very true. The panorama of his life attracts the eye, and disposes the mind to self-consultation." (Oscar T. Shuck, *History of the Bench and Bar of California*, Los Angeles, Cal., The Commercial Printing House, 1901. pgs. 537-538.)

Mooney, James (in re Estate of Mary Mooney) II: 3, 117-119, 121; III: 5-11 ¶ "Marriage ID#560164, Western States Marriage Record Index via Ancestry.com): James Mooney m. Mary Murry [*sic*] on May 5, 1872 in Watsonville, Santa Cruz County, CA. From *Overland Monthly and Out West* magazine, Volume 9, issue 1, published: July 1872." ¶ James Mooney, 38-year-old Hotel Keeper in Watsonville, native of Ireland; wife, Mary, 30-years-old, native of Ireland, keeping house." (1880 U. S. Federal Census) ¶ "THE MOONEY ESTATE. ¶ On Saturday Judge Smith rendered the following decision in the matter of the estate of Mary Mooney: ¶ The final account of Thomas F. Murray, as administrator of the estate of Mary Mooney, deceased, is hereby settled, allowed, and approved, except as to the item of \$450, charged therein as commissions for said administrator, which item will be reduced to \$389, being the commission allowed by law based upon the appraised value of said estate, and as so reduced said item is allowed and approved. And also the further item of \$150 for extra services of said administrator, which is not allowed." (*Santa Cruz Sentinel*, Dec. 13, 1903, 3:5.)

Mooney, Thomas (in re Estate of Mary Mooney) (II: 115-117; III: 5-11) see **Mooney**, James above.

Moore, Charles (Defendant: Younger vs. Estate of William Henry Moore) II: 14-15, 141 see **Moore**, Helen M.

Moore, Fred W. (Hearing Transcript volume II: p. 15) "FRED MOORE CRITICALLY ILL. The family and friends of Fred Moore of San Jose, formerly of Santa Cruz, are greatly alarmed over his condition. He is suffering from hearth trouble and pneumonia. ¶ A week ago Sunday, Mr. Moore, who had been in good health, went hunting with John Chace, in the vicinity of Madrone. They were stopping at the Spreckels ranch. During the hunting trip Mr. Moore caught a severe cold. He was quite ill at the ranch on the Sunday following, but some remedies were applied and he returned home Monday feeling better. ¶ However, he was not well after his return, but ascribed his illness to a bilious attack. He remained at his store until last Wednesday when he was too ill to come down town. It was not until Sunday that his condition became so alarming that medical attendance was summoned and it was found that he was dangerously ill. ¶ On Monday he was very low, it was reported that his condition was extremely critical. It was stated Tuesday that his condition was somewhat improved, but he was not out of danger. (*Santa Cruz Surf*, Oct. 28, 1903, 3:4) ¶ "FRED MOORE. Highly Eulogized by His Home Papers. Concerning the death of Mr. Moore the *San Jose Herald* says: Fred W. Moore, a prominent merchant of this city, well-known to nearly every resident of San Jose, died at 1 o'clock yesterday afternoon. His death will carry sadness into many homes, for during the many years of his residence here his quiet manners, genial nature and high-minded character

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had endeared him to thousands. Mr. Moore was taken ill a few weeks ago, and although from one to three physicians have been almost constantly in attendance, their efforts have proved unavailing. Up [to] today all believed that he would recover. At 1 o'clock he suddenly passed away. ¶ Mr. Moore was born in Santa Cruz county, where his parents owned a large ranch, and all his life he had been a strong, active and robust man. He came to San Jose and entered the clothing establishment of T. W. Spring, and was married to Mr. Spring's daughter, Marcella, the issue of which union has been three girls and one boy, all charming children, in whose affection the father delighted. For a few years past Mr. Moore has been sole proprietor of the store and a few months ago he purchased one of the finest homes on the Alameda, which he was just preparing to enjoy when taken down with what proved to be a fatal illness. He was a prominent member of the Natives Sons, Masons, Knights Templar and other benevolent organizations of this city and stood high both in business and social circles. In addition to his children he leaves his wife, who has been continuously by his bedside day and night since he was stricken down, and two sisters, one, married, residing at Santa Cruz, and the other, Miss Stella Moore, residing at San Francisco. He was 44 years of age." (*Santa Cruz Surf*, Nov. 3, 1903, 1:3)

Moore, Helen M. (Plaintiff in Moore vs. Hoffman) "Estate of W. H. Moore — The hearing of Helen H. Moore's petition for Letters of Administration continued to April 20th." (*Santa Cruz Sentinel*, March 31, 1883, 3:5) ¶ "... That at the date of the death of said William H. Moore, all of his children were very young and incapable of understanding their rights or the rights of their mother in and to said before described property; that at the date of William H. Moore he had been married to Helen M. Moore, for the space of about three months only, and no property of any kind had been accumulated by such community of marriage; that almost immediately after the marriage of William H. Moore and Helen M. Moore, and in order to secure the property of their mother, Lizzie Moore, his wife, that his will and intent was that the before described property, and all thereof, should go to his two boys, Fred and Charles by his former wife, Lizzie Moore, and stated to said Helen M. Moore that he had made his will to that effect, and otherwise provided for his other children, and further stated to Helen M. Moore, in order that said Helen M. Moore might be provided for, in case of his death, that he would and he did thereupon insure his life for her sole benefit in the sum of \$5,000 (The Moore Suit. *Santa Cruz Surf*, April 2, 1886, 2:2.)

Moore, Thomas Walker (Executor, Estate of William Henry Moore) "Asserting Homestead Against the Husband's Separate Property. ¶ In the matter of the estate of W. H. Moore, deceased, the Supreme Court ordered the judgment and order reversed, and remanded the cause for further proceedings. This was an appeal from an order denying the application of the widow of the deceased that a homestead be set aside to her out of the property of her late husband. The petition was filed August 2d, 1877, and Thomas W. Moore, as administrator, and the children of the deceased by a former marriage, filed their objections to the granting of the petition, alleging that on November 2d, 1871, the petitioner executed a deed to said Fred W. Moore and Charles Moore, the deceased's son, of her right, title and interest in the real estate left by her husband, and consequently ought not to be permitted to assert a claim of homestead. It was upon this point that the Court below denied her petition. In doing so, Judge Myrick believed the Court erred. The deed of Mrs. Moore was silent upon the subject of homestead. Whatever its effect as a conveyance, it was no more than to convey the interest in the property of the deceased, which she received upon his death by succession. A homestead right, or the right to have a homestead, is not a right which rests under the law by succession; it is a right bestowed by the beneficence of the law of this State for the benefit of the family. It certainly could not be said her deed conveying her interest as successor would interfere with and defeat the

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purpose of the law in giving the family an abiding place. Judgment and order reversed.” (*Santa Cruz Sentinel*, Oct. 16, 1880, 3:6)

Moore, William Henry, Estate of (Defendant in *Younger vs. Moore*) ¶ “Homicide—Death of Wm. H. Moore. ¶ On Monday October 30th, 1871, William H. Moore, an old and well known resident of this town, was shot and instantly killed by George Dennison. The affair happened in Ed. Briody’s saloon. The shooting was caused by a personal difficulty between the parties. The ball passed through the heart causing instantaneous death. Justice Wellington, acting Coroner, held an inquest, and the evidence before the Jury, in substance, was in accordance with the above statement, and the verdict rendered accordingly. The deceased was 37 years of age. The funeral took place, on Wednesday last, from the late residence of deceased, on the coast road, one mile West of Santa Cruz. Mr. George Dennison has the reputation of being a quiet and peaceable citizen. He was bound over, to appear for examination, in the sum of \$1,000, by Judge Wellington.” (*Santa Cruz Sentinel*, 1871 Nov 4 3:1) [see also at the end of the bio of Stone, Frank M., who handled this case.]

Morgan, Francis Edward (Dr.) “F. E. Morgan, Coroner and Public Administrator of Santa Cruz County, was originally elected in 1886 and served continuously until January, 1895. He was reelected in 1898. Dr. Morgan came to Santa Cruz County in 1859 and in 1881 graduated from the medical department of the University of California. He then took up the practice of his profession in Santa Cruz and has served the county as County Physician and also as a member of the Board of Health of Santa Cruz, besides serving many years in the official capacity he now occupies.” (*Santa Cruz Surf*, March 31, 1902, 4:2). ¶ “The SURF, in an editorial of date of October 23, spoke of Dr. F. E. Morgan, candidate for re-election to the office of Coroner and Public Administrator, as follows: “Dr. Morgan is a son of one of the most highly respected pioneers of this county. He was educated in the schools of this county, studied medicine with the late Dr. Benjamin Knight before attending medical college. After receiving his degree as M. D., he returned to this county to practice his profession. Here invested the savings of his practice, in Santa Cruz property, contributing to and not shirking the obligations of citizenship. Soon after he commenced the practice of his profession he was elected to the office he now holds, when the duties were nominal as compared with the business which has developed. Dr. Morgan has worked with unflagging zeal and has conducted a most gentlemanly campaign, and hopes that his friends will on election day, tomorrow, roll up a big majority to his credit.” (*Santa Cruz Surf*, Nov. 5, 1906, 1:1).



Murray, Fred, Helen, & Thomas F. Murray (in re Estate of Mary Mooney, Deceased) see Mooney, James {above}. ¶ “Washington Hotel, 189 Main Street, was built in 1869 by Thomas Murray. ¶ (*Watsonville, Memories That Linger*, by Betty Lewis, Valley Publishers, 1976, p 94.)

N

Netherton, William Price (attorney) “Residence, 96 Riverside Avenue; office, People’s Bank Building, Santa Cruz. Born in Pacheco, Contra Costa County, California, December 7, 1861. Son of John Smith and Matilda A. (Estes) Netherton. Married March 2, 1885, to Margaret M. Glassford. Received his early education in the public schools of Contra Costa County, and later in the high school of Oakland. Admitted to the bar of California, January 9, 1894; United States Circuit Court, 1898; United States District Court, 1899. Practiced in Santa Cruz. Entered into partnership with H. A. Van C. Torchiana in October, 1906, under the firm name of Netherton & Torchiana, which continued until 1911, since which time he has continued in the practice of his profession alone. City Attorney of Santa Cruz, 1895-1906. Member of the

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Board of Education of Santa Cruz since 1910; also of I. O. G. T., I. O. O. F., N. S. G. W., and Maccabees fraternities. Democrat.” (*History of the Bench and Bar of California*. Edited by J. C. Bates. San Francisco: Bench and Bar Publishing Company, 1912, p. 444. With Portrait.)

Nichols, Pastoria Guild (She was the daughter of Cynthia A. Sloan Guild and Jonathan Harwood Guild and wife of Uriah Schermerhorn Nichols. She was born in Santa Cruz, California, on April 6, 1856, and died on January 31, 1940, in Santa Cruz, California. {*Santa Cruz Sentinel*, Feb. 1, 1940, 1:5}; She had two daughters: Clara B. Nichols and Lois L. Nichols.) [In the testimony on page 95 of Volume I] “Q. You seem to be a good deal put out because that deed signed by Pastoria Nichols and Sarah Dakan was not delivered to you, I understand it has been left with the bank and also left with Mr. Netherton to be delivered to you, I suppose you are willing to accept it now and you pay the \$1000. and costs?
Mr. Younger: Irrelevant, immaterial and incompetent, not proper cross examination.”

Nordon vs. Chummy (case mentioned on page 85 of Volume II, in the testimony of Philip George Sheehy); however, and extensive search has produced no evidence that these names are correct.

O

Oneal/O’Neal, Louis (San Jose attorney) ¶ “Louis Oneal, State senator-elect for the Thirty-first senatorial district, San Jose, was born in the town of Paradise Valley, near the boundary line of California and Nevada, in 1874. A young senator, indeed. But he was nominated by his party (Republican) for the office on August 18, 1900, amid great enthusiasm, after many speeches had been made in his eulogy, and was elected on the 6th of November by an overwhelming majority. ¶ The Senator’s father was a poor cattle ranger of Paradise Valley, and died when the son was a boy, leaving also a widow and a young daughter. “Louie” attended the country school in his native town, and by toil of various kinds, educated himself and maintained the family. After some years the cattle range was sold, and the family removed to San Jose. The son was now sixteen. He passed through the public schools with credit and took a college course. He then began the study of the law at San Jose, and in due time was admitted to practice by the Supreme Court. Leading attorneys had become interested in him and gave him advice and legal training. During this period he maintained himself and the family by clerking and driving a delivery wagon for Oscar Promis, the crockery merchant, holding the position until after his admission to the bar. ¶ Mr. Oneal, not long after he began his professional career, manifested much skill and ability in the trial and argument of cases, and was appointed deputy district attorney, to fill a vacancy. Thereafter he was selected by the board of supervisors to fill a vacancy as justice of the peace. From this place he passed to the senate chamber at Sacramento. There he has already justified the good opinion and expectation of his constituency. He is a man of great natural force, a strong speaker, widely informed, and to a vigorous mind unites a sunny disposition.” (*History of the Bench and Bar of California*, Edited by Oscar T. Shuck. Los Angeles, The Commercial Printing House, 1901. p 1057, with portrait p. 1056.) ¶ “Among the leading lawyers of Northern California, Louis Oneal figures prominently. At the time of his election to the California Senate, in 1901, he had the distinction of being the youngest member of that body, but his marked ability was soon recognized by his colleagues and in the session of 1903 he was appointed chairman of the committee on corporations, a position he filled with such capability as to attract the attention of his associates. He was particularly interested in the removal of the capital from Sacramento to San Jose, for which he presented a bill, but with unfavorable results. The ability displayed while a member of the State Senate was indeed



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gratifying to the Republican party, which nominated him, and to his community in general. ¶ Near Winnemucca, Humboldt County, Nev., Senator Oneal was born, November 24, 1874, being second among three children comprising the family of George W. and Sarah G. (Trousdale) Oneal, natives, respectively, of Missouri and Illinois, but both residents of Nevada since about 1851. At the time of crossing the plains George W. Oneal was only a boy, but he at once began to mine at Gold Hill. Later he engaged in the cattle business in Paradise Valley, in which he continued for a long period; in later years horse and cattle raising occupied his attention. During his entire residence in the west he was interested in mining. For many years he resided in Santa Clara County, but is now deceased. ¶ Louis Oneal obtained his early education in the public schools of San Jose, supplemented with a business course. His first means of livelihood was as a grocery clerk, but being energetic and determined to succeed, he began to study law privately continued until he was admitted to the bar, April 25, 1895. With B. L. Ryder as a partner, he opened a law office in the Ryland block and later was in the office of Howell C. Moore. In 1896 he was appointed deputy district attorney under B. A. Harrington and filled the position acceptably for two years, after which he became a member of the firm of Herrington and Oneal. The county board of supervisors appointed him city justice in January, 1900, to fill the vacancy caused by the death of John W. Gass, and he remained in the position until November, 1900, when he resigned, subsequent to his election as state senator. He has extensive interests in cattle and horse raising in Santa Clara County, to which he gives considerable time. ¶ The marriage of Mr. Oneal in November, 1902, united him with Miss Anna Hatman, who was born in this city and received a thorough education abroad in the University of Leipsic. In that famous institution her special studies were music and art, in which she had the advantage of the training of the best masters that Germany affords. One son was born to Mr. and Mrs. Oneal, Duncan, a Santa Clara University student. Mr. Oneal is a staunch supporter of the principles of the Republican party and firmly believes that the platform of this party is conducive to the highest progress of the nation and the greatest prosperity of its citizens. The Santa Clara County Republican League, when under his leadership, took an active part in campaign work and proved a valuable aid in local party work. Fraternally, he is a member of the Odd Fellows, Knights of Pythias and the Elks. He is progressive and enthusiastically interested in all civic affairs, and is a member of the Chamber of Commerce. During his busy life, he takes time for recreation and finds the most pleasure in horseback riding. It was largely through his influence that the California Round-up Association was organized, thus bringing the present generation a touch of the vivid life of the old Spanish days. He has ever believed in constructive measures and has occupied a position of leadership, and is actuated at all times by a high sense of duty. (Eugene T. Sawyer, *History of Santa Clara County, California*, Historic Record Co., 1922, page 1358.)

Osborn/Osburn, Hugh Roy (b. April 1873 in Elgin County, Ontario, Canada - d. June 21, 1924 in Oakland, California; Santa Cruz attorney, he immigrated in 1884 at the age of 16; he is identified as a Publisher in the Great Register of Voters for Township 4, Amador County, California in 1900) ¶ “Hugh R. Osborn was naturalized yesterday afternoon, the witnesses being O. V. Ort, J. T. McKean.” (*Santa Cruz Surf*, October 7, 1898, 4:1). ¶ “Personal Splashes. Miss Catherine Armstrong, only daughter of Mr. and Mrs. Thomas Armstrong, is to be married to Hugh R. Osburn tomorrow morning at ten o’clock, at Calvary Episcopal Church. (*Santa Cruz Surf*, February 20, 1900, 4:2) ¶ [In a lengthy description of the wedding, how the bride was dressed, and presents given, the groom is identified as follows:] “Mr. Osborn is a native of Canada but was raised in Hollister. He has been connected with the newspaper profession and until recently was on the Democrat of Salinas. He is at present engaged in the study of law. He is a man of sterling qualities and a prominent member of the Knights of Pythias.” (*Santa Cruz Surf*, February 21, 1900, 4:3). ¶ (TO PRACTICE IN FEDERAL COURT. ¶ Hugh R. Osborn and Benj. K. Knight, two local attorneys, were, on motion of U. S. District Attorney Woodworth, admitted to practice in the Federal District Court of the United States yesterday morning. (*Santa*

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Cruz Surf, April 27, 1904, 2:4) ¶ “POLITICAL. ¶ For City Attorney, HUGH R. OSBORN ¶ Hugh R. Osborn is an independent candidate for the office of City Attorney. For several years he has practised [*sic*] law in this city, having for a time served as assistant district attorney under Benjamin K. Knight. He is a fearless advocate and conducts his cases with considerable skill. Mr. Osborn is a married man, and local property owner. ¶ Before coming to Santa Cruz Mr. Osborn had some experience in the newspaper business, principally in Salinas [*sic*, *i.e.*, *King City Herald*]. ¶ Mr. Osborn is a young and energetic man. He is probably making the hardest fight for the office of city attorney of any of the candidates. He has secured many votes by personal appeals to the individual voters, to whom he has set forth his platform, in what is known as a “house-to-house fight.” (*Santa Cruz Evening Sentinel*, April 5, 1907, 4:3) ¶ “City Attorney Files Answer to F. A. Hihn Co. ¶ City Attorney Hugh R. Osborn on Friday filed an answer to the complaint of the F. A. Hihn Co. in the beach front case, denying the claims set forth by the plaintiff, and as a separate cause of defense to said actin the city attorney avers: ¶ That neither plaintiff above named, nor its predecessors, or grantors were seized or possessed of said premises described in said complaint lying south of the south rail of the Southern Pacific Railroad Company's line, extending east and west through and across said premises described in said complaint, nor any part thereof, within ten years before the commencement of this action. ¶ That defendant City of Santa Cruz and the inhabitants thereof, have held the said premises and been in the actual continued possession and occupation thereof, and of the whole thereof, as hereabove [*sic*] last described, exclusive of any other right, for more than ten years immediately preceding the commencement of this action. ¶ That defendant City of Santa Cruz and the inhabitants [*sic*] thereof, from time immemorial, have used all of the said lands and premises described in complaint, for the purpose of recreation. ¶ That all of the lands lying south of the esplanade is sand which is moved by the winds and tides of Monterey Bay. ¶ That the strip of land known as the esplanade has been filled in and improved by the City of Santa Cruz, and has for more than five years last been used as a public way, for persons on foot and on bicycles and others. ¶ That no part or portion of lands lying south of the railroad have been enclosed or cultivated or improved by the plaintiff or any other person. ¶ That there is a street extending southerly from First St. to high water mark, through and across the said lands described in plaintiff's complaint, known as Westbrook St., and that the same is of the width of sixty feet, and has been dedicated to the public as a public street, and has been used by the public for more than five years last past before the commencement of this action. ¶ Wherefore, defendant prays that plaintiff take nothing by its action, and that the title of defendant City of Santa Cruz be quieted, and for such other and further relief as to the court may seem just and meet in the premises.” (*Santa Cruz Sentinel*, July 23, 1910, 1:6-7) ¶ HUGH R. OSBURN [*sic*] FOR DISTRICT ATTORNEY ¶ Hugh R. Osburn [*sic*] of King City announces his candidacy for district attorney in this issue of the Index. He has been a successful practicing attorney for twenty years and has had a wide and varied experience in both civil and criminal business. His record is one of service. For two terms he was city attorney of Santa Cruz and served one term as auditor of that city. He was also deputy district attorney of Santa Cruz county and made good in these positions. For the past five years he has been city attorney of King City. His reputation as a lawyer is firmly established and he has always been a booster for progress in his home town. Mr. Osburn's [*sic*] familiarity with the duties of district attorney is beyond question and in the event of his election he will make an efficient official.” (*Salinas Daily Index*, {*aka* *The Salinas Californian*), July 8, 1918, 4:2) ¶ ATTORNEY DIES AFTER ILLNESS ¶ (Herald Special Service) NEWMAN, June 23.—Hugh R. Osburn [*sic*], a brother of R. M. Osburn of this city, died at an early hour Saturday morning in Oakland. Osburn [*sic*] suffered for years from an obscure ailment and submitted to an operation in the hope of obtaining relief, but from which he failed to rally. Removing to Oakland some time ago he became a law partner of Daniel Rygel. ¶ But for ill health Osburn [*sic*] would undoubtedly have been one of the most prominent lawyers of the state. For a number of years he was city attorney of Santa Cruz and then defeated the strongly entrenched District Attorney Knight for that office, serving one term. Osburn [*sic*] then left Santa Cruz and opened a law office in King City, where he gained a wide and successful practice. He also at one time was located in the mother lode country. At various times he owned newspapers and was very successful as an editor. ¶ Hugh R. Osburn [*sic*] was a native of Elgin county, Province of Ontario, Canada, where he was born 55 years ago. He was married to Miss Kathleen Armstrong, daughter of one [of]

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the prominent families of Santa Cruz, and she survives her husband. They had no children. ¶ The funeral will be held from the family home in Oakland Tuesday afternoon at 2 o'clock. Members of the R. M. Osburn [*sic*] family of Newman will attend the funeral." (*Modesto Morning Herald*, June 24, 1924, 7:4)

P

Pardee, George Cooper (California Governor) "Pardee was born on July 25, 1857, in San Francisco, California, the only child of Enoch H. Pardee and Mary Pardee. The Pardee family was well known in the San Francisco Bay Area. His father was a prominent oculist in San Francisco and Oakland. Enoch's stature within the community helped him get elected to the California State Assembly in the early 1870s, and later as the Mayor of Oakland for a single term from 1876 to 1878. ¶ Raised in the Pardee Home in Oakland, George Pardee closely followed in his father's medical background. He attended the nearby University of California, Berkeley, then studied medicine at the Cooper Medical College in San Francisco. In 1885, Pardee traveled abroad to receive his medical degree at the University of Leipzig After his return from Germany, Pardee joined his father's medical practice, specializing in eye and ear diseases. ¶ Pardee, in 1879, like his father, Enoch, also developed an early interest in politics. By the early 1890s, Pardee had become an active member of the Republican Party, and was elected to the Oakland Board of Health and the Oakland City Council. In 1893, following a successful election, Pardee became the 29th Mayor of Oakland, serving a single two-year term until 1895. During his mayoralship [*sic*], Pardee began a public battle with the Southern Pacific Railroad's ownership of the Port of Oakland. At one point, Pardee kicked down a piece of the port's fence erected by the Southern Pacific out of anger." (*Wikipedia*, April 5, 2021.)

Peakes, Mary Alice (Mary Alice Peakes vs. William C. Peakes) III:16 (Mary Alice Draper was born on July 31, 1862, in CA; she died on January 15, 1942. Her husband was William Cleveland Peakes. "PEAKES—In Oakland, January 15, 1942, Alice Peakes, mother of Charles J. Peakes, grandmother of Shirley C. Peakes, sister of Della Farley, Emma Livermore, Nell Eastman, Marion Draper and Lou Draper; a native of California, aged 79 years. ¶ A farewell service to which friends are invited will be held Saturday afternoon, January 17, at 1 o'clock in the Little Chapel of the Flowers (Hull & Sons), Adeline Street at Ashby Station, Berkeley. Concluding service, private." (*Oakland Tribune*, Oakland, CA, January 16, 1942, p. 39:5).

Peckham, Charles Eugene (shown as Peckman) mentioned II:67 in the testimony of Dr. Spencer C. Rodgers, he replied to the question by Attorney Lindsay: "A. Oh I could mention the names of George F. Martin for one - mention the name of Mr. Speckens, Mr. Edward White, Mr. Charles Peckman [*sic*, i.e., Peckham], and quite a number of others." [He was the son of Caroline Perry Reynolds Peckham & Peleg Alvie Peckham. He was born on March 17, 1865 in California, and died on October 9, 1923. He was a resident of Watsonville, at one time he was employed as a mail carrier. His wife was Stella Peckham.] ¶ "P. A. Peckham. ¶ WATSONVILLE, July 2.—P. A. Peckham died early this morning from a paralytic stroke. He was a brother of the late Judge R. F. Peckham of San Jose. He is survived by a widow and several children, among whom are George W. Peckham, editor of the San Jose Spectator, and Charles E. Peckham, late editor and proprietor of the Watsonville Daily Register. The funeral will take place here on Friday morning." (*San Francisco Call*, July 3, 1901, 2:4)

Perez (Mrs. Buelna's sister who lived nearby)) I:183-184 ¶ In the TESTIMONY OF Mrs. FRANCES BUELNA, she was asked: Q. Where did you sign the paper? In Mr. Leonard's office? A. I signed it in my sister's house. Q. Where does she live? A. At her house. Q. About where in the city is that? A. It is out of

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the city. Q. In the southern part of the city? A. It is only a few, short distance from my place where I live. Q. Whereabouts in this city, I am not acquainted with the different parts of the city; whereabouts in the city does your sister live? A. They live near the other side of the Cowles[sic] Wharf, near to Perz. [i.e., Perez?] [Probably this was Emma, Mrs. John Perez, living at 64 Lighthouse Ave., Santa Cruz, cross street: Gharkey Street, according to the 1910 Census. She was 32 years old, he was 36, they had been married 7 years; he was a fisherman. Their 10-year old nephew was living with them.]

