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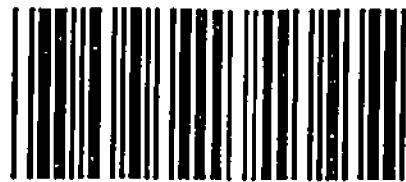
2711

DESCRIPTION:

Kelly, Bernard J.

DATE:

11/23/87



2711

POOR QUALITY
ORIGINAL

0010

Witnesses:

Counsel,

Filed 23 day of Nov 1887

Pleads

THE PEOPLE

Forgery in the First Degree.
(Section 510, Penal Code)

Bernard J. Kelly

1913 Jan 3 before day added not found
RANDEPH B. MARTINE,

District Attorney.

A True Bill

W. C. Magowan
Foreman.

May 18-1888
for the reasons filed
herewith, I recommend
that this Indictment be dismissed
J. R. Kelly
District Attorney

5th District Police Court
New York July 20th 1887

The People on Complaint of
Paulus Sachse
against
Bernard J. Kelly

Examination

Examination before
Hon.

Andrew J. White
Police Justice

Appearances
For People John M. Conant
and Mitchell Levy
For Defendant J. C. Lowe
~~Cornelius~~ O'Reilly
S. C. Doty

Rose Bolt, a witness, being
duly sworn, testified as
follows, on behalf of the people
Direct examination by

Mr. Conant

Q. Where do you live?

A. 160th Street.

Q. Near where?

(1)

Fifth District Police Court
New York September 17th 1887.

Paulus Sachse }
vs. } Forgery
Bernard J. Kelly }

Examination resumed September 17th 1887, before,
Hon.

Andrew J. White
Police Justice

Appearances

For People

Messrs Levy, Coman
& Simonson

For Defendant

Messrs Lowe
Heilly & Dopty

Frederick Fisher, interpreter of
7th District Court sworn to act as
as interpreter in this matter
by the Court.

Paulus Sachse, a witness, ^{for the People} being
sworn testified as follows =

Direct Examination by Mr Levy

Q. Where do you live?

A. Cortlandt Avenue.

Q. What number?

A. 748.

Q. What is your business Mr Sacher?

A. Sailor.

Q. How old are you?

A. 51 years.

Q. Where is your place of business?

A. I work here in Harlem. I
worked here for over 20 years.

Q. Did you know Ewald Bolt in
his life time?

A. Yes sir.

Q. Where did he live?

A. In 160th Street.

Q. Near what Avenue?

A. Near Cortlandt Avenue.

Q. Do you know when he died?

A. Yes sir.

Q. When did he die?

A. He died the 13th of November 1886

Q. Last year?

A. Last year.

Q. Do you know where he died: did
he die at his house in 160th St.?

A. He died in his house.

Q. Do you know whether he left any
last Will and Testament?

A. Yes, I knew after he died, not
before.

- Q. Was that Will brought in the
in the Surrogate's Court?
- A. It brought it there?
- Q. And was the will admitted by
the Surrogate as the will of
Ewald Bolt deceased?
- A. It was.
- Q. You qualified as the Executor
of the will of Ewald Bolt, did
you not?
- A. Yes sir.
- Q. Have you in your possession, the
original bond and mortgage,
which was executed by Bernard
J. Kelly to Ewald Bolt, deceased,
or Ewald Bolt, deceased?
- A. It has.
- Q. How long have you had possession
of the original bond and mortgage?
- A. Mr Bolt died about 3 o'clock in
the morning, and that same
morning his daughter brought me
all the papers.
- Q. Has the original bond and mort-
-gage been in your possession since
that time?
- A. It has.
- Q. Did Annie Bolt work for you?
- A. Yes sir.

- Q. At what time, between what days?
- A. Before her father died?
- Q. Yes?
- A. She worked for me last fall.
- Q. Do you recollect whether she was working for you, the three days preceding the death of her father Ewald Bolt?
- A. She didn't work for me on those days.
- Q. How do you know that she was not working for you?
- A. Because I was sick myself.
- Q. Do you know where she was on those three days preceding the death of her father, of your own knowledge?
- A. She was at home as much as I know.

Cross examination by Mr. Lowe

Q. How do you know that she was at her father's house on those 3 days before his death?

A. Because she told me herself that she was at home. She never goes any where else.

Defendant's Counsel moves to strike out witnesses testimony as to where she was on those three days.

Consented to by Peoples Counsel.

L. Where you informed by any person that the girl was at home by her father -

Objected to because it is calling for hearsay testimony - Question is withdrawn.

for the People Julius W. Hupfield, a witness being sworn testified as follows -

Direct examination by Mr Levy

L. Where do you reside, doctor?

A. 352 Willis Avenue

L. What is your business?

A. Physician.

L. Did you know Edward Bolt in his life time?

A. I did.

L. Do you know where he resided?

A. I do.

L. Where you his medical attendant in his last illness?

A. I was.

L. What was the nature of his sickness

A. Well, it was lung trouble.

L. How long has he been sick?

A. For several years.

Q. How long had you been attending him?

A. Over a year and a half, something like that - Over a year.

Q. You drew up the last will and testament of Ewald Bolt, did you not doctor?

A. I did.

Q. Do you remember when that was drawn up?

A. It was drawn the day before, but it was signed on the 11th of November of last year I think, yes it was last year.

Q. Whereabouts was it executed?

A. In his own room.

Q. Were you one of the witnesses to the will?

A. I was.

Q. What was the condition of Mr Bolt on the 11th day of November 1886?

A. He was very sick - very low - in fact very sick.

Q. Was he rational and did he understand what he was doing on the 11th day of November 1886?

A. He did every bit of it.

Q. How often did you see him on the

11th of November?

A. On the 11th of November I think only once & I remember that I saw him on the 11th. That day he made the will, I remember that distinctly, it is now some time ago but I seen him that day.

2. Did you see him on the 12th of November?

A. Yes sir, I seen him several times on the 12th.

2. About how often?

A. In the first place I seen him early in the morning.

2. What time was that?

A. That was during my office hours between 8 and 10.

2. How long did you stay there the first time you saw him?

A. That is hard to tell, I stay some little time, about the usual time I stay in patients houses.

2. What was his condition on the morning of the 12th of November 1886 when you first saw him?

A. He was much worse than the day before.

2. How was he so far as his mental capacity was concerned? (7)

- A. Well he didn't care for anything much that day at all. He did not take much notice of me. I spoke to him but he never answered, only just bowed.
- Q. Do you think he was in a condition to comprehend what you were talking to him about?
- A. At that time I