Piratsky, James G. (b. Oct. 25, 1850 in Australia, d. Aug. 26, 1949, in Watsonville) Editor, *Watsonville Pajaronian* (II:3, 76-80) “Into the Sun-Herald office Saturday afternoon walked blind, 83-year-old James G. Piratsky, former editor and publisher of the *Watsonville Pajaronian*. Sixty years a newspaperman, it was the first visit of this grand old veteran of California journalism to Colusa since that hot day in July, 1905, when the community paid final tribute to Will S. Green, for whom Piratsky had worked for five years, from 1877 to 1882...” (*Colusa Sun-Herald*, Dec. 21, 1936.) ¶ “James G. Piratsky was a man of many parts and numerous skills, but he is best known to posterity as the longtime editor of the *Watsonville Pajaronian*, which he shepherded from weekly to daily status in the early part of the century and continued to edit until 1930, when, at the age of 80, blindness forced him to the sidelines. Piratsky was born in Australia in 1850 but came to the United States as a small child with his parents, who settled in Virginia City, Nev., at the height of the Gold Rush. He left school at the age of 12 and was soon engaged as a “printer’s devil” in a print shop in San Francisco. Not long afterward, he landed a compositor’s job on the “Bogardus Figaro,” a paper covering theater events in San Francisco. That job also introduced him to the stage, which became second only to journalism in his affections, and for much of his life he was involved in amateur theater and stage works. In 1876 he married Mary Ann Cook and the young couple began an odyssey that took them from Colusa to Hollister to Eureka and back to San Francisco as Piratsky pursued his printing trade. His newspaper career became solidified when, in 1892, he bought an interest in the *Hollister Free Lance* and became an editor for the first time. During his years in Hollister, he also had time to serve as county clerk, recorder and auditor, and to resume his amateur theatrical career with the local drama organization. His association with Watsonville which was not to end until his death in 1949 at the age of 98, began in 1902 when, in partnership with George Radcliff, he purchased the weekly *Pajaronian*. Piratsky was later to reveal that he had only \$3,000 when he invested in the newspaper and that the firm had over \$7,000 in debts. But these were paid off in time, and the *Pajaronian*, which was soon turned into a daily and became the *Evening Pajaronian*, prospered. The Radcliff-Piratsky partnership was unique in that there was no formal accounting between the two until the paper was sold in 1930. Radcliff was soon to become active in state politics, and, from 1911 on, he took no active part in managing the newspaper. Piratsky became editor and publisher. During those years, “Sunny Jim” (as he was affectionately known) continued his love affair with the theater. At the La Petite Theater in the 300 block of Main Street (owned by his wife), Piratsky would stand down in front when the silent movies were being ground out, and he would speak the character’s parts - women’s and men’s, including the slimy tones of the villain. Music was supplied by a pianist, and price of admission was 10 cents. Over at the Opera House on Third Street (now East Beach), Piratsky would often be on hand for running commentaries on the movies being shown. People would come from miles around to hear Sunny Jim, who had a regular following among the drummers (traveling salesmen). He was also instrumental in bringing some famous theatrical people to the Opera House, including Lon Chaney and Chic Sales, as well as discovering local talent for the stage productions. Piratsky’s editorial column was called “Alternating Currents,” and he could put words together with a flair that gained admiration from people all over the state. His editorials were instrumental in advancing many community causes, including the city’s purchase of the privately owned water works in 1923. By that time,

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Piratsky had lost the sight in his left eye as a result of glaucoma and the sight in the other eye was failing. He continued to work, however, and it was during this period that he dictated a book called "Early Days in the Mission San Juan Bautista" from information told to him by local historian Isaac Mylar. A limited edition of 300 copies was published in 1929 after first appearing in the *Pajaronian*. In 1927, while he was in San Francisco for eye treatments, Piratsky lost the sight in his right eye. Two operations restored partial sight in the eye, but he remarked that his printing days were over and that that was the hardest part to bear. On Sept. 26, 1930, a month before his 90th birthday, Piratsky announced that he and Radcliff had sold the *Evening Pajaronian* to Fred W. Atkinson, former mayor of Watsonville and publisher of the *Morning Register*. Piratsky's wife, Mary Ann, died Sept. 19, 1932, and he wrote the following tribute: "Whatever he (Piratsky) amounted to during his married life was due to the good influence, wise counsel and tender love of his wife." They had one daughter who married Frank Rhoads, and two granddaughters - Alene, who was to become Mrs. Joseph Solari, and Lorraine, who was to marry Bert Scott and carry on her grandfather's tradition by becoming society editor, then managing editor, of the *Register-Pajaronian*. Jim [Piratsky] fell in his bedroom on July 21, 1949, and broke his hip. He died of pneumonia on Aug. 27, 1949 at 98, a man who had turned a small weekly newspaper into one of the best-known papers in the state. Several years later he was honored by the state Legislature by being inducted into the California Newspaper Hall of Fame. The *Santa Cruz Sentinel* noted in 1930 when Piratsky sold his paper: "It was just as necessary for Jim to write and read, criticize and boast, as it was for him to breathe air. It was natural. There are many who have followed him through the many years, and all of his readers, as well as all the rest, are going to miss him. There are many who can take his job, but none who can take his place." ("James G. Piratsky" by Betty Lewis, *Watsonville Yesterday*, © 1978 by Mehl's Colonial Chapel, Watsonville, California, Litho Watsonville Press, pp. 90-92.)

Plyler, George F. (defendant) (aka Pyler [sic]; vs. The People) I: 123-124, 131-132, 136-139; **II:**30-31, 48; **III:**11 ¶ [People vs. Plyler, COUNSEL: for Appellant: Daniel W. Burchard, W. A. McGuire, Howell C. Moore, Louis O'Neal; W. F. Fitzgerald, Attorney General, Charles H. Jackson, Deputy Attorney General, and Carl E. Lindsay, District Attorney, for Respondent.] ¶ "HARVESTON AND PLYLER ¶ Give and Decline to Give Evidence in Court. ¶ Joe Says He Was Keeping an Eye on Plyler's Wife and Doing His Duty as An Officer. ¶ George F. Plyler was taken from the jail yesterday and put on the witness stand to testify in behalf of his friend Harveston. ¶ He testified that he had engaged Harveston to watch his wife and Harris but denied that he had employed him to commit a crime. ¶ On cross examination he declined to answer most of the questions put to him by the District Attorney on the ground that he would incriminate himself if he answered. ¶ Mrs. Plyler was recalled and denied going to the California restaurant with Harveston. ¶ Lieutenant-Governor Jeter, J. H. Logan, W. D. Story, S. F. Grover, Henry Willey and Duncan McPherson testified that Harveston's reputation for peace and quiet, truth and veracity and honor and integrity was good. ¶ The first witness examined in the Harveston case this morning was Robert Cardiff, who explained the workings of the electric light. ¶ The entire morning was taken in examining Joseph Harveston, the defendant. ¶ He told his story and said that he was a personal friend of the Plylers. That on the Saturday before the commission of the crime Plyler said to him: 'Whenever you see my wife in Santa Cruz keep an eye upon her.' ¶ On the Sunday at 1 p.m. I saw Plyler, his wife and Harris at the corner of Pacific and Walnut Avenues; saw them again between 4 and 5 p.m.; was told by Plyler to keep my eye on Harris. It was a very busy day with me on account of an excursion in town. In the evening saw Plyler and Harris making toward the train. I was down to the train as were all the other officers in town, and after the excursion left I went to my home for supper. ¶ The telephone rang and the operator asked me if Mr. Plyler

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was there. I answered, 'No, he is not here but went home on the train if he is not at the Hobron House.' They told me that San Jose wanted him. ¶ At 7 o'clock went to the Hobron House to see if Plyler was there. I was shown their room and found Mrs. Plyler and Harris in room. Mrs. Plyler said she guessed George had gone home on train. I told her about telephone call. She asked where 159 Pacific Avenue was. I went down and looked it up as she said a note was left under her door for Mr. Plyler to call at No. 159. I returned in a few minutes and told her it was the telephone office. ¶ At half-past ten I went to bed; telephone rang and Plyler spoke and said, 'Joe, come down, I want to see you; meet me at Old Corner Saloon.' I met him and he told me, 'Joe, I am nearly dead tired watching the house, and want you to stay and keep an eye on the house.' ¶ My testimony here might differ from Plyler's, but I will tell the truth all the way through. ¶ I then sat down and watched. Heard a noise across the street, jumped up and ran across the way; saw Shelton jolting rope of arc light. I told them to leave the light alone as I did not want them to damage it. ¶ Mr. Plyler then came back and said, 'Did he come down here.' I said, 'George, don't do anything rash.' He replied, 'Don't worry about me.' ¶ Saw Harris come down. Thought I had better go to room. Went to door of room 17 and knocked. The door was opened just wide enough for Mr. Plyler to step out. He said, 'Joe what do you want.' I said, 'Where's Charlie.' He said, 'He's all right.' Thinking I might be intruding, I said good night and then Mr. Austin in the hall and spoke to him. ¶ I then went home to bed and slept soundly. On cross examination he said: 'Wasn't on the street with Mrs. Plyler that night, nor any other woman. Never in my life was with Mrs. Plyler in the restaurant. The witness who said I was with a woman was mistaken. Have gone into restaurants with women other nights but not on that one. Next morning locked from my room and not seeing Harris in the barber shop and while having my shoes shined seeing the chair empty, I asked the bootblack about Harris. He thought he was sick. ¶ It set me to thinking and I thought it possible he might have a black eye. Walking down to the post office I met Mr. Austin and said if Harris makes a row I don't want to be mixed up in it, but never once thought that Plyler would do a rash act. The first time I heard of crime was from San Jose, when I looked for Mr. Lindsay and told all I knew. ¶ The cross examination [was then conducted by Mr. Lindsay and Harveston at one time broke down completely, shedding tears. He was tangled at several points, but his ready wit came to his relief." (*Santa Cruz Surf*, Jan. 28, 1898, 1:1-2)

Porter, Warren Reynolds (Watsonville banker) (I:201, 205; II:2, 52-53, 55-56, 62-63, 79) "Warren R. Porter, a prominent member of the parlor [Native Sons of the Golden West, Watsonville Parlor, No. 65, was instituted July 18th, 1885], was born at Santa Cruz, March 30th, 1861. Has lived in Santa Cruz county, principally in Watsonville, since. He was educated in the public schools of Watsonville, and at St. Augustine's college, Benicia; is one of the most expert book-keepers in the county, and, after acting as assistant book-keeper to the bank of Watsonville several years, accepted the secretaryship of the Loma Prieta Lumber Co., which he still holds. He was a charter member and one of the leading organizers of Watsonville Parlor, No. 65, and is highly thought of by his brethren of the order." (*Progress*, Vol. 1, #1, Nov. 1, 1887, 10:3.) ¶ "Warren R. Porter, President of Pajaro Valley Bank of Watsonville, has received from Governor Gage his commission as a member of the Board of State Prison Directors." (*Santa Cruz Surf*, June 14, 1901, 4:5.) ¶ "PERTINENT PORTERISMS ¶ LIEUTENANT-GOVERNOR CREATES ¶ A SENSATION AT BERKELEY. ¶ The Berkeley correspondent of the San Francisco Call sends that paper the following: Lieutenant Governor Warren R. Porter, in speech delivered to more than 2,000 students of the University of Harmon gymnasium today, sought to inculcate in them the principles that his public career as a machine boss and follower of Herrin. Before an largely of young men and women about to enter the practical world,



Francisco Call an astounding California in have guided him in audience composed Porter stood up and

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made a special plea for the political “performer,” the man who takes orders from the machine. President Benjamin Ide Wheeler of the university, who had invited the lieutenant governor, an ex-officio regent of the university, to address the students, winced during the unusual speech of the Watsonville man, who urged the students to follow in the steps of political corruption. Many of the professors of the faculty, who sat on the platform during the cynical address, showed plainly the uneasiness they were experiencing. The Porter speech is declared to be unprecedented in the annals of the university meetings, which have been held fortnightly during the past six years. ¶ Some of Mr. Porter’s gems of thought follows: “Be a performer and not a reformer.” ¶ “You will find that a ward politician is not so bad as he is pictured.” ¶ “Success is the desideratum in life.” ¶ “Girls don’t know anything about practical politics.” (*Santa Cruz Surf*, October 24, 1908, 1:4.)

Prescott, Frank C. (Assemblyman) (I:3, 23) “Frank C. Prescott, of Redlands, was born on November 15, 1859, at Ottawa, Lasalle County, Illinois, where he attended public schools. He moved to California in 1876. ¶ General Prescott began his military career as a private in the Oakland Light Cavalry, National Guard of California, in 1878. Later, after relocating to Southern California, he assisted in the formation and was elected the First Lieutenant of the Redlands Guard, an independent company, which was mustered into the National Guard as Company G, Ninth Infantry, June 3, 1893. ... ¶ In the fall of 1903, Major Prescott was promoted to the rank of brigadier-general in command of the First Brigade, N.G.C., by Governor Pardee. ¶ Outside the military, Gen. Prescott began his career in the telegraph business in 1876. His uncle, George B. Prescott, was the first general electrician of the Western Union Telegraph Company, and one of the earliest writers on the subject of telegraphy. In the telegraph business, General Prescott occupied many important positions. He was manager of the San Diego office of the Western Union in 1887, chief operator of the Oakland office from 1878 to 1882, when the relaying business handled there prior to the laying of the cables across the Bay made a large force necessary. During the stirring times of the Geronimo campaign in Arizona he was manager of the Tombstone office and there formed the acquaintance of General Lawton. This acquaintance ripened into a lifelong friendship, which after years was useful to the one-time telegrapher in military activities. ¶ Fifteen years of telegraphy, some of them spent in working the heaviest overland press wires out of San Francisco and Los Angeles, were broken by one year, 1883-84, in the newspaper business, as editor of the Santa Barbara Daily Independent. ¶ The law, however, which from the beginning had been his ambition as a profession, claimed his best efforts and had been his study during all the years of telegraphy. At the April term, 1888, of the Supreme Court of California, at Los Angeles, he was admitted to practice law. He at once entered the office of John D. Bicknell, where he remained a year. Later he entered into a law partnership with Hon. R. B. Carpenter. Upon leaving Los Angeles in 1892, General Prescott moved to Redlands. Here, he was admitted to practice in the Circuit Court of the United States for the Ninth Judicial Circuit on July 1, 1889, and in the District Court of the United States for the Southern District of California on September 16, 1901. Here too, he served as the city attorney of Redlands. In January 1903 he entered into a law partner ship under the firm of Prescott & Morris, his office being located in San Bernardino. ¶ In 1895 he was the law clerk of the judiciary committee of the assembly in the legislature of the state of California. The duties of this position brought him into touch with the greater part of the more technical points in law-making. In November, 1902, he was elected assemblyman of the Seventy-sixth assembly district, representing San Bernardino county. As legislator he was a member of the Ways and Means, Judiciary, Military, and State Hospital committees, also chairman of the Committee on State Library. In November 1904, he was re-nominated by acclamation for the same office by the Republican party. He served as Speaker of the House during the 36th Assembly.” (Mark J. Denger,

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California Center for Military History; <http://www.militarymuseum.org/Prescott.html>) viewed April 8, 2021.

Q

Quinn, Richard P (I:141; II:26-27, 46); *see also (in re* William A. Trafton vs. Richard P. Quinn) *see* **Trafton**, William A.

R

Radcliff, William Richard - Editor, Watsonville *Pajaronian* (II:62) Radcliff, William Richard (21) born in Ohio, Occupation: Printer, Resident of Pajaro precinct, Registered to vote on Nov. 7, 1876 (Santa Cruz County, Great Register of Voters 1875-1879, #7306.) ¶ “On the eve of Rutherford B. Hayes election, in 1876, to the Presidency of the United States, a young man came to the Pajaro Valley who was going to make quite a name for himself: William Richard Radcliff. Born in Toledo, Ohio in 1855, he and his family moved to Grass Valley, California, where Will was raised, received his schooling, and learned the printing business. He then went on to Sacramento to work on The Sacramento Union, one of the most respected newspapers in the state. His next job was with the Crocker Company where he worked for five years. This company handled all the printing for the Central Pacific Railroad Company, and Will was to become a first-rate printer as well as an accomplished writer. Coming to the Pajaro Valley in 1876, he purchased a half-interest in the Pajaronian from C. O. Cummings, editor and publisher of the paper. In 1879, Will married Lizzie Hopkins, daughter of James Hopkins, a local man, and, in 1880, he bought out Cummings who retired from the paper and Radcliff became the sole owner. He and his wife had a daughter, Ruth, who was to become a teacher at Watsonville High School. Lizzie died at the young age of 27 in 1883, and Will later married Annabel Tuttle, daughter of Owen and Mary Tuttle. In 1891, Radcliff moved into his new home located on the corner of East Beach and Alexander, # 103. This large two-story house was fronted by a white, picket fence and the first floor of the home contained a parlor, dining room, library, pantry, kitchen, sewing room, porch and, upstairs, were three bedrooms and a bathroom. Tragedy struck again, in 1900, when Annabel died of a burst appendix. Radcliff had become the assistant cashier of the Bank of Watsonville in 1889, and later cashier. And it was because of these duties and others that he sold his interest in the newspaper to James Piratsky and his brother, George Radcliff in 1903. Mr. Radcliff also served on the city's first Board of Aldermen and as a school trustee. In 1917, a small grammar school was built on Rodriguez Street for \$14,000, and designed by Ralph Wyckoff. This school was named for W. R. Radcliff. He died on July 28, 1923, and in 1928, the Radcliff home was torn down, the property sold and a new structure built. Three children were born to Will and Annabel: Belle who married Floyd MacFarlane and lives in Monterey; Katherine who married Clarence Laws and lives in Carmel; and Phillip who died at the age of two. At Radcliff's death Thomas MacQuiddy wrote: "Watsonville mourns the passing of one of God's true noblemen, W. R. Radcliff is no more with us, and our loss is immeasurable. His devotion to our community's true interest and to that of our county and state amounted to a sacred patriotism. In devotion to American institutions, and in intelligent and untiring service, Mr. Radcliff is comparable to the nation's greatest spirits. Not many communities are blessed with the presence of men of his caliber." (Betty Lewis, *Watsonville Yesterday*, © 1978 by Mehl's Colonial Chapel, Watsonville, California, [printed by] Litho Watsonville Press, p. 99.)

Reed, Charles Wesley (attorney, 1897-1976) In the testimony of Charles M. Cassin, Volume III, page 16 of the Hearing Transcript, he named several cases, including: “The next next case was J. S. Reid, plaintiff vs. J. D. Knight, defendant; attorney for the plaintiff, Charles Wesley Reed, Lindsay and Cassin attorneys for the

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defendant; judgment went for the defendant....” ¶ “Charles Wesley Reed and Mrs. Smith {Mrs. E. O. Smith of San Jose}, representing the Federation of Women’s Clubs” lobbied before the California Assembly Committee of Forestry for the establishment of the Redwood Park Bill which ultimately established Big Basin State Park in 1901. (*Santa Cruz Surf* January 24, 1901, 4:3) ¶ [Charles Wesley Reed was the President of the Sempervirens Club, which was the lead organization that lobbied for the establishment of the Park.] ¶ “*Big Basin* ¶ Sempervirens Campaign For Forest Funds. ¶ Second meeting in the campaign to raise funds for the expansion of Big Basin by over 1000 acres to include the Berry creek watershed will be held in San Jose tomorrow. ¶ Scheduled for noon in the Hotel De Anza, the conference will bring together representatives of the San Lorenzo Valley Property Owners’ association, Save-the-Redwoods league and Sempervirens club of San Jose. ¶ State officials, among whom will be Newton B. Drury, state park commission acquisition agent, will explain the status of the drive to find a \$50,000 matching fund for purchase of land in the park. The \$50,000 appropriated at the last session of the legislature must be equalled by money from private sources before any land can be bought. ¶ F. J. Whiting of Ben Lomond and Emory E. Smith of San Francisco will represent the Property Owners. ¶ To Honor Founder ¶ The luncheon will also honor Charles Wesley Reed, last surviving member of the Big Basin exploratory group and one of the founders of the Sempervirens club. ¶ Reed, now retired, drafted the bill that brought about the state’s purchase of Big Basin park in 1900 after his group had explored the basin to describe its wonders to the public. ¶ As a former supervisor and district attorney of San Francisco, he was a leading advocate of the Hetch-Hetchy project only recently completed. He also was the author of the state civil service bill. ¶ As a guest of the Sempervirens club, he visited Big Basin recently for the first time since it was acquired by the state, but was able to recall location of various groups and individual trees. He lamented the despoliation of the park’s natural cover of ferns and shrubbery, however.” (*Santa Cruz Sentinel*, January 19, 1940, 1:2). ¶ “Charles Reed Died Friday ¶ Charles Wesley Reed, a former resident of Santa Cruz, died Friday in Yuba City at the age of 79. ¶ A native of Marysville, he had lived for three years in the Santa Cruz area before moving to Yuba City. ¶ He is survived by his wife, Alma Reed of Yuba City; two sons, George A. Reed of Capitola and Robert Reed of Santa Cruz; a brother, ret. Lt. Col. George S. Reed of Napa; a sister, Rosalind Painter of Groveland; five grandchildren and four great-grandchildren. ¶ Funeral services will be conducted Monday at 2 p.m. at Lipp and Sullivan Chapel in Marysville. Interment will follow at Sierra View Park in Marysville.” (*Santa Cruz Sentinel*, Nov. 28, 1976, 38:5) ¶ “MOTHER OF CHARLES WESLEY REED ¶ Deceased Was One of Pioneer Women of State ¶ Mrs. Charles W. Reed, widow of the late Charles Wesley Reed, widow of the late Charles Wesley Reed, a pioneer horticulturist of Yolo county and mother of Charles Wesley Reed, the well known attorney, died at the home of her daughter, Mrs. Rowena Demeter, at 1300 Grove street, Berkeley, Monday morning. Mrs. Reed, who was 72 years old, suffered a stroke of paralysis three weeks ago, from which she never recovered. ¶ A year after coming to this state Mrs. Reed taught in the schools of Oroville and Chico until her marriage in 1862 to Charles Wesley Reed, who had laid out an extensive pear orchard opposite Sacramento in Yolo county. From 46 varieties of the fruit planted, Reed selected the Bartlett pear for exclusive cultivation, and a carload of this variety from the Reed orchard was the first shipment of fresh fruit to leave California. Mrs. Reed had lived almost entirely in her old home since 1862 until her sickness of three weeks ago. ¶ Four sons—Marvin Dudley Reed of Sacramento; Charles Wesley Reed of San Francisco; Howard Reed, a fruit grower of Marysville; Hayward Reed of Sacramento — and one daughter, Mrs. Rowena Demeter of Berkeley, survive her. ¶ Funeral services will be held this morning at the residence of Mrs. Demeter at 1300 Grove street. The remains will be cremated and the ashes taken to Sacramento. Mrs. Reed’s four sons will be pallbearers.” (*San Francisco Call*, March 1, 1911, 7:2).

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Reichenbach, Germany (II:114) (Bequest for poor of Village by Geo. Kohl). Reichenbach is in Upper Franconia (Bavaria). It is a town located about 169 mi (or 271 km) south-west of Berlin.

Reid, James S. (J. S. Reid vs. J. D. Knight [sic]) III:16 [this should be J. S. Reid versus J. D. Enright] ¶ REID, JAMES S., proprietor Reid's Law Agency, 194 Crocker Bldg, Telephone Main 407, r. 2204 Devisadero (*Langley's San Francisco Directory ...* for the year 1895, p. 1250) "The next next case was J. S. Reid, plaintiff vs. J. D. Knight, defendant; attorney for the plaintiff, Charles Wesley Reed, Lindsay and Cassin attorneys for the defendant; judgment went for the defendant..." ¶ "REID AGAINST ENRIGHT. ¶ AN APPEAL FROM THE JUSTICE COURT DISMISSED. ¶ Judge Smith's Reasons For Refusing to Grant the Plaintiff's Appeal. ¶ On Saturday Judge Smith rendered the following decision in the suit of J. S. Reid vs. J. D. Enright: ¶ This action was tried in the Justice Court and judgement rendered in favor of defendant, from which judgment the plaintiff appealed to this court. The defendant contends that the Justice's court did not have jurisdiction of the subject matter, and therefore that this court is without jurisdiction on this appeal. There is also a further defense that there was no consideration for the obligation sued on. ¶ The note in suit is for \$400, dated August 16th, 1893, due three months after date, with an alleged credit of \$158.31. It is admitted by the plaintiff herein that this credit was received by the Perine corporation in bituminous rock before the note was assigned by said corporation to plaintiff for collection. In a letter offered by plaintiff and admitted in evidence, written by the defendant to said corporation, the defendant directed the credit to be applied to the payment of the interest due. This letter was written while the corporation still held the note. There was no evidence offered showing how the corporation applied the credit, but section 1479 of the Civil Code provides that it must be applied as directed by the debtor. When this action was commenced there was due as interest \$71.05. The credit of \$158.31 paid all the interest and reduced the principal from \$400 to \$312.74. This latter sum is clearly in excess of the jurisdiction of a Justice's Court. ¶ Plaintiff, however, conceived the idea that he could confer jurisdiction upon the Justice's Court by arranging the credit to suit the occasion, and therefore in his complaint alleged that \$58.30 was credited on the interest, and \$100.01 on the principal and brought his action for \$299.99, balance of principal, and \$12.75 balance of interest due. This was such a flagrant disregard of the law conferring jurisdiction in civil matters upon Justices' Courts, that the counsel who represented plaintiff in this court offer to remit all of plaintiff's claim in excess of the Justice's jurisdiction. But that should have been done before suit was brought and can not be legally permitted here, for no order that this Court might now make could confer jurisdiction on the court below. And it clearly appearing that the Justice's court did not have jurisdiction of the subject matter of the action, this court is without jurisdiction on this appeal. It was so held in the case of Shealor vs. Superior Court, 70 Cal., 564, which is decisive of this case. As the appeal will have to be dismissed for want of jurisdiction, it becomes unnecessary to determine the question as to whether there was a consideration for the note sued on. That question can only be determined when the plaintiff brings his action in a court having jurisdiction of the subject matter. It is therefore ordered that the appeal be and the same is hereby dismissed." (*Santa Cruz Sentinel*, July 3, 1898, 3:4) ¶ "Court Decision in Reid vs. Enright. ¶ The decision in the case of J. S. Reid vs. J. D. Enright was rendered by Judge Smith today. ¶ The case was one appealed from the Justice Court in Santa Cruz township. The Court finds the following facts: ¶ That the amount sued upon by the plaintiff exceeds the sum of \$300 and the plaintiff failed to wave [sic] any part of said sum at the time of the commencement of the suit. ¶ That the Justice Court in which the suit was tried never obtained or had any jurisdiction to try the same. ¶ That this court by reason of the Justice's Court never having had jurisdiction did not obtain jurisdiction to hear the same on appeal. ¶ The conclusion of law—For the foregoing reasons it is ordered that the appeal of said case from the Justice Court be dismissed." (*Santa Cruz Surf*, August 23, 1898, 4:2)

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Reanda/Rianda, Ellen (Reanda used in error) (plaintiff in Rianda vs. Watsonville Water & Light Company) I:144-145, 148; II:3, 36-37, 127, 130; III:28-29 ¶ ELLEN RIANDA, Administratrix, etc., Respondent, v. WATSONVILLE WATER AND LIGHT COMPANY et al., Appellants, S. F. No. 4318, Supreme Court of California, 152 Cal. 523; 93 P. 79; 1907 Cal. LEXIS 379, December 9, 1907 PRIOR HISTORY: APPEAL from a judgment of the Superior Court of Santa Cruz County and from an order refusing a new trial. Lucas F. Smith, Judge. CASE SUMMARY PROCEDURAL POSTURE: Defendants appealed from a judgment of the Superior Court of Santa Cruz County (California), in favor of plaintiff, in the suit to quiet title to certain riparian and other water rights in the county and to set aside two deeds made by the plaintiff to the defendants on the ground of fraud in their procurement. OVERVIEW: Plaintiff was the administrator of an estate of the deceased, who owned the land in question. The deceased granted to defendants the water and riparian rights and privileges with a covenant that the deceased as grantor was entitled to take water for her household. Plaintiff alleged that there was no consideration for the deeds and that the covenant had never been fulfilled and that when the covenant was made by defendants in the deed it was made without any intention of performing it. The complaint set up a claim of adverse possession to all the water and water rights by the deceased from the date of the deeds to the time of her death. The prayer was for a decree adjudging that the estate of the deceased was the owner of all the water, water rights, and riparian rights and privileges of every kind belonging or pertaining to the land described in the complaint. The court reversed the judgment entered in favor of the plaintiff, finding she had no right to maintain the action. The conveyance before the deceased's death of the property to her two daughters carried with it the interest in the water rights. Thus, the estate had no interest in the land or in the water rights. OUTCOME: The court reversed the judgment entered in favor of plaintiff, the administrator of the estate of the deceased, in the suit to quiet title to certain riparian and other water rights and to set aside two deeds made by the plaintiff to the defendants on the ground of fraud in their procurement. COUNSEL: Wyckoff & Gardner, and Charles A. Shurtleff, for Appellants. George P. Burke, and Dickerman & Torchiana, for Respondent.] the case went into the Judge's chambers and I could see them from where I was sitting, and finally the Judge looked around and I saw Mr. Cassin beckon to him to come in, and immediately he interrupted the lawyer who was arguing the case, he said "gentlemen, you will have to excuse me, I have got to go to my chambers." They remained inside in the chambers there for very nearly fifteen minutes I think; several minutes, and after they came out the Judge went on the bench again, and the argument on the other matter was continued; I went into the Judge's chambers then, I might have gone in before he came out, I do not remember, when the door was open; I went in to get some books from the book case, which were in the room, and I found the chairs about the table and the pleadings in my case spread out on the table and I came back and I made a very little argument in the case, in the matter.

----- Transcriber's Insert -----

ELLEN RIANDA, Administratrix, etc., Respondent, v. WATSONVILLE WATER AND LIGHT COMPANY et al., Appellants S. F. No. 4318 Supreme Court of California 152 Cal. 523; 93 P. 79; 1907 Cal. LEXIS 379 December 9, 1907 PRIOR HISTORY: APPEAL from a judgment of the Superior Court of Santa Cruz County and from an order refusing a new trial. Lucas F. Smith, Judge. COUNSEL: Wyckoff & Gardner, and Charles A. Shurtleff, for Appellants." ----- End of Transcriber's Insert -----

Rich, Harrison Wilborn (*aka* "Harry Rich," attorney) (I:5, 165-175, 177, 199, 210; II:33-35; III:27-28, 31, 36-37, 49, 53) (born May 1878 in California) ¶ "JUDGE SMITH REFUSES TO CALL IN ANOTHER JUDGE IN RICH VS. BIG CREEK CASE. ¶ Judge Smith denied the request of Attorney W. M. Aydelotte for a change of judge in the suit of Harrison W. Rich vs. Big Creek Power Co. on Tuesday. Rich, Sr., was one of the memorialists who petitioned the legislature to investigate the official conduct of the Superior

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Judge last spring, and it was upon this ground, as well as on that of the judge's alleged feeling towards himself, that Mr. Aydelotte requested that another judge be called in. ¶ He stated in court that the change of judge had already been agreed to and a date set for the convenience of Judge Dooling, but Judge Smith declared that he did not consider himself disqualified; that he would refuse to call in any other judge, and that he would try the case himself." (*Santa Cruz Sentinel*, October 11, 1905, 6:2). ¶ "MAY NOT COME BACK. Harrison W. Rich, a well-known attorney of this city for the past year, and formerly city attorney of Boulder Creek, has suddenly departed from this city and although he is believed to be in San Francisco his whereabouts are in reality unknown. Rich left last Saturday for San Francisco, and he was accompanied as far as Gilroy by his wife and family. But investigation shows that his intentions were to never return to Watsonville and he has sent no word to his friend in this city as to his whereabouts or in regard to his future plans. ¶ Upon investigation it was learned that Attorney Rich had sold his office fixtures as well as the furniture in his former home here and that the only articles left in this city which he owns is his law library in his office in the Jefsen block. These facts were learned from Chas. Trabling, the law clerk in Attorney Rich's office, who, when interviewed by a Pajaronian reporter this morning, stated that in his opinion Rich had shaken the dust of Watsonville from his feet and left for parts unknown, but right at present he may be in San Francisco. ¶ The destination and future home of Rich is, however, believed to be Honolulu, Hawaii, where he practised [*sic*] law some five years ago. He was the recipient some time ago of a flattering offer from a prominent Honolulu law firm and it is now believed that Rich has accepted this offer without giving out to his friends the nature of his plans. ¶ Trabling says that business had not been good with Rich, that he had become discouraged about the prospects of it becoming better with him in this county, and that he had about decided to seek pastures new. Trabling also stated that he did not believe Rich's departure was due to any financial troubles or any "affair of the heart" outside of his home, street rumor to the contrary notwithstanding. ¶ One many titled official is said to be quite anxious about Mr. Rich's whereabouts. The reason for the anxiety is said to be of a financial nature — sort of a "high-over" from the last campaign — Pajaronian. ¶ Mr. Rich resided in Santa Cruz years ago, his father being a resident of this section at the time, but he has gone hence." (*Santa Cruz Sentinel*, April 20, 1909, 1:7). ¶ Having left Santa Cruz County in 1909, his name was recorded as "Rich, Harrison W, lawyer, 408 Eagle bldg, h E519 Glass av." in the 1911 Polk Directory for Spokane, Washington. ¶ His name was recorded as "Counsel W H Souser, h E519 Glass av., Spokane, Washington," in the 1912 R. L. Polk & Co. City Directory for Spokane. ¶ He is identified as a Lawyer in the 1920 Census for Washakie, Worland County, Wyoming. ¶ "Harrison Rich, Former Resident, Dies at Bay ¶ Funeral services were held in San Francisco yesterday for Harrison Rich, 75, former resident of Sacramento and one of the early settlers of California. When a small boy Rich crossed the plains from Illinois with his parents. He lived here for a time and later moved to Santa Cruz County, where he became a large land owner. ¶ Rich died in San Francisco on December 12th. He had been making his home in the bay city of late. ¶ Deceased was the father of Mrs. Valla E. Parkinson, Sacramento attorney. He also is survived by his widow, Mrs. Janetta Rich, and the following sons and daughters: H. W. Rich, attorney of San Francisco; Mrs. V. Newell of this city, Mrs. Lydia Doymeyer of Los Angeles, H. L. Rich of King City, and Howard E. Rich of Los Angeles. (*Sacramento Bee*, December 17, 1925, 10:5) ¶ In 1926, he is in the Great Register of Voters of Sacramento County at 1507 16th, occupation "Layer" [*sic*]. ¶ "H. W. RICH BECOMES HART'S LAW PARTNER ¶ H. W. Rich, an attorney who had practiced for many years in Montana, Colorado and Wyoming, has located in Sacramento and formed a partnership with Attorney A. L. Hart. The firm name is Hart and Rich. Rich decided to locate here while on a visit to California from Worland, Wyoming, where he last resided." (*Sacramento Bee*, August 4, 1926, 27:2) ¶ "Judgment Asked—Judgment for \$1,250 alleged due on a promissory note is asked in a suit filed in the superior court by J. G. Newell against H. W. Rich." (*Sacramento Bee*, November 27, 1926, 5:3)


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Richards, Daniel B. (Notary Public in and for the City and County of San Francisco) (I:14; II:88) He notarized a document in 1905: In the testimony of Judge Lucas Flattery Smith, Mr. Sullivan asked Smith as follows: “Mr. Sullivan: Judge Smith, accompanying specification is an affidavit by William M. Adyelotte, sworn to January 25th, 1905, before D. B. Richards, Notary Public.” (II:88) ¶ “RICHARDS DANIEL B, atty-at-law and notary public, 14 Sansome, rooms 49-50, tel Main 876, r 1113 Castro, tel Church 5305” (Crocker-Langley Directory ... San Francisco, 1905, p. 1560.)


Ricks/Rix, William Sr. (as Mr. Ricks in typescript) (of Bishop, Wheeler & Hoffler) -- mentioned II:54-55 in the testimony of Warren Porter: MR. LINDSAY. Q. Do you know Mr. Ricks[sic] of the firm of Bishop Wheeler and Hoffler? ... A. I have heard Mr. Ricks[sic; i.e., Rix, William]. Q. Was that in favor of Judge Smith or against him? MR. SULLIVAN. We object to specific instances. Of course Mr. Ricks lost the case and he damned the Judge. ... A. I believe he did. Ricks[sic] came to me in here — I think Ricks[sic] told me that he was going before the Judge, that he had been exceedingly courteous to him, very nice to him and treated him very nicely. Q. When he cut down the verdict? A. Yes sir.” ¶ “William Rix Dies After Long Illness ¶ He Was a Leading Member of California Bar. ¶ William Rix, well known lawyer, died yesterday at Agnews Sanitarium at San Jose. Though ailing for more than thirty years, Rix became acutely ill two weeks ago and was sent to Agnews for rest and quiet. ¶ Rix was respected for his mentality among brother lawyers in San Francisco and along the Pacific Coast. He was considered by many as one of the best lawyers ever produced in California. ¶ Rix was a scion of a well-known family. Julian Rix, the landscape artist, was a brother. Edward Rix, a half-brother, is a mining engineer. Edward Rix married Alice Rix, the writer. ¶ William Rix leaves two children. Mrs. Gladys Rix Townsend is his daughter. William Rix Jr., the son, is connected with the San Francisco Gas and Electric Co.” (*San Francisco Examiner*, August 30, 1915, 3:3).

Roche, Theodore Joseph “Tito” (San Francisco attorney) In the testimony of Charles Cassin, III:22, he related a conversation he had: “I went to Mr. Forgeus and I said “Mr. Forgeus, there is some question raised here whether as a matter of ethics I should try get you Mr. Theodore Roache [sic], a young of the best lawyers in the city, I will get him “Attorney-at-law [with] Sullivan, Roche, comprised of Matt. I. Sullivan, Theo. J. and Theo. Roche, Jr.” | [In May 1912, 1928, he was President of the Police Santa Barbara, California, when he was 82



that case, I will get you a better lawyer, I will man in Mr. Sullivan's office, I consider him one to come down here, he can try the case”. | Johnson & Barry [whch] was a co-partnership, Roche, Hiram W. Johnson and Edward I. Barry Roche was appointed a Police Commissioner. In Commission. He died on November 20, 1958, in years old.] (Ancestry.com viewed 5/5/2021)

Roberts, Frank Kittridge (born Oct. 26, 1865, in Santa Cruz, died Dec. 13, 1955, in Santa Cruz) (Roberts vs. Julius Haesters) In the testimony of Benjamin K. Cruz County), he was asked by Defense Attorney of them are the credit towards in the case of Frank Haesters] — Mr. Roberts, and Mr. Chittenden, and heard Mr. Forgeous; Mr. Lilly; Mr. Osborn; Judge now. ¶ Q. With the exception of the last two you of the Hesters [sic; Haesters]? A. Yes sir. ¶ Q. was involved in that litigation was he not? ¶ A. He represented Mr. F. W. Billing at one time? ¶ A. certain bill of sale. ¶ Q. Prepared for Mr. Billing a



Knight (District Attorney of Santa Sullivan (III:43-44): “A. Well many K. Roberts vs. Julius Herters [sic, Mr. Walty [sic; i.e., Walti]. I have Skirm; that is all I can think of just have named, they are creditors of one And Mr. Aydelotte As an attorney Yes sir he was on all sides of it. ¶ Q. Yes sir; he prepared for Mr. Billing a certain bill of sale? A. Yes sir. ¶

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Q. After his services for Billing were rendered he represented Hesters? ¶ A. No, he represented Roberts; he got a \$500.00 note from Hester [*sic*] for services that he claimed to have been rendered, and then went to these creditors and got them to join in a suit to replevin this property that had conveyed by this bill of sale, that he had drawn up as attorney for Mr. Billing.” ¶ “BANKRUPTCY. ¶ HIGHER COURT SUSTAINS DECISION OF REFEREE MARTIN. ¶ In U. S. District Court in Matter of Julius H. Haesters, in Involuntary Bankrupt. ¶ This case was heard before Ed Martin, referee, to whom it was referred as special master in bankruptcy some two weeks ago. ¶ It was an application of F. W. Billing to have Haesters declared a bankrupt. The case was contested by other creditors of Haesters, but after some days consumed in taking testimony the matter was submitted for decision, and the referee found from the evidence that Haesters committed an act of bankruptcy within four months of the filing of the petition of F. W. Billing to have him decide a bankrupt. On June 15 Judge De Haven made an order approving and confirming the report of the referee and adjudging Julius H. Haesters a bankrupt.” (*Santa Cruz Surf*, June 16, 1904, 1:1) ¶ “Frank K. Roberts, Former City Councilman, Civic Leader, Dies ¶ Frank K. Roberts, 90, who served his native city of Santa Cruz as a city councilman for 16 years and was active in civic affairs for half-a-century, died this morning at a local rest home. ¶ He had only been confined to his bed for the past two weeks although he had been in failing health for some time. ¶ A former groceryman, he was born in the Roberts home on Main street on Beach Hill where he lived almost all his life. ¶ His father, Joseph Roberts was a native of Fall Kirk, Scotland, who went to sea as a young man and at one time was captured by cannibals only to escape and later came to California and Santa Cruz. ¶ Joseph Roberts owned considerable property on Beach Hill and acreage on Water street where he owned what was believed to be the first brick building in Santa Cruz. ¶ Roberts served his last term on the city council from July, 1937 to July, 1941 as commissioner of public health and safety under the old commissioner system in the municipal government. ¶ He was first elected to the council in the 1900s and was reelected twice. Roberts street off Broadway was named in his honor. ¶ He was a charter member of the Santa Cruz Rotary club, a charter member of the Santa Cruz parlor 90, Native Sons of the Golden West and a charter member of Santa Cruz lodge 38, BPO Elks. ¶ During his many years in the Rotary club, he was proud of the fact that he never missed a meeting. ¶ As a boy, Frank Roberts worked for the J. and R. Bernheim department store, the largest in Santa Cruz, in the grocery department. Later he was employed in a San Francisco grocery store for two years. ¶ Upon his return to Santa Cruz, he formed a partnership with the late George Chittenden and they opened the “Roberts and Chittenden” grocery on Pacific avenue at a location now occupied by the Woolworth store. ¶ It was a large grocery store for a community the size of Santa Cruz and was often referred to by San Francisco visitors as the “little Goldberg and Bowen” grocery which was the name of the largest San Francisco grocery at that time. ¶ Later Roberts operated a grocery store on Pacific avenue near the plaza. ¶ He always wore a red carnation or rose in his lapel. ¶ His wife, Florence, died in the mid 1930s. ¶ Roberts’ middle name, Kittredge, was in honor of the late Dr. F. Kittredge of Beach Hill, one of the first doctors in Santa Cruz. ¶ He is survived by his son, Frank K. Roberts Jr. of Los Angeles; a granddaughter and great-grandchild in Los Angeles and a niece, Mrs. Ben Jackson of Berkeley. ¶ Funeral arrangements are pending at the Wessendorf mortuary.” (*Santa Cruz Surf*, December 14, 1955, 1:6-7)

Rodgers, Spencer Clay (born May 1, 1848 in Concord, Knox County, Tennessee; d. March 10, 1930, in Watsonville, California) (shown incorrectly as Dr. B. C. Rogers) (Watsonville physician) (II:66-67) “The Santa Cruz County Medical Society was founded on December 22, 1903 and continued to serve this county for more than 112 years. It has grown from 13 members to more than 400. According to an article in the Journal of the American Medical Association dated January 1904, the first Board of Governors & Officers included: President - Dr. Exeter P. Vaux, Santa Cruz; Vice-President - Dr. Spencer C. Rodgers,

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Watsonville; Secretary - Dr. Saxon T. Pope, Watsonville; Treasurer - Dr. Ira C. Bush, Santa Cruz; CMA Delegate - Dr. Saxon T. Pope, Watsonville; CMA Alternate - Dr. Willis R. Congdon, Santa Cruz; Other Board members: Dr. James F. Christal, Santa Cruz; Dr. William A. Phillips, Santa Cruz; Dr. Nat Green, Watsonville.” (Santa Cruz Medical Society website, viewed April 13, 2021. <http://www.cruzmed.org/inner-mobile.aspx#>) ¶ “DR. RODGERS, 81, FORMER CORONER OF COUNTY, DIES ¶ Funeral services will be held tomorrow at Watsonville for Dr. Spencer C. Rodgers, former coroner of Santa Cruz county, who died yesterday at his home there, a victim of heart attack. The rites will be held at the First Presbyterian church and burial will be in the Watsonville I. O. O. F. cemetery. ¶ Dr. Rodgers was taken suddenly seriously ill following a Sunday visit to Hollister with his daughter, Iva. Shortly after retiring his heart, weakened from an ailment of long standing, suddenly failed him and the end came swiftly and unheralded. ¶ Born in 1848 ¶ Dr. Rodgers was a native of Tennessee, born in Concord May 1, 1848. He graduated from Louisville University with the class of 1872 and had ever since devoted his time and energy to the practice of medicine. In 1874 he married Miss Cordelia Virginia Haun, who preceded him in death in 1921. ¶ In 1890 Dr. Rodgers came to Watsonville, entering into partnership with his uncle, Dr. W. D. Rodgers, then one of the leading physicians of the county. Dr. Rodgers was at once recognized as a man of superior ability and has always stood high in the estimation of the profession. He became actively engaged in the social life of the city and was an honored members of the Presbyterian church. In 1896 Dr. Rodgers returned to Knoxville for a few months, then returned to Watsonville, where he has since made his home. ¶ Leaves Five Children ¶ He is survived by the following children: Mrs. G. F. Silliman, Mrs. John E. Gardner, Miss Iva Rodgers, Frank Rodgers, all of Watsonville; and J. F. Rodgers, of Pacific Grove. He was a brother of Mrs. Ellen Longbottom, of Waldow, Florida; Mrs. Henry Anderson, Powell Station, Tennessee; Samuel R. Rodgers, and R. D. Rodgers, both of Knoxville, Tennessee. ¶ He as a nephew of James Rodgers, George Rodgers, W. D. Rodgers, Wiley Rodgers and Samuel Rodgers, pioneers of this valley; and was a cousin of Luther Rodgers, C. H. Rodgers, Dr. Omer Rodgers and Arthur Rodgers, all well known to older residents of the valley. ¶ He served one term as the public administrator and coroner of this county.” (*Santa Cruz Evening News*, March 11, 1930, 9:2-3)

Rodriguez, Edward vs. The People (Supreme Court case reversed, II:48) “STOLE \$12 FROM SISTER’S TRUNK ¶ Edward Rodriguez was brought over from Watsonville by Constable Corr on Friday, pending trial for burglary. Young Rodriguez is charged with going through his sister’s[sic] trunk at their home in Watsonville and taking \$12 which was secreted therein.” (*Santa Cruz Weekly Sentinel*, September 2, 1905, 8:4) ¶ Rodriguez Also Gets Four Years. ¶ Edward Rodriguez of Watsonville, also with two ‘priors,’ pleaded guilty to burglarizing his cousin’s[sic] trunk in her home and stealing several dollars. He was represented by Attorney H. C. Lucas, also appointed to defend him. Judge Smith imposed the same sentence as on Maxwell, sending Rodriguez to San Quintin, at the prisoner’s request (*Santa Cruz Weekly Sentinel*, October 7, 1905, 5:5)

Ryan, John M. (aka Johnnie) (sued by Frances Bulena for breach of marriage agreement: I:180, 192-193; II:42) Source: *San Francisco Call*, Nov. 20, 1900, 5:2: “SUES RANCHER FOR REFUSING TO MARRY HER ¶ Action Brought by a Widow Who Has Thirteen Children. ¶ Special Dispatch to *The Call*. ¶ SANTA CRUZ. Nov. 19. — Testimony was heard to-day in the Superior Court in the breach of promise suit of Mrs. Frances Buelna against John M. Ryan, a wealthy farmer of Pajaro Valley, for \$15,000 damages. The plaintiff [Frances Buelna] testified that she was born at San Juan [Bautista] forty-eight years ago. She was married twice, but could not recollect the years of the marriages took place. She is the mother of thirteen children. She said that at the second time she met Ryan he talked of marriage and she said if she found a

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man who was honest and would provide for her and make her life happy, she might be induced to marry again, no matter how old the man was. Ryan Exclaimed that he was the person who answered the requirements. Then they both arose and shook hands to bind the matrimonial bargain. ¶ This was on August 9, 1898. She admitted that she did not love him then, but the more she thought of his promise to make her happy the greater became her attachment for him. Believing in his promises she kept house for him and their relations became intimate. Last July the engagement was broken off, he returning the ring she gave him. Then he gave her \$100, telling her to do what she pleased with it. Subsequently he visited her at her home here, and promised her another \$100, saying he intended to purchase a home in Los Angeles where they both could live. ¶ The defendant's attorney asked Mrs. Buelna if she had ever sued a man for breach of promise before but the question was ruled out. Ryan is about 65 years old."

Ryland, Caius Tacticus (San Jose attorney) II:15 ¶ "1852 [p. 21] A second democratic convention met at Benicia, on Tuesday, July 20th, with 258 delegates present. The San Francisco delegates represented by proxies four other counties, and a motion to rule out proxies created a commotion, but was defeated. ¶ [p. 22] The convention was called to order by F. P. Tracy, and Wm. H. Lyon was chosen temporary chairman. On permanent organization, W. T. Barbour was president, and E. Allen, A. Ludlow, C. Cullledge, W. Robinson, C. T. Ryland, A. Randall, R. H. presidents. ¶ 1872 [p. 316] On the 20th, the delegates to the national convention: First Venable ... all of whom were elected by day named [May 24th, 1876] the state and was called to order by John C. Maynard, Ryland was elected temporary chairman, difficulty was experienced in settling contests organization was effected by the election of R. J. Tobin, F. M. Warmcastle, T. F. Bagge, M. Biggs, and others, vice-presidents. (Davis, Winfield J. *History of Political Conventions in California, 1849—1892*. Publications of the California State Library, No. 1. Sacramento, 1893.) ¶ "Caius T. Ryland, the speaker of the assembly in 1867-8, was born June 30, 1826, in Howard co., Missouri, working on a farm during the summer, and attended school during the winter. In 1849 he started across the plains for Cal., finally settling at San José, where he began the practice of law, having previously been admitted to the bar in Missouri. He was appointed clerk of the court of first instance in S. F., which office he afterward resigned, going back to San José. When the first legislature met he was appointed private secretary to Gov. Burnett, and in 1854 was elected to the legislature from Santa Clara co., where he was the author of the first appropriation bill passed in the state for a wagon-road over the Sierra Nevada into El Dorado co. Mr. Ryland's health giving way in 1869, he gave up his law practice, and engaged in banking. He married Letitia M. Burnett, a daughter of Gov. Burnett, one of the pioneers of 1843." (Hubert Howe Bancroft, *History of California*, Vol. VII, 1860-1890. *The Works of Hubert Howe Bancroft*, Volume XXIV. Printed in facsimile from the first American edition. Published at Santa Barbara by Wallace Hebbard, 1970.) ¶ "Caius T. Ryland, the San Jose banker, and father of J. R. Ryland, attorney-at-law of that city, was a lawyer in his early life. A farmer's son, born in Missouri on June 30, 1826, he was a California pioneer of July 30, 1849. With his name on the roll of the Society of California pioneers at San Francisco, in addition to that of J. R. Ryland, there also appear those of his five other sons, Caius T., Jr., Charles B., Dwight E., Francis P., and John W. The sons of pioneers are entitled to membership in these pioneer societies. ¶ Mr. Ryland was private secretary in 1850 to our first Governor, Peter H. Burnett. He and Judge Wm. T. Wallace married daughters of Governor Burnett. With the exception of a brief



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experience in the mines in 1849, and a short stay in San Francisco in 1850, Mr. Ryland always lived in San Jose. He was a member of the assembly in 1855, as a Democrat, but did not vote for either Broderick or Gwin for United States senator. He was again elected to the assembly as a Democrat at the session of 1867-68, and was chosen speaker of that body. About that time he retired from law practice. He had long before become a wealthy man as the result of judicious investments in real estate at San Jose and San Francisco. Thenceforth he devoted himself to banking. He was a generous supporter of the Catholic church and of many charities. His was an unstained life of three-score-and-ten, and ended at San Jose on December 15, 1897. His estate was worth about \$3,000,000.” (Oscar T. Shuck, *History of the Bench and Bar of California*, Los Angeles, Cal., The Commercial Printing House, 1901. pgs. 548-549.)

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Sambuck, Nicholas (Southern Pacific Co. vs. Sambuck II: 19-20, 22-23, 142; III: 7) “Sambuck v. Southern Pac. Co., 7 Cal. Unrep. 104, [71 Pac. 174]: The University Library, University of California at Santa Cruz, holds, in the Hihn-Younger Archive, a set of Briefs: A collection of briefs of cases, by Charles B. Younger and Charles B. Younger, Jr., that were argued chiefly in the California State Supreme Court, but also includes briefs of cases, also by Charles B. Younger and Charles B. Younger, Jr. that were argued in the District Court of Appeal, State of California, First Appellate District. ... Index edited by Stanley D. Stevens; Vol. 20, Items #8-12 are Appellant & Respondent’s briefs in Nicholas Sambuck vs. Southern Pacific Company, Case #2554, Dec. 6, 1900 - January 7, 1903, in which Attorneys Charles Bruce Younger Sr. and Forshay Walker represented Southern Pacific, John H. Leonard represented Nicholas Sambuck.” ¶ “PLANS A NEW ROAD FOR STRATEGIC PURPOSES ¶ Harriman Forms Central California Company to Build From Newark, via Dumberton [*sic*] Point and to San Mateo. ¶ ...All of the stockholders are Southern Pacific officials and attorneys. One is captain N. I. Smith, treasurer of the Southern Pacific, William Hood, chief engineer of the Southern Pacific, is another stockholder. The other three-J. E. Foulds, Forshay Walker and Frank Shay-are attorneys under Chief Counsel W. F. Herrin.” (*San Francisco Examiner*, Oct. 4, 1904, 5:5.)

Sandholp/Sandholdt, William (Sandholp used in error; Monterey County attorney; Transcript volume I: pp. 215-216) [In regard to People vs. Lavish:] “Mr. LINDSAY: A criminal case which was tried in this Court, before the Honorable Lucas F. Smith, Judge of the Court, and a Jury, on the thirty first day of July and the second, third and fourth days of August, in the year 1900? A. I do. Q. Were you an attorney in the case? A. One of them, yes. Q. How did you become an attorney in the case? A. Judge Smith sent for Mr. Martin and myself, Martin is a partner, a member of the firm of Martin and Gardiner[*sic*], and we appeared here in the courtroom the morning of the setting of the trial, how we came. Q. Proceed. A. And the court appointed us, in connection with Mr. Sandholp [*i.e.*, Sandholdt], an attorney of Watsonville[*sic*], to defend the case.”

Sans, Alvin W. (former defense attorney for defendant) (II, p. 98:) “TESTIMONY OF A. W. SAMS, Sworn. [*i.e.*, Alvin W. Sans] “MR. SULLIVAN: Q. What is your name please? A. A. W. Sams. Q. What is your occupation? A. I am an attorney-at-law. Q. Are you Police Judge of the City of Watsonville? A. Yes sir. Q. How long have you been Police Judge of the City of Watsonville? A. Two years.”

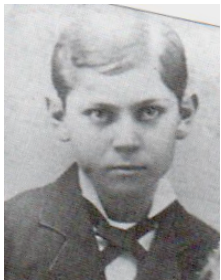
Schoddi/Schoedde//Sharra, Mark (24-year-old vet surgeon in Santa Clara County, 1897) (The People vs. Schoedde (shown in Transcript as Schoddi, or Sharra) -- reversed by Supreme Court II: 82-83) “MR. BEARDSLEE. I would like to ask a question: This question of heavy sentences. Judge, what is your theory

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of imposing sentences upon criminals? A. My theory is to impose sentences that is strictly justified by the law and the testimony; if the testimony shows it is an aggravated case, that a severe sentence should be imposed, I impose a severe sentence. In that Schoddi [*sic*] case he went over there and deliberately planned to murder an old woman without cause or provocation, except possibly robbery - no mitigating circumstances. It is very seldom I impose severe sentences.” There are several newspaper articles covering this case: *Santa Cruz Sentinel*, e.g., July 8 & 10, 1897, August 19, 1897, September 3 & 4 & 7, 1897, October 24, 1897, December 9 & 15 & 19, 1897, June 7, 1898; “—At 3 P. M. Saturday [Dec. 18, 1897] the jury in the M. Schoedde case returned a verdict of guilty, after being out an hour. Only two ballots were taken, the first being 8 to 4 in favor of conviction. The jury recommended Schoedde to mercy. He will be sentenced at 10 A. M., Dec. 27th. His attorneys will move for a new trial.” (*Santa Cruz Sentinel*, December 19, 1897, 3:2) ¶ “On Monday Mark Schoedde was given his liberty, after having been in jail more than two years and a half. District Attorney Knight made the motion to dismiss the case, as under the decision of the Supreme Court it would be impossible to convict Schoedde.” (*Santa Cruz Sentinel*, January 23, 1900, 3:1)

Schwartz, Joseph(1867-May 29, 1919) (III:16) “Death of Louis Schwartz (May 23, 1893): His family consists of the widow and four children, Joseph, who was his partner in the Arcade, Miss Bertha, a graduate of the Santa Cruz High School and two younger sons, Milton and Coleman. They reside in the family home on Mission street.” (*Santa Cruz Surf*, May 24, 1893, 5:2) ¶ **SCHWARTZ, FORMER MERCHANT** ¶ Joseph Schwartz, son of the late Louis owner of the Arcade dry goods store and before its purchase Thursday. Mr. Schwartz” portrait at right is from “Prominent Young Business Man of Santa Cruz” clipped from Edward Sanford Harrison, *History of Santa Cruz County, California*, San Francisco, Cal., Pacific Press Publishing Company, 1892. After page 356, with portrait of nine men.) [Photo at left is from family portrait on Ancestry.com]



Scrivner, John James (b. Jan. 1844 in Kentucky, d. Dec. 18, 1921, in San Francisco; Modesto & San Francisco attorney; petitioned Supreme Court of California for admission of William M. Aydelotte to practice law in California). ¶ “J. J. Scrivner, a former resident of this county and the first attorney to locate in Modesto, was in town today on legal business. He was greeted cordially by many of the old time residents of this section. He removed from this city to San Francisco in 1877.” (*Modesto Bee*, June 11, 1901 2:3). ¶ **“PIONEER MEMBER OF BAR IS DEAD.** ¶ John J. Scrivner, Expert in Patent Practice, Called by Reaper. ¶ John J. Scrivner, for many years a member of the San Francisco bar, died Saturday and was buried on Monday from Gray’s undertaking parlors. He was a native of Kentucky and was 80 years of age. ¶ Mr. Scrivner had practiced law in San Francisco for upwards of thirty years, specializing in patent cases. He was associated for some time in the early nineties with George W. Schell. Later he practiced by himself and subsequently formed an association with H. C. Montgomery. More recently he has maintained a partnership with Walter E. Hettman, with offices in the Kohl Building. ¶ “Judge” Scrivner, as he was endearingly called, had the distinction of having fought thru the entire period of the Civil War with the forces of the Confederacy. He is survived by three daughters, Mrs. George E. Dabovich, Mrs. L. H. Carver and Mrs. Charles Edward Hoppe.” (*The Recorder*, [San Francisco] December 21, 1921, 1:2.)

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Segar/**Segarini**, Frank (shown in Transcript as Seger) III:37) The interrogation of Attorney Charles Cassin included this exchange: Q. I will ask you this question: Didn't Mr. Leonard state after he came back that evening, after seeing Mr. Rich, he gave the name of his informant and the name of the juror, that Mr. Rich had stated to him that this proposition of that juror was made to him by that juror not in the St., but in his office on the 24th of October, in the presence of Frank Seger? A. Well, the record is here. I will say my best recollection of it that Leonard made some statements substantially, and that Frank Seger will come here and swear he did not hear this conversation at all. ¶ Mr. Lindsay: I move that be stricken out. ¶ The Chairman: Strike out that part of the answer." ¶ The Great Register of Santa Cruz County, 1908, shows that a 39-year old farmer, residing in the Powder Mill precinct, was Frank Segarini. No other person in this Register had a surname close to Segar. ¶ "Francesco Segarini Succumbs ¶ Francesco Segarini, for 50 years a well-known orchardist in the vicinity of the Pedemonte gardens on upper Ocean street, died on Easter Sunday morning at the family residence at 740 Ocean street. He was born 71 years ago in Italy and this city had been his home for 54 years. ¶ He had many friends and in fraternal life was a charter member of Santa Cruz Grove of Druids, No. 142. He was a Catholic. ¶ He is survived by his widow, Maria Rose Segarini, two sons, Peter and John Segarini, and a daughter, Mrs. Anna Gai. He was uncle of Mrs. Lena Scarsella of Pinole, Mrs. Mae Nezer of Santa Cruz, and George and August Foppiana of San Francisco. ¶ Funeral services will be held on Wednesday morning at 8:45 o'clock from the Santa Cruz Mortuary, thence to Holy Cross church where a high requiem mass will be sung for the repose of his soul, commencing at 9 o'clock. ¶ Rosary services will be held this evening at the mortuary chapel at 7:30 o'clock. ¶ Entombment will be in the Santa Cruz mausoleum." (*Santa Cruz Sentinel*, March 26, 1940, 8:1.)

Sheehy/Sheehy, Philip George (also shown in Transcript as Sheehy) (Watsonville City Attorney) (testimony II:84:) "TESTIMONY OF S. G. SHEEHEY, [i.e., Philip George Sheehy] ¶ Mr. Sullivan: Q. What is your profession? A. Attorney-at-law. Q. How long have you been engaged in that profession? A. About five years. Q. Where were you born? A. I was born and raised in this County, near Watsonville, in the town of Watsonville all my life. Q. You have been City Attorney of Watsonville? A. Yes sir. Q. As attorney of the Superior Court you have been engaged much in practice? A. Yes most of my practise [*sic*] is in -- Q. (interrupting.) The Superior Court? A. Yes sir of this County. Q. How often do you come to this Court? A. About once or twice a month on an average. Once a month anyway. Q. How long have you been City Attorney in Watsonville? A. About two years now, nearly." ¶ "marriage Oct. 10, 1905; in Watsonville; to Loretta J. Freiermuth" (Leon Rowland card files, UCSC Special Collections) ¶ "Philip Sheehy, Prominent San Jose Man, Dies ¶ Former Collector of Internal Revenue Succumbs To Illness ¶ Philip G. Sheehy, 67, once deputy collector of internal revenue in Santa Clara county, and attorney and income tax expert, died in the San Jose hospital Thursday night after an illness of two weeks' duration. ¶ He had been prominent for years in county Democratic party work, and he was widely known here among attorneys and in political circles. ¶ Mrs. Josephine Sheehy, the widow, is due to arrive by plane from New Jersey where she had gone just before Christmas to visit relatives. ¶ A native of Watsonville, where he once served as city attorney, and graduate of the University of Santa Clara and of Hastings Law school in San Francisco, Sheehy was named Democratic state executive committeeman in the fall of 1929, and two years later became chairman of his party's forces in Santa Clara county. ¶ Became Less Active ¶ Of recent years, however, he had played a lesser role in the affairs of the party. ¶ In October, 1932, he lost his first wife, the former Loretta Freiermuth [*sic*], and the mother of his children. A son, Philip G. jr., died at the age of 21 in November, 1933, while attending the University of Santa Clara' college of engineering. ¶ Four years after, in 1936, Sheehy declined the importunities of friends to become a candidate for representative in congress from the eighth district against the incumbent, John J. McGrath of San Mateo. ¶ In September, 1937, he married Mrs.

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Josephine Cribari in Clifton, N. J., a friend of many years. Until her arrival, funeral arrangements are being held in abeyance at the A. W. Nuttman funeral home in Santa Clara. ¶ Other survivors are four brothers and sisters, Mrs. Mary Horgan and Edward Sheehy of Watsonville and Mrs. Madge Riordan and Jeremiah Sheehy of San Jose. ¶ Their parents, Mr. and Mrs. John Sheehy, came to California from Boston in the early '50's." (*Santa Cruz Sentinel*, January 4, 1941, 1:3)

Shurtleff, Charles Allerton (b. April 4, 1857 in Shasta, CA; d. April 14, 1941 in San Mateo, CA, attorney) Transcript of Hearing, volume II, page 36: "ELLEN RIANDA, Administratrix of the Estate of Carmen Amesti de McKinlay, Deceased, Plaintiff, Findings and Decision -vs- WATSONVILLE WATER AND LIGHT COMPANY, (a corporation), FRANCIS SMITH and W. W. MONTAGUE, Defendants. This action came on regularly for trial on the fourteenth day of June 1904, and continued on the fifteenth, sixteenth, seventeenth, eighteenth and nineteenth days of June, 1904, before the court, with a jury regularly impaneled, Geo. P. Burke, Dickerman & Torchiana, and Chas. M. Cassin, appearing for Plaintiff, and Chas. A. Shurtleff and Wyckoff & Gardner, appearing as attorneys for Defendants." ¶ "WHOLE STATE MOURNS JUDGE SHURTLEFF LOSS. ¶ MENLO PARK, April 15.—California legal circles today mourned the passing of Judge Charles Allerton Shurtleff, 84, former associate justice of the state supreme court, practicing attorney in the bay region for 59 years and resident of Menlo Park the past 40 years. He died yesterday at his Ringwood road home after illness of a week. ¶ Judge Shurtleff was on the supreme court bench from 1921 to 1923, and at one time was assistant United States attorney for the northern district of California. ¶ Held Many Honors ¶ He had held numerous honorary positions of distinction. He served on the first board of bar examiners in California (now called the State Bar association) in 1925-26, was president of the San Francisco Bar association in 1913 and of the Legal Aid society. ¶ He had been a member of the board of trustees of Hastings college, Stanford university, the College of the Pacific and the San Francisco Children's hospital. ¶ Locally, he had been a member of the Sequoia union high school board, and was vice president of the first San Mateo county fiesta board of directors. For several years he took an active part in the preparation of the annual fiesta. ¶ Judge Shurtleff was born in Shasta county in 1857, and graduated from Napa college, now the College of the Pacific, and Hastings law college. He was admitted to practice in 1882. Although his law practice generally was confined to cases of corporation, estate and probate, he acted as an arbitrator in several well known cases. ¶ His father, Dr. Benjamin Shurtleff, graduate of Harvard medical school, came to California in 1849, was a leading doctor and took an active part in politics of the new state. Dr. Shurtleff was a member of the constitutional convention in 1870, served in the upper house of the state legislature, and was mayor of Napa. Judge Shurtleff was a nephew of Dr. George A. Shurtleff, another state pioneer. The judge purchased his 10-acre Ringwood road estate in 1910. ¶ Rites on Thursday ¶ Surviving is a nephew, Roy N. Shurtleff of Alameda. Judge Shurtleff's first wife, the former Ada V. West, died in 1925 after 39 years of marriage. In 1927 he was married to Mrs. Nellie Valentine Crockett, who died in 1934. A brother was the late George C. Shurtleff. ¶ Funeral services will be held at 10 a. m. Thursday from the N. Gray chapel, San Francisco, followed by entombment at Cypress Lawn Memorial park." (*The Times* [San Mateo, CA] April 15, 1941, 3:4-5)

Silvey, Emma and James M. (III:16, in the testimony of Charles M. Cassin:) "Next case was the case of James M. Silvey, plaintiff, vs. Emma Silvey, defendant; Lindsay and Cassin appeared as attorneys for the plaintiff; C. B. Younger, Sr. and Wm. T. Jeter appeared for the defendant, and the judgment went for the defendant, and I also think it went wrong." ¶ SILVEY VS. SILVEY. ¶ The Wife's Title to the Property Confirmed. ¶ Deeds Designed to Transfer Property and Not Merely as Evidences of Good Faith. ¶ The decision in the case of James M. Silvey was handed down by Judge Smith today. ¶ The case was one "to set aside, vacate

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and cancel a deed conveying valuable property.” ¶ In other terms Mr. Silvey brought suit to recover his residence and ranch property on California street, which he had conveyed by deed to his wife some years ago. Lately matters have not been running smoothly with the Silvey’s [*sic*] and before Mr. Silvey was aware of the fact he found himself without house or home, the victim of misplaced confidence—in his wife. ¶ The deed was signed by Mr. Silvey March 1, 1886. He alleges the deed was never delivered to defendant. She claims it was. The only question was the deed in question ever delivered by plaintiff to defendant. He claimed when he signed and acknowledged the deed he took it home and handed it to his wife to put away for safe keeping and not pass the title to her. ¶ His object in making the deed was to protect his step son in case of death. His wife had lived on the property ever since the deed was made but he paid taxes and had put valuable improvements on the place since making the deed. Plaintiff proved the deed was not recorded until Dec. 2, 1896, ten years after its date. ¶ The defendant testified most positively that on the date the deed bears that her husband said, “Here is your deed, that gives you all this property” It was put away and defendant had it in her possession ever since and produced it in Court. Did not record it sooner as she thought property was hers, without recording. ¶ The defendant had a number of witnesses to testify that plaintiff had told them he had given the deed of his property to his wife. ¶ Judgment was rendered in favor of defendant.” (*Santa Cruz Surf*, Feb. 26, 1898, 1:3)

Skirm, Joseph Hebal (attorney; sometimes referred to as “Judge”) “Face Lifting” of Old Time Law Office Brings Reminiscence of Tenant Eccentric Barrister Who Was Real Master of the Codes ¶ The moving of an old frame building, from property belonging to the County of Santa Cruz, to the Lower Plaza, where it is said it will undergo futuristic decoration, has brought a number of reminders that Joseph H. Skirm had his law office in that building. ¶ Mr. Skirm had his law office, for many years, in two of the William Ely buildings, — then called blocks. For a good many years, his office was in the Monteverde property, on which was the building first mentioned. ¶ Mr. Skirm was born in New Jersey, about 1832. Coming to Santa Cruz, he taught school at Soquel, during which time he acquired the knowledge of the law and became a county court lawyer. In 1857 he was elected on the Whig ticket to the office of district attorney of Santa Cruz county, which office he held for a two-year term. He thereafter continued here in the practice of the law, until his death about two decades ago. ¶ Judge Skirm was an eccentric figure. He wore his hair and beard long, which oddity added to his reputation — like that of Walt Whitman. He felt himself at his zenith when arguing a case to the jury. He really spoke to himself, permitting the jury to hear his thoughts. His office needed little attention to clean —the usually open doors kept the air in good circulation. His clients mostly did not have muddy shoes and the straw matting on the floor did not object, even after it was worn out. When it was cold, and the day bright, he would stand in the sunshine in front of his office, and speak to eager listeners who passed by. He was quite proud of the number of women he had for clients and regarded their clientage as a tribute both to his personal appearance and to his learning in the law. When he had a case in the supreme court for oral argument, he liked to have his client appear there to note the expression of deference on the faces of the bored judges. He had the good quality of not speaking to, or even looking at, people whom he disliked. ¶ Carried Market Basket ¶ The Judge arrived in town, from the upper end of Mission Street, where he lived, with his market basket, which would be well laden when one of his family would call for it to take home for the evening dinner. ¶ His luncheon was frugal, usually bread and cheese, with a glass or two of the non-vintage but wholesome wine from the Garibaldi Villa. A few crumbs of cheese were left on the luncheon table for the several mice that would come through the plastering to enjoy their daily meal. The Judge was a great gourmet. In San Francisco he eschewed the restaurants where a good meal would cost several dollars, and went to an Italian restaurant near the coast, where all you could eat, including wine, was had for half a dollar. At so reasonable a price, the niceties of napery were not

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indulged in. ¶ Eschewed Pavements ¶ When the City Council had the upper portion of Mission Street paved, a good portion of the assessment came upon the extensive Skirm frontage. A suit to foreclose the lien therefor was decided against him in the superior court. He appealed to the supreme court, and the matter was waiting its turn on the calendar at the time of Skirm's death. Mr. Skirm would never walk upon that pavement, and there being no sidewalk on that part of the street, it was rather a circuitous route which he had to take to get to a more cheerful part of Mission Street. ¶ Mr. Skirm tried many important cases, among them being that of Evans against Duke, the plaintiff bringing suit to eject Duke from property which he was in possession of under contract to buy at a very large price. Duke prevailed before a jury, and judgment went in his favor for a number of thousands of dollars, being all the money that he had paid to the plaintiff, with interest. The plaintiff, to secure a stay-bond on appeal, conveyed his property to Duncan McPherson, who went on the appeal bond. The general verdict in that case was in favor of Duke, as well as the findings of the jury upon sixty-odd issues of fact. The supreme court held that Duke was late in bringing his suit, and should have brought it several years before he did—that is, soon after the discovery of the misrepresentation and fraud which he claimed had been practiced upon him. ¶ Used a Pistol ¶ From the Front Street side of the Hugo Hihn building, Judge Skirm once took a shot at John Elliot, Jr. Elliot was not injured, and Skirm's jealousy, which was over slight attention given to a young woman by Elliot, was appeased. ¶ Mr. Skirm was among the several able lawyers who have had their offices in Santa Cruz. (Santa Cruz Sentinel Dec. 9, 1934, 7:3-4)

[The following sentence was included in the file, cited above, in the Donald Younger Collection; author unidentified: “{—— and there have been a great many who could not be classed as able.}”]

“Joseph Skirm, the most prominent character in the history of the Santa Cruz bar, is one of the pioneers. He was born in Trenton, New Jersey, and studied law in that State. Coming to California in 1849, while yet a young man, he began the practice of law in Santa Cruz, and was the first district attorney elected upon the organization of the county government. His career in this office was eminently successful, and his fearless and impartial methods won the hearts of the plain, honest, and straightforward frontiersmen, and they were all earnest friends of his. Mr. Skirm is a student of the classics, and quite an eminent scholar. Being of a modest and retiring disposition, he has never sought office, but has always preferred [*sic*] to devote his time to his own interests and those of his clients. He has been several times elected to the city council of Santa Cruz, but finally declined re-election. ¶ In 1859 he was united in marriage with Miss Mary A. Berger, of Santa Cruz. They have nine children, five sons and four daughters. (Edward Sanford Harrison, *History of Santa Cruz County, California*. San Francisco, Cal.: Pacific Press Publishing Company, 1892. p. 345).

Smith, Annie (Annie Smith vs. City of Watsonville, (III:33, in the testimony of Charles M. Cassin:) “A. Judge Smith and I were very friendly, but I have been provoked, I can recollect now, when he decided against me, I was aggrieved. In the case of Annie Smith against the City of Watsonville, where Mr. Knight appeared, I felt somewhat aggrieved” [Exhaustive research, with the kind and generous help of Alan J. Smith, City Attorney for the City of Watsonville, failed to verify the existence of the case known as “Annie Smith vs. City of Watsonville.”]

Smith, Francis (b. Nov. 29, 1831 in Ohio, d. Oct. 10, 1912, Santa Clara County, CA) (defendant with W. W. Montague) In the Testimony of Attorney Wyckoff (I:152; II:36, 38-41), he replied: “MR. SULLIVAN. What was the nature of that case when the court erroneously admitted evidence? A. It was a case sought to cancel a deed for alleged fraud. Q. On the ground of whose fraud. A. Fraud of two of the defendants Francis Smith and Mr. Montague.” [Francis Smith and W. W. Montague were named in Specification numbers VI, VII, and VIII, and XI, and in sub-number TWO of Specification number XII, all related to the

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suit No. 3971 in the Santa Cruz Superior Court: Rianda v. Watsonville Water and Light Company, Francis Smith and W. W. Montague, defendants.] “FRANCIS SMITH FUNERAL. Pioneer San Francisco Business Man Is Laid to Rest. ¶ [Special Dispatch to “The Examiner.”] SANTA CLARA, October 12. — The funeral of Francis Smith, a pioneer of ’53, who died at his home near Santa Clara on Thursday evening, was held this afternoon. The services were conducted by the Rev. James Falconer. ¶ Smith was a native of Ohio and in his 81st year. He had been engaged in business in San Francisco during the past 43 years. ¶ He was also interested in extensive holdings in Watsonville. For many years he lived south of this town and his home was one of the most beautiful in the valley.” (*San Francisco Examiner*, October 13, 1912, 9:1)

Smith, Lucas Flattery (Superior Court Judge) (He is the subject of this Impeachment Hearing and all 3 volumes of the transcript) some examples are:] abusive to attorney/witness I:54-55, 165, 168; it was his business to know whether the court instructions were the law I:134; rebuked Wilber Monroe Gardner (attorney) I:139; (referred to George P. Burke as “that drunken lawyer”) I:8, 40-42; showed considerable temper didn’t he? (I:134; his testimony II:2, 4-23, 86, 88, 96-97, 103, 105-107, 110-120, 126; III: title page, (during his testimony in Volume 3 as “The Witness”; his testimony begins on p. 3 and ends on p. 13.)

Smith, Nathan (African-American convicted defendant) (I:2, 9, 27-28, 31-33, 35-36; II:11-12) “—On Tuesday evening E. Mack, who was stabbed by a bootblack named Nathan Smith in Watsonville, was not expected to live. The knife used by Smith is a dangerous looking weapon. It is now in Sheriff Besse’s [*sic*] possession.” (*Santa Cruz Evening Sentinel*, December 19, 1900, 3:1) ¶ “SIX MONTHS IN JAIL. ¶ On Friday morning after denying a motion for a new trial, Judge Smith sentenced Nathan Smith, the colored bootblack of Watsonville, to six months in the county jail for cutting E. Mack with a knife. A petition of 150 citizens of Watsonville was presented, requesting that the prisoner be given a light sentence in the county jail, and stating that he had always been peaceable and quiet. When sentence was pronounced, the defendant was overcome with joy, for he waved his hand and thanked the Judge. He was so happy that he danced the entire distance down to the jail.” (*Santa Cruz Evening Sentinel*, February 16, 1901, 3:2)

Spalsbury, Edgar (b. Aug. 24, 1834, d. Aug. 16, 1897) Attorney, Judge) Lucas F. Smith fined him for Contempt of Court for assault upon) I:15; (Spalsbury & Houck) (III:16) “—The Highland School was opened for the first time on Monday last, with Mrs. Spalsbury, who is personally and favorably known to many of the shooting ideas of Santa Cruz, as teacher. She has eleven pupils. The trustees of the school are: Anson S. Miller, E. Spalsbury and I. M. Stow. It is expected that the school fund will enable the trustees to keep the school open for three months each year. As there is no school-house in the district, a building of Mr. Spalsbury will be used until more permanent arrangements can be made.” (*Santa Cruz Sentinel*, September 14, 1878, 3:3). ¶ “—E. Spalsbury has filed his bond as Notary Public, his bondsmen being M. W. Whittle and Duncan McPherson.” (*Santa Cruz Surf*, April 30, 1891, 3:2) ¶ “PASSED AWAY. ¶ DEATH OF EDGAR SPALSBURY ON MONDAY NIGHT. ¶ He Served His Country During the War — Was Among Our Prominent Citizens. ¶ Edgar Spalsbury died at 11:50 o’clock Monday night at his home on Laurel St. of organic disease of the heart after a lingering illness. ¶ Mr. Spalsbury was born in Jefferson Co., New York in 1835. He was admitted to the bar in 1856. On the breaking out of the Rebellion he abandoned a large practice and entered the service as Captain of Co. C, 35th New York Infantry, receiving his first baptism of fire at the battle of Bull Run. He also served with his regiment in the Army of the Potomac and participated in the campaigns of Northern Virginia. ¶ Much broken in health, Mr. Spalsbury, after the war, spent some time in traveling in an effort to regain his health, resuming the practice of his profession in Chicago in 1865. Overwork and severe climate again caused him to lose his health and, after

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trying several Eastern health resorts, he came to California in 1875, locating in Santa Cruz a year later and recovered his health. Recently he was taken ill again and but little hope was held out for his recovery. He leaves a widow and a host of friends to mourn [*sic*] his loss. ¶ In the death of Mr. Spalsbury Santa Cruz loses a good citizen, one who always had the interests of the city at heart. ¶ He served as Justice of the Peace in Santa Cruz before he entered upon the practice of law with Bart Burke. He also served as Library Trustee, taking much interest in the Library. The deceased was a member of Wallace-Reynolds Post, G. A. R.” (*Santa Cruz Evening Sentinel*, August 17, 1897, 1:4).

Speckens/Spreckens, William Alfred Victor (shown in Transcript as F. A. Spreckens) II: 2, 52, 62-63, 67 ¶ “WILLIAM A. SPECKENS DIES FROM INJURIES. ¶ William A. Speckens [*sic*], formerly of Watsonville, who suffered a serious injury to his brain when he fell from a moving car in San Jose on July 4, passed away yesterday afternoon at 4 o’clock at O’Connor’s Sanitarium. ¶ Dr. E. F. Holbrook, who attended the injured man, stated last evening that his skull had been trephined but the injury to the brain was so severe and the lacerations of the delicate membranes so pronounced, although everything possible had been done to prolong his life. ¶ Mr. Spreckens [*sic*] was a Native Son and an Elk, born in [Gilroy,] Santa Clara [County], July 15, 1860. He leaves a widow with five children, four daughters and one son.” (*Salinas Daily Index aka Californian*, August 14, 1914, 4:3-4)

Stoesser, Otto (mentioned by Henry S. Fletcher II:52) “Otto Stoesser is a leading merchant in Watsonville, a pioneer of the State, and a resident of this county since 1853. Careful business habits, frugality, and thrift have enabled him to accumulate a competence, as the he is one of the wealthy men of the county. His his struggles and triumphs, his reminiscences, and the his early residence in this State, would make a He was born in Gaggenan [*sic*], by Rastad, near of Baden, Germany, November 18, 1825, and came year of his age, arriving in New York June 25, 1846. where he worked as a laborer for one year and a half, pursued a sort of roving life, stopping and working in brief time: Wilmington, North Carolina; Columbia, Pennsylvania. His last employment was with John Hagan, at No. 308 Market Street, Philadelphia, where he remained until February 22, 1850. February 27 of that year he embarked on the ship *Zenobia*, for San Francisco, and, after a long and tedious voyage around the Horn, stopping four or five days at the harbor of Valparaiso, he arrived at his destination on the thirteenth day of August of the same year. He found his first employment in this State with Mr. M. L. Wynn, a manufacturer of Wynn’s Golden Syrup, but, being anxious to make his “pile,” he, shortly after the admission of the State into the Union, went to the Southern mines and worked at Burns’ Diggings, near Agua Frio. He did not meet with success, because, to quote his own words, “I was too green.” He returned to San Francisco on Christmas day of 1850 nearly flat broke. The “pile” which he had expected to make did not materialize, and the “pile” which he had was diminished to a sum total of \$4.85. He was determined to accept the first job that he could get, and this happened to be the position of cabin boy, called in those days flunkey, on board the steamer *Columbus*, bound for Panama. He came to San Francisco on the return voyage of the vessel, arriving in March, 1851, and then went to the mines, working at Long Bar, on Feather River. Later he went to the Rich Bar mines, but this trip proved to be a wild-goose chase, and, becoming thoroughly disgusted and discouraged, he and his party sold their traps and started back to San Francisco. ¶ After he returned he was in the same predicament in which he



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had found himself before shipping as a cabin boy, and began to hunt for a job. He went to the post office expecting a letter from home, but he had not yet reached the end of the chapter of his disappointments. He dejectedly walked along Dupont Street, but had not proceeded far before he noticed this sign in a restaurant window, "Wanted, a Dishwasher." He got the position, and worked industriously for ten days. Having secured enough funds to pay for his board for a while, he notified Mr. Wilson, the proprietor, to get another man. On the same day that he quit, he got a position as second pastry baker with Perry Brothers, on Kearny Street. Twenty-four days after he secured this employment, the establishment was burned. This was on June 22, 1852 [*i.e.*, 1851], the date of the big fire in San Francisco, which reduced to ashes nearly two-thirds of the city. A few days later Mr. Stoesser was baking pastry for Meiggs & Dunion, on Merchant Street. He remained with them for ten months and then went to work again for Mr. Wynn at "Wynn Fountain Head," on long wharf. He remained here for ten months, making all the candy that was sold from this factory, which at this time was the largest on the coast. March 2, 1853, he quit work at Wynn's and was induced by Doctor Vandeburgh [*sic, i.e.*, Dr. John P. P. Vandenberg] to go to Santa Cruz and engage in merchandising; so he bought a stock of goods and went to Santa Cruz on the 10th of March, on the steamer *Major Tompkins*, Captain Hunt commanding, and landed on the beach near where the bath houses now stand, and with the doctor opened a store on Front Street, near the old Santa Cruz House. They remained in Santa Cruz only one month, when they packed their goods in three wagons belonging to Hiram Imus and son, and started for Watsonville, which place they reached late in the evening of April 10 or 11, 1853. Doctor Vandeburgh's [*sic, i.e.*, Dr. John P. P. Vandenberg] interest in the business they established here was bought out two or three months later by Mr. Stoesser. He has been merchandising here ever since, and has accumulated extensive property. He is a stockholder in the Pajaro Valley Bank, and owns a farm of one hundred and fifty acres near town. He has been the city treasurer of Watsonville ever since the town was incorporated, in 1868. ¶ He was married, in 1862, to Elizabeth Doran, of Watsonville. The fruits of this union have been three children, two of whom are living, Julia M. and O. D. Stoesser, the latter an intelligent young man twenty-three years old, who assists his father in the management of his business." (Edward Sanford Harrison, *History of Santa Cruz County, California*, San Francisco, Pacific Press Publishing Co., 1892, p. 273-274.) ¶ OTTO STOESSER. From the time of settling at Watsonville, in April, 1853, until his death, which occurred May 18, 1902, Mr. Stoesser was one of the most influential business men and citizens of the place. Emphatically a man of work, he was never idle. but continued to be one of the most enterprising and active men of the Pajaro valley. No enterprise of merit was projected that failed to receive his substantial encouragement; and every plan for the promotion of the public welfare had the benefit of his keen judgment and wise cooperation. A man of broad and charitable views, he aided every movement for the advancement of education, morality or the well-being of the community. During the many years of his connection with the mercantile interests of Watsonville he conducted his affairs so wisely and energetically that at the time of his death he was the largest taxpayer in the city. This good fortune did not come to him by luck or chance, but was the result of legitimate business investment and careful management. ¶ A glimpse over the life-record of Mr. Stoesser shows that he was born in Gaggennau, near Baden-Baden, in the grand duchy of Baden, Germany, November 18, 1825, and was a son of Dominick Stoesser. Seeking a home in the new world, he landed in New York June 25, 1846, and from there went to Norfolk, Va., where he worked for one and one-half years. From that time until 1850 he visited a number of places along the Atlantic seaboard, and worked for a short time successively in Wilmington, N. C., Columbia and Danville, Pa. His last employer in the east was John Hagan, at No. 308 Market street, Philadelphia. Resigning that position February 22, 1850, he started for California, and on the 27th embarked on the *Zenobia* for San Francisco. The voyage around the Horn was tedious, varied only by a few stops, including four days at Valparaiso. August 13 he landed in San Francisco, where he found work with M. L. Wynn, manufacturer

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of Wynn's golden syrup. While there he witnessed the celebration incident to the admission of California into the Union. Next he went to Burns' Diggins, near Agua Fria, where he had little luck at mining. December 25 found him again in San Francisco, with only \$4.85. The first employment he was able to secure was that of cabin boy (or flunkey, as they were then called) on board the steamer Columbia, bound for Panama, to which point he went, returning on the same vessel in March, 1851. Again he tried mining on the Feather river and later at Rich Bar mines, but the work proved a failure and he was discouraged from all further attempts. On his return to San Francisco he started to work as a cabin boy, but seeing a sign in a restaurant window, "Wanted, a dish-washer," he went into the restaurant, secured the work and stayed there ten days. He was then made second pastry baker in a restaurant on Kearny street, but twenty-four days after he went there the restaurant was burned. Soon he found similar employment, and in time received large pay. March 2, 1853, he was induced by Dr. Vandeburgh [*sic, i.e.,* Dr. John P. P. Vandenberg] to go to Santa Cruz and engage in merchandising, so brought a stock of goods via the steamer Major Tompkins and opened a store on Front street, near the old Santa Cruz house. ¶ At the end of a month Mr. Stoesser packed his goods in three wagons and started for Watsonville, where he arrived April 10, 1853. On a lot adjoining the present store he opened up headquarters and three months later bought out his partner, Dr. Vandeburgh [*sic, i.e.,* Dr. John P. P. Vandenberg]. Later he built a house next to his store, but this he moved to Rodriguez street, and in 1873 built the present double store, two stories high, which he conducted until his death. He was a stockholder in the Pajaro Valley Bank and owned a large farm near town, also valuable city property, including his elegant residence on the corner of Third and Rodriguez streets. For thirty years he was treasurer of Watsonville, holding the office by successive re-elections until he finally declined to serve longer. He was never a candidate for any other position, preferring to devote himself to business matters; but, had he expressed a willingness to serve in any position, it would have been his, such was his popularity among the people of the valley. The only organization to which he belonged was the Santa Cruz County Pioneers, of which he served as vice-president for some years. He assisted in organizing the first fire department in Watsonville and maintained his interest in the department through all his life. ¶ Though passed from the scene of his labors, Mr. Stoesser is not forgotten, and his influence will not cease as long as there are public-spirited men who remember with gratitude the enterprising efforts of this pioneer. Having won his daily bread by the most strenuous exertions in early days, he always felt a keen sympathy with the working people, and was exceedingly considerate of his own employes. It was said that a position with him always meant "for life or during good behavior." From boyhood until death he bore an unsullied reputation, as an honest, liberal-minded and conscientious man. His illness was of brief duration, lasting only during two weeks, at the end of which he passed away like a peaceful dropping into sleep. In his last days he could look back over the past without remorse, and forward into the future without fear, with the profound comfort of a life well spent, and the unwavering consolation of having done his full duty on every occasion where time with its changes has called him. In 1861 Mr. Stoesser married Elizabeth J. Doran, daughter of Edward and Julia (O'Farrell) Doran. They became the parents of two children, Julia M. and Otto D. The son was born in Watsonville in 1868 and married Katherine, daughter of Capt. Thomas Lemman, of San Francisco. Since the death of his father he has had charge of the estate and conducts the business, giving promise by his keen business acumen and wise judgment of equaling his father in financial success. The family are members of the Roman Catholic Church, from which Mr. Stoesser was conveyed to his last resting place in Valley cemetery, the body being followed by one of the longest processions known in the history of Pajaro valley." (James Miller Guinn, *History of the State of California and Biographical Record of Santa Cruz, San Benito, Monterey and San Luis Obispo Counties. An Historical Story of the State's Marvelous Growth from its Earliest Settlement to the Present Time ... Also Containing Biographies of Well-Known Citizens of the Past and Present.* The Chapman Publishing Co., Chicago, 1903, p. 359-360,

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port. facing p. 359.) ¶ “OTTO STOESSER. For a period covering very little less than one-half century Mr. Stoesser was intimately associated with the commercial development and civic progress of Watsonville and his name is inseparably connected with the local annals. Death alone had power to terminate his activities. Many of the qualities that distinguished his career came to him by inheritance from a long line of thrifty Teutonic ancestors, but these attributes were supplemented by characteristics notably American and more especially typical of the pioneer Californian. To a man thus endowed a complete failure is impossible. For a time success may hold aloof its laurel wreath, but eventually determination and industry win the goal. Such proved to be the case in the career of this German-American, whose activities aided in the material upbuilding of the Pajaro valley and whose personality was a virile force in every important undertaking for the general welfare. ¶ The childhood home of Otto Stoesser was situated in Gaggennau near Baden-Baden, in the grand duchy of Baden, Germany, and there he was born November 18, 1825, being a son of Dominick Stoesser. The excellent schools of his native land afforded him fair opportunities and of these he availed himself until the time came when the necessity of self-support precluded further educational advantages. While yet a mere lad he heard much concerning America as a home for the poor young man. As soon as he attained his majority he bade farewell to relatives and friends and set sail for the new world, landing in New York City June 25, 1846. From there he went to Norfolk, Va., where he was employed for eighteen months, and next he worked for a short time successively at Wilmington, N. C., Columbia and Danville, Pa., after which he worked for John Hagan, at No. 308 Market street, Philadelphia. Resigning that position February 22, 1850, he prepared for a voyage to California and five days later he embarked on the Zenobia for San Francisco. Slowly the vessel proceeded southward to the Horn and thence up the Pacific. Only a very few stops were made, one of these being at Valparaiso, Chile, where the vessel anchored for four days. ¶ After having landed at San Francisco on the 13th of August after a voyage of almost six months, Mr. Stoesser secured employment with M. L. Wynn, manufacturer of Wynn’s golden syrup. While there he witnessed the celebration attendant upon California’s admission as a state. Like all newcomers, he was ambitious to try his luck in the mines and with this purpose in view he traveled to a mine near Agua Fria, but he was so unfortunate that when he returned to San Francisco on Christmas day he had only \$4.85 in his possession. The first employment he was able to secure was that of cabin-boy on board the Columbia, bound for Panama, and he returned on the same ship in March of 1851. Hoping to meet with better success in the mines, he went to the Feather river and Rich Bar mines, but the same bad luck befell him and he was discouraged from all further efforts in mining. Returning to San Francisco he was about to ship as a cabin-boy, but happening to see a sign “Wanted: a Dishwasher,” he entered the restaurant and secured the job. Ten days later he secured work as a pastry-baker on Kearney street, but twenty-four days after he went there the restaurant was burned. However, he soon found similar employment and in time received large pay. ¶ Having been induced by Dr. Vandeburgh [*sic, i.e.,* Dr. John P. P. Vandenberg] to go to Santa Cruz and engage in mercantile pursuits, Mr. Stoesser brought a stock of goods via the steamer Major Tompkins, March 10, 1853, and opened a store on Front street, near the old Santa Cruz house. At the end of a month he packed his goods in three wagons and started for Watsonville, where he arrived on the 10th of April. Three months later he bought the interest of his partner, Dr. Vandeburgh [*sic, i.e.,* Dr. John P. P. Vandenberg]. After a time he built a residence next his store, but this he eventually removed to Rodriguez street. In 1873 he erected a double store building, two stories in height, and there he carried on a large business until his death. The profits of his business were wisely invested. In time he became the owner of stock in the Pajaro Valley Bank, also a valuable farm near town and valuable city property, including his modern residence on the corner of Third and Rodriguez streets. For years he was said to be the largest tax-payer in Watsonville and his extensive holdings were the result of his unaided exertions in a land far distant from the home of his birth. ¶ Any office within the gift of the people of Watsonville would have been tendered to Mr. Stoesser

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had he been willing to accept, but with one exception he declined all official positions, the exception being the position of city treasurer, which he held for thirty years by successive re-elections, until finally he declined to serve longer in that capacity. The first fire department in Watsonville was organized largely through his energetic efforts and he never ceased to be interested in the success of the department. For some years he served as vice-president of the Santa Cruz County Pioneers and always he was warmly interested in that organization, but he never allowed his name to be presented for membership in any other society or fraternity. While still actively managing his large enterprises he was taken ill and after an illness of two weeks he passed away, May 18, 1902, leaving to mourn his loss his widow and their two children, Julia M. and Otto D. Mrs. Stoesser, prior to her marriage in 1861, had borne the name of Elizabeth J. Doran and was a daughter of Edward and Julia (O'Farrell) Doran. ¶ Predominant among the characteristics of Mr. Stoesser was his warm interest in workingmen. This was in part due to his thoughtful disposition and in part to his own early struggles for a livelihood. His employes found him considerate and kind and a situation in his employ was said to mean "for life or during good behavior." As his means became larger his ability to aid the distressed and needy became correspondingly greater, and many a struggling soul owed to him practical help as well as words of encouragement. The business that owed its remarkable success to his capable oversight continued unchanged for some time after his demise, but in May of 1905 it was incorporated with the firm of W. A. Speckens and the J. A. Baxter Company, under the title of the Pajaro Valley Mercantile Company, thus forming an organization of great financial strength. A general mercantile business is transacted at Nos. 327-329 Main street and Nos. 13-17-19 West Third street, Watsonville, and the modern merging of various interests will increase the usefulness of concerns planted by honored pioneers of our city." (Edward Martin, *History of Santa Cruz County, California*, Los Angeles, Historic Record Company, 1911, pp. 350-353.)

Stoesser, Otto Dominic (Watsonville merchant; II:58-59) "Mr. O.D. Stoesser, who was a man of serious nature as well as being very sensitive, was constantly being teased. One day when Charles Ford was passing Mr. Stoesser's store he saw a rack containing some hardware Mr. Stoesser had placed on the sidewalk for exhibition. Mr. Ford, seeing a chance to provoke Stoesser, took some and placed it before his own store. Mr. Stoesser, in a towering rage, followed it up and after expressing himself quite aggrieved and to get even, the freely returned the property to his store. Feeling terribly following day, he grabbed some blankets hanging for and took them down to his place of business. "This was the opportunity the Ford crowd were waiting for. They got out a fake warrant and had Stoesser arrested and brought to trial, when they almost drove the poor man crazy. Stoesser pleaded he was only joking to get even. The trial ran on for several weeks and was the topic of the day. Finally it was settled by a verdict of guilty being rendered and a fine of cigars for the crowd was rendered, which Stoesser swore he would never pay. Mr. Otto D. Stoesser, though somewhat eccentric, was a man of sterling qualities, honest to a fault and although his prices were high, he could be trusted at all times to give fair weights and measures. "In 1868 I had my first experience in feeling an earthquake. It was about eight o'clock in the morning, and I was out in the yard. I remember at first shock I started to run, but looking back saw my mother with the rest of the children gathered on the porch. Then glancing to the top of the house where the chimneys were doing a crazy dance, I stopped and ran back towards them, crying with all my might for them to get into the house, the chimney would fall and kill them. Fortunately, the chimneys did not fall, but the tops of all three were broken loose on the base near the roof and were moved about one eighth way round, and sat like this for some twenty years. "In 1872, I prepared to go to San Luis Obispo where my father had a contract to build the County Court House, but he said he would prefer to stay in Watsonville and look after his interests. In



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the fall of 1869 my father had been elected State Senator from Santa Cruz and Monterey Counties, terms he served were 1869-70 and 1871-72. After this he only took a few contracts and gave most of his time to politics. He was elected Secretary of State in 1875 and gave me the position as Deputy Secretary of State in his office." (Betty Lewis, KOMY Programs, a series of programs broadcast on radio station KOMY (Watsonville, California), unpublished, no date (from the compiler's collection). ¶ "OTTO D. STOESSER. ¶ The life record of Otto D. Stoesser is the story of a man whose talents were used for the benefit of Watsonville and the Pajaro valley. He seemed to know intuitively when the time was ripe for the institution of a new project and his very personality was an inspiration to progress. Gifted with keen insight and a broad grasp of affairs, he was constantly increasing the scope of his activities and left the impress of his individuality upon many lines of the city's development. He sought no public office, preferring to keep his personality in the background, and his demeanor was marked by that courtesy which is the outward manifestation of a generous, kindly nature. His career was conspicuously useful and his death, on the 29th of January, 1923, at the age of fifty-four years, was an irreparable loss to his community and state. ¶ Mr. Stoesser was a lifelong resident of Watsonville and a son of Otto and Elizabeth J. (Doran) Stoesser, pioneers in the settlement of the Pajaro valley. Of the children in their family, all have passed away with the exception of a daughter, Julia M. Stoesser. The father was the holder of much valuable real estate in Watsonville and rendered signal service to the city, which numbered him among its builders and promoters. In 1872 he erected the Stoesser block, which at that time was the finest in this locality and is still standing on Main street. He was also a forceful factor in the agricultural development of the valley and the large ranch on the Beach road was a part of his estate. ¶ His enterprising spirit and business ability were qualities inherited in full measure by his son, Otto D. Stoesser, who attended the public schools of Watsonville and was subsequently graduated from the Santa Clara University. After his father's death he assumed charge of the estate and successfully administered the interests intrusted [*sic*] to his care, consisting of large business properties in Watsonville and many acres of farm land in the valley. For many years he was president and manager of the large retail business on Main street which his father had founded in the early days and which afterwards merged with the Pajaro Valley Mercantile Company. He was one of the organizers and the vice president of the L. D. McLean Grocery Company of San Francisco and a stockholder in various corporations. He was the executive head of the Appleton Investment Company and was largely responsible for the construction of the Appleton Hotel & Theater building, which is a great asset to the city and stands on land owned by that company. He found much enjoyment in the solution of complex business problems and gave his best efforts to every task that he undertook, never failing to reach his objective, while the methods which he employed were always honorable and straightforward. ¶ Mr. Stoesser was twice married, his second union being with Miss Anna M. Farlin, a native of Eureka, California, and a representative of one of the pioneer families of the state. They were married August 18, 1915, and became the parents of two daughters, Mary Elizabeth and Rose Anne. ¶ Mr. Stoesser was a benefactor of the St. Francis Orphanage, and a faithful follower of the precepts of St. Patrick's Catholic church, which lost a tower of strength in his passing. He took quite an interest in politics and served on the county central committee of the democratic party. He was active in behalf of the Watsonville Chamber of Commerce and the Young Men's Christian Association. He was honored with the presidency of the California Apple Show and was also chosen a member of the Redwood Park Commission of California. He belonged to Watsonville Council, No. 953, of the Knights of Columbus; to the local lodge of the Benevolent Protective Order of Elks, and was also a member of Watsonville Parlor, No. 65, of the Native Sons of the Golden West. He was a keen analyst of men and conditions and his mind bore the impress of sincerity and candor. He was a many-sided, forceful personality and his life was an inspiring example of good citizenship. Broad-minded, sympathetic and genial, Mr. Stoesser won friends wherever he went and the years served to strengthen his hold upon their

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esteem, for his was a character altogether admirable.” (*History of Monterey and Santa Cruz Counties, California; cradle of California’s history and romance.* Chicago, S. J. Clarke Publishing Co., 1925, pgs. 164-167, portrait p. 165.)

Stone, Frank M. (attorney in Moore vs. Hoffman case, II:94-95) “FRANK M. STONE. ¶ The story of Mr. Stone’s life possesses exceptional interest; there is much that is strange and much that is picturesque, in both his personal and his professional career. Frank M. Stone was born March 12, 1847, at his infancy his parents removed to Boston, agent for heirs of estates in probate, and was time of his death, which occurred in 1881, on corporations. Among his close personal of the Navy, who was then Governor of Massachusetts. ¶ It will add a pleasant chapter to our History. ¶ a small town near Concord, New Hampshire. In Mass., where his father acted as a fiduciary elected to the legislature. He, the father, at the was chairman of the joint legislative committee friends was Hon. John D. Long, now Secretary Mr. Stone’s early education was obtained at the academy in Royalton, Vermont. He thereafter was graduated from the Boston English and Classical Schools, and finished his education under private tutors. He commenced the study of law under the directions of his father in the early seventies. His health becoming impaired, he shipped as supercargo of a sailing vessel, making several voyages to the Azore [*sic*] Islands, also to the West Indies and to Europe. ¶ His life at sea was full of adventure, including the wrecking of his vessel and his drifting alone in mid-ocean for an entire night off the Island of St. Michaels. It was followed by a most exciting trip from Petersburg, Virginia, to Mobile Bay, Alabama, while negotiations for peace were in progress in 1865, and before transportation by rail had been resumed. He took up his studies again in the backwoods of Alabama, and in the uplands of Georgia, living on what he could obtain by foraging. ¶ Mr. Stone came to California in 1874, and finished his course of study in the office of Colonel Joseph P. Hoge, the Dean of the California bar — spending the years 1878-79 in his office. “A particularly pleasant period was that,” he once said to us. He was admitted to the bar by the Supreme Court of this State in the spring of 1880. He was deputy district attorney of the city and county under Hon. Leonidas E. Pratt, in 1882, and continued to act in that capacity until December, 1882, when he resigned. He thereafter formed a law partnership with Hon. A. A. Sargent, ex-Minister to Germany, and ex-United States Senator, and such partnership continued until Mr. Sargent’s death in August, 1887. ¶ While Mr. Stone held the office of deputy district attorney, he prosecuted many notable cases, among which was that of Maroney for shooting Judge D. J. Murphy in open court. Judge Murphy, who had not yet become Superior Judge, had in defending a man in the Police Court, awakened the wrath of Maroney by his cross-examination of the latter, who was a police officer, and the prosecuting witness. Judge Murphy’s life hung in the balance for some days. During the progress of the Maroney trial a peculiar incident occurred. The case had taken several months to try, and, at its conclusion, was submitted without argument. The jury retired and, after being out two nights and a day, came into court and requested counsel to argue the case. Henry E. Highton represented the defense. Court and counsel being content, the jury was brought in and the case was argued for three days. The jury again retired — the result of their balloting for something like four days, being seven for conviction and five for acquittal, the vote never having changed for one ballot. ¶ The case of the People v. Carl Johansen was one of peculiar private and public concern. The defendant was a sailor, and, while being shipped by his boarding-house master, one Sanders, both being Swedes, Johansen shot Sanders, killing him instantly. “I have killed a shark.” Upon being placed upon trial his counsel interposed the plea of insanity. The defendant was adjudged guilty and sentenced to death. His peculiar appearance during the trial so affected Mr. Stone that he went to see him personally at the county jail, after his conviction, particularly inquiring about a scar upon his temple. The man replied through an interpreter that the scar was from a pistol ball and that the bullet was then in his



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brain. Inquiring regarding his family, Mr. Stone became satisfied that the history of his life had not been brought out upon his trial, and that, possibly, the defense of insanity should have prevailed to the extent that the punishment should have been imprisonment, rather than death. Not being able to obtain the address of any of his people, but only the fact that he was raised in the province of Kalma, Sweden, the attorney wrote a history of his trial and directed it "To any friend or relative of Carl Johansen, Kalma, Sweden." It brought a reply from the Governor of the province, praying to have the execution delayed until the story of Johansen's life should be laid before the court. Judge Freelon, the then presiding Judge, granted the request for delay, and the facts as appeared from the evidence taken by the Government of Sweden, showed that the defendant had in his native land, attempted suicide by shooting himself in the head, that it was true that the bullet still remained in his brain, that he had escaped in the dead of winter from an insane asylum, clothed only in such material as he could obtain by cutting up and using fur rugs. He jumped from a two-story window, gathered clothing in one place and another, and shipped before the mast for San Francisco. His mother and two sisters were in an insane asylum, and the father was a subject of epilepsy. Mr. Stone was still in office, and with these facts before him, he called the jury together, re-submitted the facts, and by unanimous vote they requested the Governor to commute the sentence to life imprisonment. Governor Stoneman acceded to the request. Johansen was sent to San Quentin and within three months was removed, a raving maniac, to the asylum in Napa, whence he shortly escaped, and it is supposed that he perished in the mountains, as remains of a person answering his description were found some months afterwards. ¶ The Swedish Society of San Francisco, and the Government of Sweden took action, extending their thanks to Mr. Stone, both personally and in his official capacity. ¶ The peculiar Chinese case of *People v. Tarm Poy*, is known in the criminal annals of the State as the "Hatchet Case." The facts are as follows: On the corner of Dupont and Jackson streets, the most brilliantly lighted corner in Chinatown, San Francisco, one night at about 11 o'clock, a Chinaman was assailed by a "hatchet man" and the autopsy showed seventeen frightful wounds made by a hatchet, any one of which would have proved fatal. The assailant fled, leaving behind him on the scene of the tragedy, a hat. The present Police Captain Wittman was then a sergeant and in charge of the Chinatown squad. He ascertained that the murderer had fled along Dupont street for about twenty-five yards, disappeared up a stairway and no trace of him was thereafter discovered, nor was any one found in the building who could be in any way implicated in the perpetration of the crime. At the head of the first flight of stairs, the sergeant found an open window. At this point of his investigation he was informed that the relatives of the deceased suspected one "Tarm Poy," who lived in Washington alley, as being the criminal. The sergeant within two hours of the killing visited the dwelling place of Tarm Pay [*sic*] and arrested him. Asked to produce his hat, he could not do so, and upon the hat, which was found upon the scene, being placed upon his head, it fitted perfectly. Sergeant Wittman, placing the hat and Tarm Poy in charge of an officer, returned to the stairway before referred to, and getting out of the window, proceeded over the various intervening houses and finally ascended a ladder and reached a sky-light, which being open, he descended through it to the room in which Tarm Poy had been found when arrested. ¶ The fight between the friends and relatives of the deceased and of Tarm Poy became most intense. Books were circulated over the State. It was found that 4000 of the family resided here; and the entire number subscribed to defray the expense of prosecution. At this point Mr. Stone was specially retained, having long since ceased to hold official position, to prosecute the accused. A dramatic incident occurred during the trial. The Chinese vice-counsel having been subpoenaed to testify, the Chinese interpreter for the Fong family suggested that, as sometimes a Chinaman printed his name on the inside band of the hat, the consul be requested to turn down the band of the hat, which was found on the scene of the tragedy, to ascertain if any identifying mark could be found thereon. After an examination, the witness testified that he found the name of Tarm Poy in Chinese characters written on the band of the hat. It was shown that the hat had never

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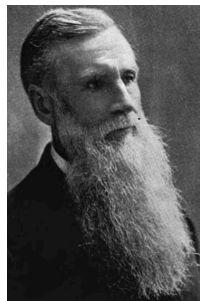
left the possession of the police from the time it was picked up on the street. With this chain of circumstantial evidence, the defendant was promptly convicted and sentenced to death. The case was appealed by the eminent counsel, D. M. Delmas, who raised many and most interesting questions of law. The appeal was unavailing; the judgment was affirmed. ¶ At this point of the proceedings the Fong family was so grateful to Mr. Stone for the outcome of the case, that each member of the family then known to reside in California, was appealed to; and by contributions in sums ranging from five cents to twenty dollars, gave him, in addition to a large money fee, a solitaire diamond for which they paid one thousand dollars, and which our friend still wears triumphantly, notwithstanding the sequel. ¶ At this point Hon. S. M. Shortridge appealed to the Governor for clemency. After various kinds of arguments, at which, however, Mr. Stone was not present, Governor Waterman pardoned Tarm Poy “upon the condition that he leave the State.” The records show that Tarm Poy lost no time in availing himself of the privilege. ¶ The strangest part of the story remains to be told. Something like a year afterward, the chief man in charge of the prosecution as representing the Chinese, and who furnished the testimony and produced the witnesses at the trial, confided to Mr. Stone that “it did not make much difference, became Tarm Poy was not the man who committed the murder.” He said that it was a part of the Chinese religion that when a man of a particular family was murdered, a member of some antagonistic family must answer therefor with his life. In this instance, they had seized upon the information gained from Sergeant Wittman and had concluded that Tarm Poy came nearer filling the bill of a victim than any one of whom they had knowledge, and they had woven around him a mass of circumstantial evidence almost unparalleled in criminal jurisprudence. He then and there told Mr. Stone that while the coroner’s inquest was in progress and the hat was lying upon the table at the morgue, he having deftly secured a Chinese printing brush in his sleeve, had printed the name of Tarm Poy in the band of the hat under the very nose and eyes of the police, and had not been detected therein; that he was satisfied that another man had committed the murder, but having no evidence to substantiate the belief, had determined upon the sacrifice of Tarm Poy. ¶ In narrating these facts to us in conversation some years afterwards, Mr. Stone said, “I have never taken a Chinese case since that trial.” ¶ This history is given for the first time, and will be a matter of considerable astonishment to the other learned counsel, who practically agreed that the defendant was guilty. ¶ Among the civil cases of marked interest and which have been cases personally conducted by Mr. Stone, was that of *Cook v. Pendergast*, (61 Cal., at page 72), which we believe is accepted as settling the law and practice as to change of venue. The point raised never having been before advanced, the case stands as the leading one upon the question therein involved. ¶ *The Estate of Flint*, 100 Cal., page 391, has been much cited in the matter of contests of will, wherein the questions of undue influence and incompetency are raised. The case must be particularly pleasant to him on account of the express compliment therein given him by the court as to the manner of the preparation of the bill of exceptions. ¶ The case of *Humphries v. Hopkins* calls for mention, because it lays down the law as far as this State is concerned, regarding the rights of a local creditor as against those of a receiver of a foreign court, who has taken possession of property within the jurisdiction of the court appointing him a receiver. It is reported in 81 Cal., 551. ¶ The estate of William H. Moore, deceased, wherein for the last sixteen years Mr. Stone has represented the children of Moore as against the claims of his second wife, the step-mother of the children, probably covers a longer period of time in the matter of litigation than any other reported in our State. William H. Moore died in 1870, leaving a large estate, which has now been in litigation thirty years; it has been before the Supreme Court in its various branches between fifteen and twenty times, and can be cited as authority upon more points of probate law than any other. Judges from all parts of the State have passed upon various questions raised. Two of the original counsel in the case have become Superior Judges, and died. At least five of the several judges who have participated in the various branches of the case have died. Children and grand-children of William H. Moore have been born and reared since 1870.

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Something like sixty or seventy thousand dollars has been spent in litigation, yet strange to say the estate today remains intact and of greater value than when Mr. Moore died. Taken as a whole, it is a remarkable probate case — the strangest part of which story was its culmination in the year 1899. Then, after twenty-nine years of litigation, it was decided that the most valuable part of the estate never belonged to William H. Moore, but the property of his first wife, who died one year before Moore, and by the decree of the court the children of the first wife now receive in value after thirty years of litigation, more than the amount for which the entire estate was originally appraised in 1870. ¶ We have no space left to speak of the political events with which our subject has been connected, during his partnership with Senator Sargent, and the well-remembered Stanford-Sargent contest, nor to his traits of personal character, except to say that he is a man of intense loyalty to friends and unwavering fidelity to purpose. He is in full practice, with elegant offices in the towering Claus Spreckels building. He is married, but has no children. He joined the Free and Accepted Masons in 1868 on becoming of age, taking during that year the various degrees up to and including that of Knight Templar.” (Oscar T. Shuck, *History of the Bench and Bar of California*, Los Angeles, Cal., The Commercial Printing House, 1901. Pgs. 938-942, portrait p. 940.)

Storey, William Dalphin (Santa Cruz attorney/judge) (also shown as *Story*) II:5-6, 8, 49, 94; III:3, 52) “... Is one of the prominent lawyers of Santa Cruz. He was born in Yorkshire, England, in 1830, and came to America when only one year old. He lived in the Eastern States until 1875, when he came to California. He ever since. ¶ In 1857 Mr. Storey graduated at the head of his class from Lawrence University, Wisconsin. He then entered Albany (New York) Law School, and in 1860 graduated from that institution. Among his classmates at Albany were W. F. Vilos, U. S. Postmaster-General under President Cleveland’s administration, and under Benjamin Harrison. ¶ Mr. Storey worked school and doing farm work. In the year of his graduation from Albany he was admitted to the bar, and has practiced law continuously ever since, with the exception of seven years spent in the editorial profession. For three years he as editor in chief of the editorial staff of the Rochester *Democrat*, the leading Republican journal of Western New York. He also wrote leading editorials for papers in Minneapolis, Memphis, New York, and other cities which engaged in the practice of law. ¶ In 1879 Mr. Storey was elected district attorney of Santa Cruz County, and held that office three years. He has held the office of city attorney in Santa Cruz under three municipal administrations, and Oat the present writing is city attorney, deputy district attorney, and court commissioner. ¶ Judge Storey took an active part in advocacy of the new constitution of the State of California in 1879, and has always been in the front rank of the supporters of public improvements, notably the city electric light and water systems. He now occasionally contributes to the public press, and his writings claim the respectful attention of his fellow-townsmen. His literary style is plain, straightforward English, lacking figurative ornamentation, but characterized by clear-cut logic. ¶ Mr. Storey was married, in 1877, to Mrs. Eliza Josephine Doke. (Edward Sanford Harrison. *History of Santa Cruz County, California*. (San Francisco, Cal.: Pacific Press Publishing Company, 1892. p. 344-345, with portrait.)



Stratton, James T. (surveyor of Rancho los Corralitos & Watsonville; II:37) “James Thompson Stratton was born on October 9, 1830 at Thompsonville, New York, the son of Mr. and Mrs. Jonathan Stratton. His maternal grandfather was the Honorable William A. Thompson, first judge of the Court of Common Pleas for Alston and Sullivan counties, New York. ¶ Stratton was educated at the Columbia Grammar School in New York, and came to California, via the Isthmus of Panama, just after the Gold Rush. He arrived in San

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Francisco on the "Columbus" on June 6, 1850. His first work in California was a survey of the town of Benicia; later, in 1851, he travelled up the American River to try his luck at the diggings. In 1853 he completed a survey of the town of Alameda, and in the following year he returned East to marry Cornelia A. Smith at Sing Sing, New York, on October 30, 1854. ¶ Returning to California following his marriage, Stratton settled in the town of Clinton, now renamed East Oakland. In 1858 and 1859 he was the County Surveyor for Alameda County, and made many important surveys in other parts of California, becoming an authority on the large Mexican grants. It is said that he subdivided more Spanish ranchos than any other surveyor. ¶ Stratton was appointed U.S. Surveyor-General for California by President Grant in 1873, but because of failing eyesight he was forced to abandon the job in 1876. During the period from 1880 to 1883 he served as Chief Deputy State Surveyor under General James W. Shanklin. Toward the end of his life he was associated with Shanklin in many land ventures throughout the state. It may also be noted that Stratton was a pioneer in the introduction of the Australian eucalyptus into California, planting over 300 acres of these trees on his Hayward ranch. ¶ Stratton's death occurred in Oakland on March 15, 1903. He was survived by his wife and four children: Frederick Smith Stratton, George Malcolm Stratton, Robert T. Stratton and Mrs. Walter Good." (University of California-Berkeley, Bancroft Library Collection Title: James T. Stratton Papers, Date (inclusive): 1857-1903 Collection Number: BANC MSS C-B 770, Biography of James Thompson Stratton).

Stuart Hills, John *see* **Fife** (Stuart Hills vs. Fife)

Sullivan, Matthew Ignatius (San Francisco attorney) [Sullivan defended Judge Smith, and his questioning of witnesses appears throughout all three volumes] Distinguished S. F. Jurist Expires At Eighty Following Long Illness ¶ Matthew I. Sullivan, prominent alumnus of the University and distinguished jurist, died Friday night, August 6. Judge Sullivan, one of San Francisco's most beloved sons, was 80 years of age. The former Chief Justice of the California Supreme Court, famous as a foe of political graft and as a lifelong champion of municipal ownership, succumbed peacefully at his home, 920 Guerrero Street. He was buried in Holy Cross. ¶ A lingering illness of many weeks had called a halt to Judge Sullivan's fifty-five years of activities devoted to the service of San Francisco in various honorary capacities. The late Judge Jeremiah F. Sullivan, in whose honor the annual Sullivan Oratorical Contest is held by Ignatian Council, Y. M. I., was his brother. Admitted to Bar Judge Sullivan attended parochial and public schools in the Mission district, and in 1863 entered St. Ignatius College, now the University of San Francisco, graduating in 1876 with a degree of bachelor of arts. Immediately thereafter he began his study of the law in his brother's office, entering Hastings Law College on its opening day two years later. He continued his legal studies there until November 19, 1879, when he was admitted to the Bar by the State Supreme Court. Judge Sullivan was dean of the School of Law of the University of San Francisco at the time it was opened. Upon the golden jubilee of the University, he received the extraordinary degree of *Juris Doctor Utriusque* [*doctor juris utriusque* is a Latin term which means doctor of both laws. It refers to a combined law degree, in both civil and canon law]. In his will, Judge Sullivan left \$10,000 to the University of San Francisco. ¶ Rolph Adviser ¶ Throughout the career of James Rolph, Jr., Judge Sullivan was his close friend and adviser. It was he who persuaded Rolph to first run for mayor of San Francisco, later urging him to accept the gubernatorial nomination. Since 1905 Judge Sullivan's legal associates were Theodore Roche and Senator Johnson. In 1887, with Archbishop P. W. Riordan, the Rev. D. O. Crowley and others, he incorporated the Youths Directory of San Francisco, and remained one of the active directors until the death of Father Crowley in 1928. Judge Sullivan authored the school teachers' retirement law, enacted by the Legislature in 1913. ¶ Named Justice in August, 1914, Judge Sullivan was named Chief Justice of the State Supreme Court by

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Governor Johnson to succeed William H. Beatty, who died in that year. Simultaneously Judge Sullivan was serving as State Commissioner for the 1915 Exposition. As chairman of the City's Advisory Committee in 1913, Judge Sullivan led the important negotiations which ultimately resulted in the acquisition of the properties of the Spring Valley Water Company. After framing the first city planning ordinance, he served as president of the Planning Commission for thirteen years, resigning in 1930. Responsible for Removals he presented, in 1928, the city ordinance compelling the removal and disinterment of all bodies in the Masonic Cemetery, half of which was acquired for the future campus of the University, and the Odd Fellows Cemetery. In January, 1931, he was appointed attorney for the State Superintendent of Banks. Recently, the Governor had appointed him chairman of the Water Resources Commission of California. (San Francisco Foghorn of the University of San Francisco, August 23, 1937, p. 1:2-3.) ¶ Matt. I. Sullivan, senior member of the law firm of Sullivan, Roche, Johnson & Barry, was born in Grass Valley, Nevada county, California, on November 3, 1857. His parents, Michael M. and Margaret M. Sullivan, were born in Ireland and immigrated to the United States before the middle of the last century. They came to California from Connecticut by the Nicaragua route in the year 1852 and first settled in Nevada county. In 1862, with his parents, five sisters and his brother, the late Jeremiah F. Sullivan, Judge Sullivan came to San Francisco, where he has ever since resided. (*History of San Francisco, California*, Lewis Francis Byington, Supervising Editor, Oscar Lewis, Associate Editor; San Francisco, The S. J. Clark Publishing Company, 1931, p. 5-10, via Google viewed March 26, 2021.)

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Taylor, Arthur Adelbert (editor/publisher *Santa Cruz Surf*) “Mr. Cassin, the court, and practical politics. What is called legal proof of these charges will not be attainable. Belief or rejection must result from circumstantial evidence. On this matter the writer has a personal experience to offer in evidence. After giving it, it is our purpose to leave the matter with public opinion to form its own conclusions. Prior to October 1902, the relations between the *Surf* and Mr. Cassin had been very friendly. The files of this paper will attest the support he received in his political aspirations as a young man. As a candidate for District Attorney, as a candidate for Superior Judge, as a candidate for State Senator, as City Attorney of Santa Cruz, he received the unstinted support of the *Surf*. Especially was this true when he was a nominee for the Judgeship. We regarded him as a young man of good impulses and fair abilities, who if placed on the bench in early life would develop into a Judge who could be honored and respected. In advocacy of Mr. Cassin’s cause at one time and another many pages of this paper have been expended.” (*Santa Cruz Surf*, February 15, 1905, 4:1.)

The Chairman *see* **McCartney**, Herbert S. G. (Assemblyman)

Throckmorton, James Webb (February 1, 1825 – April 21, 1894) Governor of Texas, [former law partner of Judge Lucas F. Smith] was an American politician who served as the 12th governor of Texas from 1866 to 1867 during the early days of Reconstruction. He was a United States Congressman from Texas from 1875 to 1879 and again from 1883 to 1889. Following the outbreak of the Mexican–American War, he joined the 1st Texas Volunteers as a private in February 1847. A few months later, he was assigned as an assistant surgeon to the Texas Rangers, until receiving a medical discharge in June of that year. During the Texas secession convention in 1861, he was one of only eight delegates to vote against secession from the United States. Despite this, he served in the Confederate Army, first as a captain of Company K, 6th Texas Cavalry Regiment. ¶ He was promoted to brigadier general by 1862. During late 1862 while



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stationed in North Texas, which was chaotic because of military and state militia abuses, he saved all but five men in Sherman, Texas, from being lynched by militia as suspects in anti-conscription activities. Violent acts had spread in North Texas after the Great Hanging at Gainesville earlier in October 1862, when a total of 42 men were killed, most hanged. ¶ Throckmorton defeated Elisha M. Pease in the Texas gubernatorial election of June 25, 1866, at the same time that the legislature approved a new constitution. During his term as governor, Throckmorton's lenient attitude toward former Confederates and his attitude toward civil rights conflicted with the Reconstruction politics of the Radical Republicans in Congress. He angered the local military commander, Major General Charles Griffin, who persuaded his superior, Philip H. Sheridan, to remove Throckmorton from office and replace him with Elisha M. Pease, an appointed Republican and Unionist. ¶ As the Radical Republican's influence began to wane in the mid-1870s, Throckmorton was elected to Congress representing Texas's 3rd Congressional District. He later served the 5th District in the 1880s. ¶ Throckmorton died at age 69 from a fall, having become frail due to kidney disease. (*Wikipedia*, The Free Encyclopedia. Online: https://en.wikipedia.org/wiki/James_W._Throckmorton ¶ viewed April 23, 2021.)

Torchiana, Henry Albert van Coenen (attorney) Residence, Family Club; office, Humboldt Bank Building, San Francisco. Born in Java, Dutch East Indies, December 25, 1867 [Died in San Francisco, CA, March 1, 1940]. Son of William George and Baroness (Van California in 1890. Married at Santa Cruz, California, Educated in the public schools of Amsterdam, Holland, Holland; later graduated from the College of Amsterdam, Holland. Admitted to the bar by the 1900 and the Supreme Court of the United States. Albert Dickerman under firm name of Dickerman & California, which continued from 1900 to 1905. In W. P. Netherton, at Santa Cruz, under the firm name of Netherton & Torchiana, which continued with Fred S. Stratton and W. W. Kaufman in 1910, practicing under the firm name of Stratton, Kaufman & Torchiana, which continues to date. President of the Santa Cruz Chamber of Commerce, 1908-10, and President of the Santa Cruz County Commercial League, 1907-9. Member of The Family and Union League clubs, and Alumnus of the College of Commerce of Amsterdam, Holland. Republican. (Source: History of the Bench and Bar of California. Edited by J. C. Bates. San Francisco: Bench and Bar Publishing Company, 1912. p. 531-2. With portrait.)



Trafton, Howard V. (Santa Cruz County Sheriff) [I: 15; III: 2, 31, 55] “Former Sheriff of Santa Cruz County, killed in the line of duty [on September 5, 1925.] ¶ Trafton was Santa Cruz County's first Sheriff to have been born and raised in the region. His family had settled in Pajaro and he was born [on June 11th] 1871. Trafton had been Sheriff for 22 years and had earned much respect. Prior to being elected sheriff, Trafton had been Watsonville's early fire department as an engineer, and promoted to the [sic] in 1902. He was married twice, widowed once and had two sons. As one might expect of the county's veteran sheriff, he was a member of the Masons, the Knights Templar, along with many other fraternal organizations. ¶ The first marriage of Howard V. Trafton was solemnized in 1895 and united him with Miss Beatrice Soto, who died in 1901, leaving one son, Frank. The following year he was united in marriage with Miss Rose Valdez, by whom he has one son, Chester. ¶ Sheriff Trafton and Undersheriff Richard Rountree were



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shot and killed while attempting to arrest a man who was interfering with highway construction crews. Sheriff Trafton was able to return fire during the shootout and killed the suspect. ... He died in the line of duty at age 54. The man shot and killed the Undersheriff, Sheriff Trafton returned fire, killing the suspect. But had been mortally wounded himself, died of his wounds.” (*Find A Grave* website; visited Mar. 17, 2021)

Trafton, William A. (Mayor of Watsonville). Watsonville 2008), provides the history of the Quinn-Trafton Quinn, local realtor, had recently [May 1903] been the passage of the city charter. The Board of Aldermen election just to see where the people of the town Quinn was for this resolution, but, at the last minute, library should be in the plaza, and there was no who had lost the mayoral election by only four votes, Court as to legality of the ballots. In June of 1904, the decision was handed down from the court that ten of the votes were erroneously counted for Quinn, making Trafton the winner after all. On July 8, 1904, William A. Trafton was sworn into office as mayor of Watsonville.” (Case citation: WILLIAM A. TRAFTON, Appellant, v. RICHARD P. QUINN, Respondent S. F. No. 3773 Supreme Court of California 143 Cal. 469 (June 4, 1904))



Historian Betty Bagby Lewis (1925-controversy as follows: “Richard sworn in as the new mayor following voted on a resolution to have a city wanted their library building. Mayor had a change of heart. He decided the election. Meanwhile, Will Trafton, had appealed to the State Supreme

Court as to legality of the ballots. In June of 1904, the decision was handed down from the court that ten of the votes were erroneously counted for Quinn, making Trafton the winner after all. On July 8, 1904, William A. Trafton was sworn into office as mayor of Watsonville.” (Case citation: WILLIAM A. TRAFTON, Appellant, v. RICHARD P. QUINN, Respondent S. F. No. 3773 Supreme Court of California 143 Cal. 469 (June 4, 1904))

U, V, W

Wagner, John Sr. (A juror in case of Ramirez vs. Big Creek Power Co.; accused of being corrupt) Vol. I:65: “Q. And the foreman of the jury called for the name of the corrupt juror didn’t he? A. No sir, I think that was not the foreman of the jury; I think it was another juror, Mr. Wagner. Q. Didn’t some juror ask you to give the name of your informant? A. Yes sir, Mr. Wagner. Q. Mr. Wagner? A. I do not remember he said the name; I am under the impression he wanted me to give the name of the juror because it put a cloud on all the jurors, somebody might think they had all sold their vote.” ¶ “Wagner Grove. Located in the southern section of Harvey West Municipal Park [Santa Cruz], Wagner Grove was dedicated in 1958 and this plaque was unveiled: WAGNER GROVE ¶ DEDICATED TO THE MEMORY OF JOHN WAGNER, SR. ¶ PIONEER OF SANTA CRUZ COUNTY. WAGNER GROVE PART OF RANCHO TRES OJOS DE AGUA, WAS GRANTED TO Nicholas DODERO IN 1844. ¶ PURCHASED JOHN WAGNER IN 1873 AND SOLD BY HIS HEIRS TO HARVEY WEST IN 1958. PRESENTED TO THE CITY OF SANTA CRUZ BY MR. WEST, JANUARY 14, 1958.” ¶ John Wagner, a native of Germany, migrated to California in 1854, settled in Santa Cruz in 1857 where he developed a farm and a vineyard; he also operated a tannery in Scotts Valley. He became a naturalized citizen on October 121, 1868, at Santa Cruz. He died in December, 1914. His obituary mentioned his home “on Highland avenue near the beautiful natural redwood grove in the canyon that bears his name, Wagner’s park, which showed his love of nature and for the beautiful.” — *Santa Cruz Surf*, December 22, 1914.” (Donald Thomas Clark, *Santa Cruz County Place Names, a geographical dictionary*. [2nd ed.] Scotts Valley, California : Kestrel Press, 2008, p. 371.)

Walker, Foshay (attorney of San Francisco, Hearing Transcript Volume I:62, in regard to the testimony of J. H. Leonard: Q. That was the first case you ever undertook to try alone was it not? A. I think so, yes sir. Q. Who was opposed to you in that case? A. Mr. Charles B. Younger on the trial of the case, and Mr. Younger and Mr. Howard [sic] on the motion for a new trial. Mr. Howard of San Francisco. --- Transcriber’s Note --

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-- [Written in pencil above "Howard" is "Walker." The attorney's name is Foshay Walker.] "Walker, Foshay, Deceased, Los Angeles, admitted to bar in July 1891." (California Bar Assn. website).

Walti, Frederick Rudolph "Fred" (Mr. Walty used in Transcript) III: 47 [Frederick R. Walti began the Walti-Schilling Meat Packing Company.] ¶ "MARRIAGE LICENSES. Frederick R. Walti, native of Switzerland, aged 30 years, and Fredericka Schilling, native of California, aged 21 years; both of East Santa Cruz." (*Santa Cruz Sentinel*, Mar. 2, 1892, 3:4). ¶ "Fred R. Walti, Oldtime Civic Leader, Passes. ¶ Fred R. Walti, 79, rancher and retired operator of the Walti-Schilling meat packing company, died at Hanly hospital yesterday after a brief illness. He was taken ill Sunday while inspecting his ranch at San Miguel and was rushed to the hospital here. ¶ Native of Basle [*sic*], Switzerland, Walti came to America at the age of 15 and worked in Nevada and Hollister. At 26 he came to Santa Cruz and bought into the Henry Bausch brewery at the corner of Soquel avenue and Ocean street. He also went into the meat business, operating a retail market at two locations on Pacific avenue and later going into the wholesale trade with his father-in-law, Henry Schilling. ¶ The Walti-Schilling concern is now operated by his son, Fred William Walti and associates. ¶ Was City Councilman ¶ Walti was married in this city to Freida Schilling, and they purchased the old Jackson Sylvar place at the corner of Sylvar and High streets. Always interested in civic affairs and widely respected for his business judgment, he served as a city councilman before the commission form of government was adopted. ¶ Deceased was preceded in death by his wife. He is survived by his daughter, Mrs. H. B. Pearson, with whom he lived; son, Fred William; sister, Mrs. Ida Martin; sister-in-law, Miss Clara Schilling; and three grandchildren, Brice Pearson, Hugh and Phyllis Walti. ¶ Private funeral services will be held at the Wessendorf Mortuary Friday afternoon at 2 o'clock and will be conducted by the Rev. Norman Snow of Calvary Episcopal church. Private inurnment will be at the Santa Cruz mausoleum." (*Santa Cruz Sentinel*, Oct. 3, 1940, 1:2). ¶ "DIED. WALTÍ — In Santa Cruz, October 2, 1940, Frederick R. Walti, father of Fred W. Walti and Mrs. Clara Pearson, brother of Mrs. Ida Martin and grandfather of Phyllis Walti, Hugh Walti and Brice Pearson; native of Switzerland, aged 79 years, 6 months. Private services conducted by Rev. Norman Snow will be held at the Wessendorf Mortuary today (Friday) at 2 p. m. The body will lie in state between the hours of 10 a. m. and 1 p. m., during which time friends may call at the chapel. Private inurnment at Santa Cruz crematory." (*Santa Cruz Sentinel*, Oct. 4, 1940, 5:1). ¶ "Cards of Thanks. ¶ WALTÍ— We, the family of the late Frederick R. Walti, wish to express our deepest and most sincere thanks for the respect, honor, and many beautiful tributes shown by his and our many friends. FRED WILLIAM WALTÍ, and Family; MRS. H. B. PEARSON, and Son; MRS. IDA MARTIN." (*Santa Cruz Sentinel*, Oct. 5, 1940, 5:3).

Wanzer, James Olin (Notary Public) Notary — Governor Low has appointed James O. Wanzer, of Santa Cruz, a Notary Public. Mr Wanzer was our late competent and faithful Deputy County Clerk, and his well known integrity, ability and industry will enable him to fill the position in a manner deserving a liberal patronage. His office will be in Hihn's building, under the Sentinel office, as soon as the rooms are properly fitted up. (Source: *Santa Cruz Sentinel* June 2, 1866, 2:5) ¶ "Another **real estate firm** will open for business this morning in the room which was originally part of the French liquor store, next door to the Pilot Hose Company's building. The members of the firm are **Joseph Skirm** and **Jas. O. Wanzer**. Both of the gentlemen are well known to our citizens and have the advantage with real estate dealings in Santa Cruz county." (*Santa Cruz Daily* 3:3). ¶ "SANTA CRUZ PIONEER LAYS DOWN BURDENS ¶ J. AWAY AT HOME SURROUNDED BY HIS FAMILY ¶ BODY TOMORROW — MRS. WANZER TO LIVE WITH



of a long experience
Surf Mar. 16, 1888,
O. WANZER PASSES
WILL BE CREMATED
DAUGHTER. ¶ "James

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Olin Wanzer, a resident of this city for fifty-three years, a veteran of the civil war and a man who attained some prominence in state and local politics during his lifetime in California, passed away at an early hour Sunday morning, at his home, 94 Church street, after a week's serious illness. ¶ At his bedside when the end came were his wife, his son, Harry S. Wanzer, and his daughter, Mrs. Van E. Britton, and their families. ¶ Mr. Wanzer had been quite ill for two years, and a week ago he was forced to his bed from which he never arose. ¶ Funeral services were held from the home this afternoon, Rev. E. H. McCollister officiating. Mrs. Clarence E. Fette sang beautifully at the services. The body will be shipped to Cypress Lawn cemetery tomorrow by Wessendorf & Staffler for cremation. ¶ Deceased was born in New York City in 1837, and came to California in 1856 and like many another in those days went to work in the mines. He arrived in Santa Cruz in 1860. During his life he followed his chosen profession of searcher of records and attorney-at-law. For ten years he was secretary of the F. A. Hihn company. He served four years as state deputy surveyor to Robert E. Gardner and during the civil war was adjutant of a regiment in the federal army. He was the first town clerk of the village of Santa Cruz. He had always been of an energetic disposition and figured prominently in political affairs and movements for civil betterment. ¶ He is survived by a wife, Mrs. J. O. Wanzer, herself one of our most prominent workers; a brother, Charles Wanzer of Omaha, Neb.; a sister, Mary A. Young, of Bath Beach, New York; a son, Harry S. Wanzer, of Sacramento, and a daughter, Mrs. Van E. Britton, of San Francisco. ¶ Mrs. J. O. Wanzer will soon leave for San Francisco to make her home with her daughter, Mrs. Britton. (*Santa Cruz Evening News* Sep. 8, 1913, 4:1).

Warren, William W. Jr. (b. abt. 1836 in Texas, died in Watsonville September 21, 1935) (mentioned by Peter Paul Hartmann) I: 44-45 "Q. Did you read the language contained in the affidavit after Mr. Aydelott [*sic*] gave it to you four days ago? A. I did not. Q. You took it home with you? A. Yes sir. Q. When you got home, you took and put it in the trunk among your papers? A. No sir; I carried it around with me until yesterday. ... Q. Who else? A. W. W. Warren. Those are the only persons I showed it to."

Waste, William Harrison (Assemblyman) "Residence, 2222 Durant Avenue, Berkeley; office, Courthouse, Oakland. Born in Chico, Butte County, California, October 31, 1868. Son of John Jackson and Mary Catherine (McIntosh) Waste. Married Mary J. Ewing. Attended the public schools of Butte County from 1873 to 1882; Los Angeles public schools, 1882 to 1883; Los Angeles High School from which he graduated in 1887; University of California, from which he received the degree of Ph. B. in 1891, and the degree of B. L. in 1894 from Hastings College of Law. Admitted to the bar by the Supreme Court of California, June 14, 1894. Practiced law alone until appointed Judge of the Superior Court by Governor Pardee in 1905. Member of the Assembly of California from 1903 to 1905. Republican." (J. C. Bates, *History of the Bench and Bar of California*, San Francisco, Bench and Bar Publishing Co., 1912, p. 544.)

Welch, Richard R. (Estate of) contestant represented by Hubert Coke Wyckoff I: 153 "COMMITTEEMAN BURKE. What is the title of the case in which you and Mr. Cassin are now associated together pending in this Court? A. The Estate of Richard R. Welch. Q. Who do you represent? A. The contestant of the will. Q. Whose case was it originally? A. My case; well I think both of us, I think we were both associated at the same time. MR. CASSIN. No, Mr. Wyckoff."

Whimple, Lillie [The victim was Miss Lillie Whimple. The defendant was Louis Buelna.] I:111 ¶ "A. At that time, I believe the ruling of the Court was what it would not be necessary in regard to any other witness than Mrs. Whimple ... the prosecutrix, and I understood then that it would probably be behind closed doors when she was brought on, but not with other witnesses." [An extensive search for more information about

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“Miss Lillie Whimple” produced nothing. It is possible that her name was manufactured, to protect her identity.]

White, Anna (Annie E. [*sic; i.e., R.*], Mrs. Edward White) mentioned II: 120 “Mr. Lindsay: I will call your attention, Judge, to the case of White against Bessee [*sic; Besse*] which was tried in this Court some time ago, I do not remember the date-- do you recollect the case? A. Yes, sir. Q. The plaintiff was Edward White, one of the gentlemen who testified here today, was it not? A. No, that was his wife, I think. Q. His wife? A. I think it was Annie E. [*sic; i.e., R.*] White; I think so; that is my recollection; I am not sure. Q. And the defendant was the sheriff of the county? A. Sheriff Bessee [*sic; Besse*] that is my recollection; it was Annie E. [*sic; i.e., R.*] White against Sheriff Bessee [*sic*].” ¶ “Anna White vs. Besse, Sheriff—Answer to complaint; complaint is intervention; order granting permit to file the same.” (*Santa Cruz Surf*, June 6, 1900, 5:2) “Anna R. White vs. Milton Besse - Notice of motion and affidavit.” (*Santa Cruz Surf* September 20, 1901, 4:2) ¶ “The eldest son of William F. White was **Edward White**, born in San Francisco June 25, 1851, and educated in Santa Clara College. In 1874 he began for himself by renting farm land and later bought Calabasa rancho [Rancho la Laguna de las Calabazas] of two thousand acres, where he engaged in the dairy business and developed a fruit industry. At this writing eight hundred acres of the tract are in his possession. Much of the property is set out in apples, apricots, cherries and various small fruits, and there is also a dairy of fifty Durham cows. In 1889 he moved his family to Watsonville, where he has since made his home. **His wife, Annie**, is a daughter of John Royse, a pioneer of Pajaro valley, and they have six children, Edward, Jr., Ellen, Stephen, Lucille, Raymond and William. Another son was lost in infancy.” (James M. Guinn. *History of the State of California and Biographical Record of Santa Cruz, San Benito, Monterey and San Luis Obispo Counties; ...* Chicago : The Chapman Publishing Co., 1903, p. 327).

White, William Francis “WILLIAM F. WHITE. This gentleman was a well-known and distinguished citizen, and one of the pioneers of Santa Cruz County. For many years he was a resident of the Pajaro Valley, and well known to nearly all the citizens of Santa Cruz County. He formed associations and ties here which have outlived him, but his circle of friends and acquaintances and the field of his work were not confined to this county. He has left his imprint on the literature of California and in the laws by which we are governed. ¶ He was born in County Limerick, Ireland, in the year 1816, and came to America with his parents at the age of four years, settling in Susquehanna County, Pennsylvania, which was at that time an unbroken wilderness. His boyhood was spent on his father’s farm. He received the advantages of a college education at Oxford Academy, New York. ¶ When gold was discovered in California, Mr. White was one of the first to start to the new El Dorado, being accompanied by his young wife, to whom he had been married but a few months. Notwithstanding the persuasion of her friends, she determined to accompany and share the fate of her husband, and, accordingly, sailed with him from New York City in January, 1849, *via* Cape Horn, for San Francisco. There were three hundred passengers on the vessel, and Mrs. [Frances *aka* Fannie Russell] White was the only woman among them. This early devotion to her husband and to her family was a marked trait of Mrs. White’s character throughout her life. ¶ After a successful voyage Mr. and Mrs. White landed in San Francisco in June, 1849, the voyage having lasted six months. Mr. White engaged in the mercantile business with D. J. Oliver and John R. McGlynn. This firm continued its existence until 1852, when Mr. White bought an interest in the *Sal Si Puedes* [*aka* Salsipuedes] Rancho, in company with Eugene Kelly, Eugene Casserly, and others. [White’s ranch was known as Santa Maria. Jane Borg wrote in a private message to me on Monday, April 21, 2008, as follows: “Santa Maria Ranch is still in place and goes by the same name today. The gate is right at the foot of Hecker Pass (Hwy 152) on the right hand side. There is flat land in bush berries along Carleton Rd. reaching almost, but not quite, to the

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Gizdich Ranch. On the east it reaches up toward the ridge line. How far I do not know. Today it is most likely to be smaller than the original piece. The principal home on the ranch is a William Wurster design. Today it is owned by the Di Napoli family from Santa Clara (?). It is used as a vacation home but occasionally used for nonprofit organization fund raisers. It was the site of the first Mass noted in the information about Valley Catholic Church. White was one of the donors along with Kelly of the land for Valley Church.] ¶ He built a house in what was then considered the most desirable building spot in the valley, and moved his family into their new home in 1853. Most of the material of this house was shipped from Maine. At that time there were only four other buildings in the valley, and they were built of adobe, which covered the plains at the time. Wild in them. This house was used as a place of priests from the San Juan Mission would assemble from various parts of the curiosity and lengthy inspection the White's premises; particularly was their seemed to grow tired of manipulating the well. ¶ In this house Mr. and Mrs. White an interesting family of six daughters and two sons. Edward and Stephen M. White. ¶ The elder is a prosperous farmer and lumber manufacturer of the Pajaro Valley, and the latter is one of the prominent lawyers of the State, and a conspicuous figure in Democratic State and national politics. ¶ Mr. White always displayed great interest in public affairs, but was none the less attached to his family; and those who enjoyed the hospitality of his home always found him a genial host and most agreeable companion. He held offices of honor and trust, and his public record is as spotless as his private one. In 1878 he was elected a member of the [Second] constitutional convention [in Sacramento from March 1878 to March 1879] called to frame a new constitution for the State of California. He was one of the most prominent and active members of this body, and many of the principles of the new constitution have the imprint of his ability. He was also a candidate for governor [of California] on the Workingmen's ticket in 1879, but was defeated by the Republican nominee by a very small majority. He was then appointed bank commissioner by Governor Irwin, a position the duties of which he discharged with credit to himself and the State. At the expiration of his term of office Mr. White took up his residence in the city of Oakland, where he resided until his death [At his son's home, Stephen Mallory White, in Los Angeles of apoplexy (*aka* Ruptured aortic aneurysms, and even heart attacks and strokes were referred to as apoplexy.)], on the sixteenth [*sic; i.e., thirteenth*] day of May, 1890. ¶ Mr. White is a nephew of Gerald Griffin, the celebrated author, and one of his sisters is Sister Superioress in the Georgetown, D. C., Convent. A brother of his was chief justice of New York, and was a confidential adviser of Abraham Lincoln. That Mr. White inherited some of the literary ability of his distinguished uncle is indicated in the many of his numerous contributions to the press of this State, and particularly in the volume entitled "Pioneer Times in California," by William Gray, [a pseudonym] of which he is the author. He contributed much to the current literature of the times, spending much of his spare time in writing. He was naturally literary, and his capacity for the enjoyment of a joke, and disposition to perpetrate one, are well remembered by the citizens of Santa Cruz and Pajaro Valley. Distinctly will they remember the celebrated "Sack Letters" which appeared in one of the Watsonville papers, in which various citizens of the county were designated as "bean sack, potato sack, second-hand sack," etc. Mr. White always took the liveliest interest in the welfare of Santa Cruz County, and particularly Pajaro Valley, and no one in the early history of the county did more to advance the interest of this locality than he. Here his children were born and reared, and here were spent the happiest days of his life, and here his remains find their last resting-place. *Requiescat in pace.*" (Edward Sanford Harrison. *History of Santa*



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Cruz County, California. (San Francisco, Cal.: Pacific Press Publishing Company, 1892. p. 301-303, portrait after 68.) [According to Ancestry.com & Find A Grave, William Francis White was buried in Pioneer Cemetery (*aka* I.O.O.F. Cemetery), 66 Marin Street, Watsonville.]

Williamson, William Hyslop (court reporter) (b. June 1871, d. March 20, 1913 He was 28 (in 1900), living at 77 Ocean View Ave., Santa Cruz, with wife Grace E., 26, and her mother, Eliza A. DeLamater.) “William Hyslop Williamson, familiarly known to his hundreds of friends as “Will,” has gone to his maker, and the courthouse and the courtroom where he spent sixteen years as court reporter will see him no more. He closed his eyes peacefully in the last sleep early this morning at his home on Ocean View avenue, his devoted wife still bowed with the sorrow of her mother’s death, and his two little girls being at his bedside. ¶ During the last few months Will Williamson has been failing rapidly in health, suffering from an organic trouble which he hoped to conquer, but against which all effort failed. His work of the past week or two in the superior courtroom was very laborious and many of his friends realize now that they should never have allowed him to attempt the reporting in the Moore-San Vicente suit, a piece of work in which he found rest often necessary. ¶ The deceased was born in San Francisco forty years ago, but has lived in Santa Cruz since a very small boy, taking up the work as court reporter on the appointment of Superior Judge Smith sixteen years ago. Judge Smith, who is greatly affected by Mr. Williamson’s sudden death, said this morning that the state did not have a more competent court reporter than Will Williamson and that he expected difficulty in finding his successor. ¶ The greatest sympathy prevails for the widow, Mrs. Grace Williamson. She has lost the sweetheart of her childhood days and only three months ago her mother, Mrs. De Lamater, passed away. The presence of her two beautiful daughters will help to lessen her poignant sorrow at this time. ¶ Also surviving the deceased are the mother and father, Mr. and Mrs. John Williamson of Lincoln street, and a brother, J. R. Williamson, of the firm of Williamson & Garrett. ¶ The funeral will be private and will be held from the home tomorrow afternoon. It is requested that flowers be omitted.” (*Santa Cruz Evening News*, March 20, 1913, 8:3)

Wyatt, John J. (attorney, Salinas, partner of Pedro E. Zabala Jr.) **I:** 2, 14-16, 197, 211, 314, 364, 373-376; testimony commenced **I:** 372; testimony concluded **I:** 377; mentioned **II:** 32-33, 55, 104; **III:** 46) The *Californian* of Salinas, published on Wednesday Evening, March 24, 1909, (1:3) an announcement of his death, and Funeral March 25, 1909 at the Church of the Sacred Heart, Interment in the Catholic Ceremony) “... A large delegation from the Assembly will come in a special Pullman car tonight to attend the funeral. The visitors will return to San Francisco at 11:40 o’clock.” ¶ The *Californian* of Salinas, published a report of his funeral on Thursday Evening, March 25, 1909, (5:1) “LEGISLATOR AND LAWYER AT REST ¶ CALIFORNIA ASSEMBLY SENDS LARGE DELEGATION TO HONOR AN ABLE MEMBER ¶ Last Offices Paid to the Memory of the Hon. John J. Wyatt by Large Concourse of Friends. ¶ The funeral of John J. Wyatt, Assemblyman from this county and city attorney of Salinas, was conducted this morning. Mr. Wyatt passed away on Sunday afternoon and his obsequies were postponed until today at the suggestion of Speaker Stanton of the California Assembly, so that a delegation from the Assembly could come to Salinas and show proper respect to Mr. Wyatt, who was a very influential member of that body during the session of 1907. ¶ At midnight the Assembly delegation reached Salinas in a special Pullman car. They remained aboard their car until this morning. They number twenty-six and they are:

Speaker P. A. Stanton, Los Angeles.	R. L. Beardslee, Stockton.
Dominick J. Behan, San Francisco.	P. F. Cogswell, El Monte.
B. J. Collum, San Francisco.	J. A. Cullen, San Francisco.
A. M. Drew, Fresno.	James F. Feeley, Oakland.

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Samuel Fleisher, Santa Maria.	W. R. Flint, Hollister.
Fred C. Gerdes, San Francisco.	W. W. Greer, Sacramento.
Percy V. Hammon, San Francisco.	William J. Hanlon, Los Angeles.
George J. Hans, Fruitvale.	Louis W. Julliard, Santa Rosa.
Walter R. Leeds, Los Angeles.	J. B. Maher, Santa Cruz.
J. W. McClellan, Humboldt.	John J. McManus, San Francisco.
Frank Otis, Alameda.	Harry W. Pulcifer, Oakland.
Albert P. Wheelan, San Francisco.	W. B. Whitney, Healdsburg.
W. J. Webber, Hanford.	Rev. S. N. Marsh, Fresno, chaplain of the Assembly.

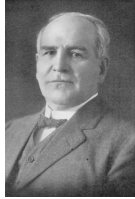
Soon after 9 o'clock the remains were escorted from the mortuary parlor to the Church of the Sacred Heart by the Salinas Aerie, Fraternal Order of Eagles, the mayor and city council, the Monterey Bar Association and the Assembly delegation on foot. Carriages and commodious conveyances followed to take the visiting lawmakers, the pallbearers and city officials from the church to the Catholic cemetery. ¶ The pallbearers were Thomas J. Field, Bradley V. Sargent, J. Henry Andresen, F. H. Lang, Joseph Lehmann and Bertie Rudolph. ¶ At the Church of the Sacred Heart solemn high mass was sung, the Rev. Father Meyer officiating. The church was filled and the floral offerings were many and very beautiful. The Assembly delegation brought a very elaborate piece. It was a floral spread which covered the casket and hung down the sides, composed of carnations, roses, geraniums and smilax artistically woven into a beautiful design. There were other exquisite offerings and the last resting place of the deceased lawyer and legislator was hidden with flowers when the friends who had assembled at his grave turned away and left him to rest in peace. ¶ Rev. Father Browne accompanied the remains to the cemetery and said prayers at the grave. ¶ The Assembly delegation returned in their special car on train 23 at 11:40 o'clock."

Wyckoff, Hubert Coke (attorney, Watsonville) "CLEAN," "MANLY," "STRAIGHT-FORWARD." ¶ Watsonville is the home town and Pajaro valley the birthplace of H. C. Wyckoff, the Republican nominee for Superior Judge. Nearly all of the years of his lifetime have been spent in this valley. Our older citizens have known him from the early days of his childhood, and no one has found a flaw in his daily life or a blot upon his character. He is a clean, manly, straightforward citizen—and in legal training and experience, and in cleanliness and honesty of daily life, he is admirably fitted for the Superior Bench. Elect him to the bench and he will dignify the position and make its record one of which all good citizens will be proud.—Pajaronian" (*Santa Cruz Surf*, November 1, 1902, 1:3). ¶ "Burke's Mass Meeting. ¶ EDITOR SURF:—George P. Burke, of Watsonville, a prominent democratic attorney, addressed a great number of citizens of Santa Cruz, on Cooper Street, last evening, his topic being the Judgeship of Santa Cruz County. He spoke from the standpoint of a democrat, saying that he was supporting the democratic nominee for Governor, and a majority of the democratic nominees on the democratic ticket; but could not support Lucas F. Smith because he believed him to be unqualified for the high office of Superior Judge. Contrary, to the expectation of some people, Mr. Burke did not descend to abuse, but spoke in a gentlemanly way, and fortified his remarks by reading from the records of the Court. His talk was a convincing one and seemed to have a great effect on his audience. ¶ A number of hoodlums, not one in ten of whom had a vote, attempted to break up the meeting by shouting and hooting, but they were quickly suppressed, and the large concourse of citizens present expressed with one voice the sentiment that in this free county, it was a very poor cause which would resort to such methods to prevent a discussion of any candidate's public career. The meeting dispersed with enthusiastic cheers for H. C. Wyckoff, the next Superior Judge of this County. [by] FAIR PLAY." (*Santa Cruz Surf* November 1, 1902, 1:4)

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Wyman, Addi Wesley (County Supervisor, appraiser of estates) among the public officials of Santa efficiency have made them county supervisor, living at Soquel line, of Yankee parents, who Hampshire. Our subject was born (McGaffey) Wyman, of English and



Grass valley, California, as long ago as 1849, but later returned to Canada, where he became well-to-do. In 1874, he again came to California, and this time took up his residence at Santa Cruz, where he died and his remains were interred in the cemetery of the Odd Fellows. ¶ Addi Wyman is the product largely of the excellent schools of Canada but he was fortunate in coming to California when only twenty years of age, so that he has been able, for years, to study conditions here and to keep himself in close touch with the spirit of the Californians. He first followed agricultural pursuits and then learned the trade of millwright. Having reached the Golden state on the 1st of April, in the Centennial Year of '76, he began to work for Grover & Company, and continued in their sawmill in Soquel Canyon for ten years. Then he took up contracting and building for himself and continued a leader in that field for thirty-six years. He also built many roads and bridges in various parts of the county, and especially in this section, so that he became very familiar with the district. ¶ From 1902 to 1906, Mr. Wyman served his first term as supervisor, and on January 1, 1921, he was reelected. He has been very active in road work and since he gives all of his time to his public duties and is most conscientious in the discharge of what is expected of him, he has succeeded in equipping his district with as fine highways as may be found, in their class, anywhere in the state. He made all of the grades between here and Watsonville and he is the pioneer in the matter of good roads in this part of California. He is noted for his successful "fills" on a very extensive area, and he may point with pride to fine highways built by him over thirty years ago and still in excellent shape. His bridges, also, have stood the test; and his grades were accepted and used by the state highway commission. ¶ Not long ago, when Mr. Wyman was a candidate to succeed himself as supervisor of the second supervisorial district, a newspaper said of him: "By all means, he should be reelected for another term. The administration of Supervisor Wyman is beyond doubt or question the most progressive one attained by any supervisor of this mountainous district in the past quarter of a century. When Mr. Wyman assumed the duties of supervisor, he found the one hundred and forty miles or more of roads in a deplorable condition; a district with practically no equipment, dissatisfaction was rampant among the taxpayers who were residents of his district and were not on the paved highway. His management of the duties of his office, therefore, has been such as not only to win the admiration and approval of his constituents, but has given him an enviable reputation among the members of the state highway commission, and others also of authority in road building. ¶ "With the thought of his district and the county ever in mind, Mr. Wyman has been the means of securing several thousand dollars' worth of government trucks that had been turned over to the state highway commission to be loaned or rented to the various counties at a rental of one dollar a year per truck." ¶ On the 21st of September, 1882, Mr. Wyman married Miss Anna Jane Parrish, a daughter of Joshua Parrish, of Soquel. Her father was born in Ohio and came to California in 1849, but in 1853 returned to his native state, where he married Narcissa Dell. The same year he returned with his bride to Soquel, where he bought a large tract of land, making his home there until his death, which occurred July 24, 1898. His wife survived him until May 9, 1911, dying at the home of Mr. Wyman. To our subject and his wife have been born the following children: Lorretta is now Mrs. John Maddock; R. V. Wyman is a farmer of Modesto; Fay M. Wyman was killed in service in France during the World war, at the early age of twenty-six, on October 26, 1918. He had enlisted in the regular army, and was a member of the Fourth Division of the Fifty-ninth Regiment.

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Ruth is now Mrs. Harry Mitchell. There are four grandchildren. ¶ Mr. Wyman is a republican, and an Odd Fellow, having passed through all the chairs of that fraternal organization, and been a member of the Grand Lodge since 1884. He has been secretary for twenty-five years of the Modern Woodmen of America, and has passed through all of the chairs of the Knights of Pythias. He was captain of his military company for three years, and was retired with the rank of major. He is also musically gifted, and for eighteen years sang in the Congregational church choir of Soquel.” (*History of Monterey and Santa Cruz Counties, California*. ... {Volume II, pgs. 174-179}. ... Chicago, The S. J. Clarke Publishing Co., 1925.)

X, Y

Younger, Charles Bruce Jr. (Attorney). “Counter Affidavits In Johnston-Dakan Case. ¶ The case of D. W. Johnston vs. Thomas B. Dakan also came up, in which Charles Dakan, and his client have both made affidavits demanding the case, on the grounds set forth in the “Sentinel” of Tuesday. ¶ The attorneys for the plaintiff, Messrs. Cassin and Lucas, stepped into the breach in five days’ delay so that they could prepare counter affidavits. This was granted by Judge Smith and the hearing set down for Thursday, October 19th.” (October 11, 1905, 6:2). ¶ “WALKS OUT OF COURT ROOM ¶ C. B. YOUNGER, JR., REFUSES TO PROCEED WITH JOHNSTON-DAKAN TRIAL. ¶ When Judge Smith Refuses to Consider Motion for Change of Venue. ¶ A dramatic scene was enacted in the Superior Court on Thursday afternoon when Attorney Charles B. Younger, Jr., walked out of the court room to emphasize his refusal to proceed with the case of Johnston vs. Dakan, in which Judge Smith had just refused his motion to call in another judge on the ground of the alleged bias and prejudice of the Judge against him. ¶ Mr. Younger and his client, Dakan, made affidavits some days ago in which charges against the Judge of partiality toward Johnston and his attorney, C. M. Cassin, and bias and prejudice against Mr. Younger were made. ¶ Judge Smith and Attorney Cassin both filed counter affidavits, in which they denied favoritism and declared that Dakan should have a fair trial. Judge Smith’s affidavit states that he would call in another judge, as requested, only that he believes that a certain few attorneys in this county are determined to disqualify him in as many cases as possible, whether he is disqualified or not. In order to properly administer his office he refuses to accede to their request. He also states that any unkind feelings he may have towards Attorney Younger as one of those who took part in the impeachment proceedings will not be permitted to sway him in the slightest degree against Dakan, Mr. Younger’s client. ¶ When the case was called in court on Thursday and the motion for a change of judge was denied, Attorney Younger gave notice that he would move for a change of venue one week from Friday. The other side waived notice and Judge Smith ordered the case to be proceeded with at once. Thereupon Mr. Younger walked out of the courtroom. A subpoena was later issued for Mr. Dakan as a witness, who asked for a continuance until this Friday morning to consult with another attorney. ¶ Judge Smith granted the continuance, advising Dakan to get another lawyer. ¶ Messrs. Dakan and Younger were both seen on Thursday night and stated that Mr. Younger had not withdrawn from the case, and would not withdraw. What their course would be when the case comes to trial in the morning they would not state, but Mr. Younger declared that he as perfectly within his rights in refusing to proceed, on the ground that Judge Smith has no right to try the case until the motion for change of venue has been decided.” (*Santa Cruz Sentinel*, Oct 20, 1905, 13:2) ¶ “Charles B. Younger [Jr.], dean of the legal fraternity of Santa Cruz, died at 5 o’clock yesterday afternoon at 212 Walnut avenue. The attorney, president of the Santa Cruz county bar association for many years and holding that position at the time of his death, was 61 years old last December. A native of Santa Cruz, he had practiced law in this city for 37 years and had,



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prior to that time studied law in the office here of his father, who was also Charles B. Younger. He was a graduate of Stanford university in the class of 1896. He is survived by his widow, Mrs. Agnes Hihn Younger, the only surviving child of F. A. Hihn, pioneer capitalist of Santa Cruz. A sister of Mr. Younger is Mrs. C. K. (Helen) Chase of Clinton, N. Y., wife of Prof. C. K. Chase of Hamilton college. Five grand children also survive Mr. Younger, Donald Bruce, Robert Robson and Helen, children of Mr. and Mrs. Donald Younger of this city; and Jean and Ruth, daughters of Mr. and Mrs. Bruce Hihn Younger. (*Santa Cruz Evening News*, May 13, 1935, pages 1:2 & 3:1) ¶ “The end came as a shock to his many friends throughout the city, who respected him for his many strong traits of character. The Superior Court was in session Thursday when the news of his end was brought to Charles M. Cassin, one of the attorneys in the Colton case. Mr. Cassin immediately moved that when the court adjourned, that it adjourn out of respect for Charles Bruce Younger.” ¶ “Dean of Santa Cruz Bar Died Here Sunday ¶ Charles B. Younger to Be Buried This Morning ¶ Charles B. Younger, dean of Santa Cruz bar and president of the county bar association for many years, member of a pioneer family and a loyal friend and citizen, passed away Sunday afternoon [May 12] at 212 Walnut avenue. The flag at the court house is at half mast as he had served as trustee of the Santa Cruz Law Library. ¶ The Elks flag floats at half mast as he was a member of that fraternity. ¶ The last tributes will be held today. The body yesterday afternoon was removed from the Wessendorf Mortuary to the family residence at 20 Laurel street, where he was born 61 years ago, December 28. The funeral cortege will leave there this morning at 8:30 o’clock for Holy Cross church, where at 9 o’clock a requiem mass will be said for the repose of his soul. Interment will be in the family plot at Holy Cross cemetery [the old section on Capitola Road Extension]. ¶ As a youth Younger attended the schools of this city, graduated from the Santa Cruz high school and was always interested in the Santa Cruz High School Alumni Association. Following his graduation he attended Stanford University and graduated with the class of 1896. He studied law with his father who started to practice here in 1857. The father, C. B. Younger, stood high in the legal profession. Mr. Younger, whose office was in the building and rooms occupied by his father at the Lower Plaza, practiced law for 37 years. He was recognized by the legal fraternity of the state as one who stood for the highest ethics of the profession. ¶ Mr. Younger never recovered from injuries received when he was run down by an automobile over two years ago on Pacific avenue near Laurel street while he was crossing the street. He had been able only a few times since the accident to appear in court. ¶ He had a trait of deep and sincere loyalty, and especially showed this to his friends from childhood days. His friendship was one prized by many as it was deep, sincere and lasting. ¶ No one will ever know of his many kindnesses and charitable acts, but he will be missed especially by older residents with whom he had grown up. They were from all walks of life and they will deeply mourn his passing. ¶ He is survived by the widow, Mrs. Charles B. Younger (Agnes Hihn) of Santa Cruz and Berkeley, the only surviving child of Mr. and Mrs. F. A. Hihn; sons, Donald Younger, attorney-at-law, Santa Cruz, the third generation to practice here, and police judge of the city, and Bruce Hihn Younger, graduate of the University of Oregon, who has just completed his second year of law school at the University of California at Berkeley, a resident of Santa Cruz and Berkeley; a daughter, Mrs. B. A. Hartman (Jane Younger), of Berkeley, and a sister, Mrs. C. K. Chase (Helen Younger), of Clinton, New York, wife of Prof. C. K. Chase of Hamilton College. She was here at the time of his passing. She was at one time a member of the faculty at the local high school. There are five grandchildren — Donald Bruce Younger, Robert Robson Younger and Helen Hihn Younger, children of Mr. and Mrs. Donald Younger; Jean Younger and Ruth Younger, children of Mr. and Mrs. Bruce Hihn Younger. ¶ All of the members of the family have been here. ¶ The oldest, an aunt, Mrs. Rosalie Younger Andrews, arrived yesterday. ¶ Mr. Younger was a third generation Californian, on both the father’s and mother’s side. One grandfather was Coleman Younger, who first came to California by way of the Isthmus of Panama in 1851 with Patrick

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Russell, who afterward became secretary of the U. S. treasury. He stayed only a few months but two years later came a second time to California, crossing the plains with his family, which included a daughter, who is now Mrs. Rosalie Younger Andrews of San Jose, president of the Santa Clara County Pioneer society. ¶ Coleman Younger's oldest daughter was a Mrs. Coffin of San Francisco, one of whose daughters, Mrs. James Edwards, is in Santa Cruz today. ¶ His mother, Jennie [*sic*] Hudson Waddell, was a daughter of William White Waddell, after whom Waddell gulch and Waddell creek up the coast were named. He was one of the first lumbermen of the county. ¶ The Youngers in American colonial days were residents of Maryland and seven brothers of that name fought in the American revolution. In payment they received land in Kentucky and Missouri." (*Santa Cruz Sentinel* Tuesday, May 14, 1935, 1:4)

Younger, Charles Bruce Sr. (attorney) 1831 – 1907 “Charles B. Younger, the oldest practitioner in law in this city, passed away at his home on Laurel St. Friday unconscious since Thursday night, the cause of his coming peacefully. ¶ An old man, past the three mankind, he bore his years well and his mind was Thursday, when he became unconscious. However, two years. ¶ A newspaperman in the “fifties,” morning. Mr. Younger had been death being cerebral congestion, the end score and ten usually allotted to remarkable for its clearness until he had been failing in health for the past journalism always possessed a fascination for Mr. Younger. Every day, as regular as a clock, he dropped into the “Sentinel” office with a quaint or humorous remark concerning the weather or “politics”. After securing a bundle of exchanges, he would leave for his home for their perusal. He will be missed by the whole “Sentinel” staff. ¶ The end came as a shock to his many friends throughout the city, who respected him for his many strong traits of character. The Superior Court was in session Thursday when the news of his end was brought to Charles M. Cassin, one of the attorneys in the Colton case. Mr. Cassin immediately moved that when the court adjourned, that it adjourn out of respect for Charles Bruce Younger. ¶ The following sketch of the life of Mr. Younger is taken from Prof. J. N. Guinn’s Historical and Biographical Record, published in 1903. ¶ The distinction of having engaged in general law practice in Santa Cruz for a longer period than any other practitioner in this city belongs to Mr. Younger, whose identification with the professional interests of this city and county covers little less than half a century. ¶ During all of these years he has not only gained a high position among the attorneys of the locality, but at the same time has been identified with the general progress of city and county and has aided largely in those measures that promise to promote the welfare of his fellow citizens. ¶ The descendant of a Maryland family who were early settlers in Maryland and took part in the Revolutionary War, Mr. Younger was born in Liberty, Clay Co., Missouri, December 10th, 1831, a son of Coleman and Eleanor Younger. His father served in the Missouri Legislature and in 1850 came to California by way of Mexico. After settling in this State he gave his attention to agriculture raising short-horn cattle, and died here at the age of 81 years of age. ¶ As a boy Charles attended private schools. At the age of six he was placed under a tutor in Latin, his father deeming it essential that a lawyer should be versed in that language. ¶ In 1848 he entered St. Joseph’s College at Bardstown, Ky., and in 1850 became a student at Danville, Ky., from which he graduated in 1853. Subsequently he engaged in study of law with Joseph F. Bell, of Danville, Ky. In 1854 Mr. Younger was admitted to practice as a lawyer in the courts of Kentucky. ¶ Coming to California Mr. Younger settled in San Jose, where his father was a resident. Opening an office in that city, he remained there until 1871[?], and in the meantime also practiced in Santa Cruz, but the climate of the latter city proved so satisfactory that he determined to establish himself here permanently. Since April of 1857 he has had an office in Santa Cruz and has been connected with some of the most important legal cases of the county, besides acting as legal representative of the railroad companies during recent years. ¶ October 16th, 1858, the first overland mail stage via El Paso and Los



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Angeles arrived at San Jose, which was the furtherest [sic] telegraph station south of San Francisco, Mr. Younger, who was then editing the *San Jose Tribune* sent to the *Alta California* of San Francisco the first telegram announcing the arrival at San Jose of the overland mail stage, and this telegram gave the San Franciscans an opportunity for celebration on the arrival of the stage in that city. In his practice Mr. Younger is keen, shrewd and careful; a constant and thoughtful student of the highest legal authorities of the age, and a believer in the principles of law and practice as laid down by Blackstone, Coke and others. In his addresses and private conversation, a quaint and quiet humor is noticeable, while at the same time he is logical and possesses fine reasoning faculties. He has one of the finest libraries in the coast region. March 27th, 1873, Mr. Younger married Jennie H. Waddell, who was born in Lexington, Missouri, and who came to California in 1860, with her father, W. W. Waddell, who was a large timber merchant in Santa Cruz Co. One of her brothers is a teacher in Santa Clara College. Mr. and Mrs. Younger have two children, Charles B. and Helen. At the time of the incorporation of the Pacific Av. railroad Mr. Younger became a stockholder in the same and also a stockholder in the banks, besides taking part in other movements for the benefit of the city. He assisted in the founding of the Santa Clara Valley Agricultural Association and for a number of years officiated as secretary of the board. Since coming to Santa Cruz he has made various investments in real estate and still owns a considerable property, portion of which is improved. It is to such progressive men as he that Santa Cruz owes the advancement it has made in enterprises of moment and of permanent value to the city." (*Santa Cruz Evening Sentinel*, Saturday, March 23, 1907, 1:3-4)

Younger, Coleman (father of Charles Bruce Younger Sr.). When his second trip to California, coming across the plains with his head of cattle. Arriving in San Jose he rented pasturage in Alum bought part of an old grant and founded his home, "Forest Home," [Coleman Younger's] son, who was Charles B. Younger, Sr., 1857 to begin the practice of law. ¶ Shortly after three o'clock Coleman Younger (well and familiarly known as Colonel chair at his home near San Jose, when a sudden attack of heart and he dropped dead. His son, C. B. Younger, of this city, who was in San Jose at that time, was immediately notified and hastened to the home of his father. He had left him in the best of health at one o'clock and was painfully startled at the news of his unexpected death. Colonel Younger was in the eighty-first year of his age, a native of Missouri, and leaves a wife and nine children. He was married three times, four children surviving him from his first wife, one from the second, and four from the last, all but two of whom are residents of California, one daughter residing in Kentucky and a son in New Mexico. The deceased came to California in the mining days, returning to Missouri soon after, where he was married to his first wife. He again came to this State and took up his permanent residence at Forest Home, about a mile north of Hotel Vendome, San Jose. Colonel Younger has been a prominent citizen of the Garden City for about forty years and leaves many friends throughout the State. He was a frequent visitor to Santa Cruz and had intended to celebrate his birthday anniversary next Thursday. (Source: *Santa Cruz Sentinel*. April 12, 1890, 1:7)



Coleman Younger made family, he drove 500 Rock canyon and later on the Alviso road. His came to Santa Cruz in Friday afternoon Younger) was seated in a disease came upon him

Younger, Helen (daughter of Jeannie Waddell Younger & Charles Bruce Younger Sr.) (Mrs. Helen Younger Chase) PARTITION SUIT DECIDED. In the partition suit of Helen M. Moore against Chas. Moore et al., Judge Dooling on Friday decreed that the Moore ranch, with the exception of the homestead would be partitioned as follows: Helen and Chas. B. Younger, Jr., together 2-15, Stella Moore, Helen M. Moore, 2-15 each, and to the F. A. Hihn Co. the remaining one-third, subject to the conditions of the trust deed. The

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homestead is divided as follows: Charles, Stella and Helen M. Moore, 1-6 each, the F. A. Hihn Co. 1-2, subject to conditions of the trust deed. (Source: *Santa Cruz Sentinel*, January 9, 1904, 3:2)

Younger, Jeannie Hudson Waddell (Mrs. Charles Bruce Younger Sr.) “A choice soul was removed in the passing of a noble woman, greatly beloved in Santa Cruz for many years. Mrs. Jeannie Younger, who died at the family home on Laurel street, where she went a short time after her Younger in 1873, who figured for many Younger was born in Lexington, Mo. Kentuckian by birth. As a young man California, and the stream and gulch up family to which she belonged. Her Waddell gulch he operated a lumber San Lorenzo river. Mrs. Younger had a great love for the beautiful and knew what was of real value in art, and developed her artistic instincts, especially in the ceramic arts, and had done much in hand painted china. She had a wonderful collection in paintings, china, the rugs and other beautiful bits from the orient which she gathered and which to her were always a source of pleasure. No one in the community appreciated flowers more than Mrs. Younger and the many years she made her home on Laurel street it has been one of the places to which people would go out of the way, so as to view the gardens. In the conservatory and in her garden were many rare and choice plants to which she devoted much of her time. In the days of the fairs given here, the country and floral fairs, she gave much of her energy and assisted in the arrangement and in the entering of exhibits and success crowned her efforts. Mrs. Younger was associated with the Woman’s Exchange and Decorative Art society from its first days, being a life member. Two other organizations that figured in this community life in days past and fostered by the older generation of women and which did much good, the Improvement society, which figured in civic improvement and the Woman’s Aid society, a worthy charitable organization which did much good, she was interested. In later years Mrs. Younger made a trip around the world, and few were as prepared with knowledge as to receive the benefit of such a trip as was derived by her. She was a home loving woman and she was one to whom the home life had first place. At the time of death Mrs. Younger was 80 years old. Her husband, whom she married in 1873, died in 1907. Her children are Charles B. Younger of this city and Mrs. Helen Y. Chase of Hamilton college, Clinton, New York. Her grandchildren are Charles D., Bruce H. and Jane, children of Chas. B. Younger, and Cleveland B., John W. and Peter L. Chase, sons of her daughter Helen. (Mrs. Chase with her sons is now traveling in Europe.) Her brother, John A. Waddell, resides at the University of Santa Clara, in which institution he has been an instructor for many years.” (Source: *Santa Cruz Sentinel* August 25, 1922, 8:4)



Z

Zabala, Pedro Eduardo (attorney, Salinas) Born in January 1867 in Monterey, CA, he died on December 31, 1928, in Salinas, California. He was the son of Pedro Zabala and Ana L. Zabala [Anna Hartnell]. Pedro Eduardo’s wife was Alice. ¶ “Pedro Zabala. [the father] This gentleman, though not himself boastful or vain, it is but just to remark, bears a name distinguished in the annals of Spanish history, and is himself descended from one of the most noted families that did honor to the name. ¶ Mr. Zabala was born in Bilbao, Biscay, Spain, June 29, 1826 [or 1824]. Although brought up in a fertile country, where the soil was generous and compensating, and where he was inured to farm life in childhood, he always evinced business tastes and aspirations. After studying in the government schools, he took a commercial course and was

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shortly afterward placed behind the counter as a clerk in his native city. ¶ In 1843 he set out for the west coast of South America, which so many of his countrymen had sought and where they had achieved fortune, and landed in Valparaiso, Chili. There he was employed in a large importing and shipping house, and so thoroughly adapted to the business did he show himself that after five years of service he was sent by his firm to San Francisco to dispose of a large cargo, and determine upon the expediency of opening up a branch house in that city which had become the cynosure of the commercial eye by reason of the wonderful gold discoveries. He arrived in San Francisco, February 20, 1849, disposed of his cargo, and, like many thousands of others, was lured to the mines. He prospected, with indifferent success, in what is now Calaveras county, and other localities [*sic*]. Tiring of the uncertainties of a miner's reward, he returned to San Francisco after an absence of a few months, intending to sail direct for Chili. Hearing of Monterey, of its climate and harbor, and that business was brisk and inviting there, he went to Monterey, arriving October 1, 1849. There he engaged in general merchandising, conducting it profitably for nine years and laying the foundation of his present affluent position. Having acquired large tracts of land, he retired from business and devoted his energies to the cultivation of the soil and to the raising of stock, in which he is still prosperously engaged. He has made Salinas his home for many years., it being convenient to some of his largest holdings. ¶ Mr. Zabala married April 24, 1859, to Miss Anna Hartnell, a daughter of the distinguished and highly esteemed pioneer, William E. P. Hartnell. Nine children out of the fifteen born to them are not living, and Mr. Zabala in the evening of his days is as blessed with domestic happiness and worldly goods as man could well desire." (Source: Barrows, Henry D.; Luther A. Ingersoll. *A Memorial and Biographical History of the Coast Counties of Central California*. Illustrated. Chicago : Lewis Publishing Co., 1893. pg. 269-270.) Pedro Zabala died in Monterey on March 13, 1917. (Ancestry.com)

Ziegler, Amos K. "ZIEGLER MUST HANG. ¶ SUPREME COURT REFUSES HIM A NEW TRIAL. Verdict Affixing the Death Penalty Stands Against Him. ¶ On Monday Knight received word that the Supreme Court had refused to grant Amos K. Ziegler, under sentence of death for the murder of his wife, a new trial. Ziegler will be brought back to Santa Cruz for resentence. Unless the Governor intervenes Ziegler will be executed at San Quentin within ninety days. ¶ The crime for which the prisoner is under sentence of death was an atrocious one. Principally through his own confession was he convicted. Insanity was the plea at both trials. At the first trial the jury returned a verdict of murder in the first degree, with life imprisonment. When a new trial was granted the Supreme Court stood four to three. At the second trial the jury brought in a verdict of murder in the first degree, without any recommendation, which meant the death penalty. On May 26th, 1902, Ziegler was sentenced. Soon thereafter he was taken to San Quentin, where he has since remained. Among the grounds for a new trial, on the second appeal, was that the Court had refused to grant a continuance because of the absence of W. B. Sharpe, an important witness. ¶ It was on August 6th, 1900, that Ziegler, in a fit of jealousy, followed his wife, after a quarrel, from their home in Doyle Gulch, to the roadway, where he caught hold of her and cut her throat with a butcher knife. He left her in the road and then walked away. Hearing her moaning he returned, and once more drew the knife across her throat, saying that he wanted to put her out of her misery. Then he calmly walked away. When he entered the house he told his mother-in-law and W. B. Sharpe, his brother-in-law, what he had done. He then walked outside to the porch where he attempted to commit suicide by cutting his throat with the same knife with which he had ended his wife's life, but the wound healed. The people who saw the body of the poor woman as it lay in the roadway with the hideous gash in the throat, with the head almost severed, were horrified at the sight. ¶ Ziegler freely gave the details of his crime to the officers, and said he did not care to live any longer and was ready to plead guilty, being



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anxious to let the law take its course. But as the months rolled around he was not so desirous of pleading guilty, and was willing to stand trial. ¶ Ziegler was many years older than his wife, who was a young woman. Before coming to this county Ziegler was a Probate Judge in Montana. He has two brothers in Philadelphia. The prisoner is physically a large man, weighing in the neighborhood of 300 pounds. ¶ It is not likely that the Supreme Court will grant a rehearing, for all of the Justices concurred in the decision.” (*Santa Cruz Sentinel* March 1, 1904, 3:4) ¶ “ZIEGLER DIES IN STATE PRISON. ¶ On Monday evening Sheriff Trafton received a letter from the Warden of San Quentin stating that Amos K. Zeigler had died at 12:15 A. M. Monday.” (*Santa Cruz Evening Sentinel* March 22, 1904, p. 1:2)

Zimmerman, Paul (insurance agent in Brazil, Indiana -- had claim for \$26 against Mr. Aydelotte I:196)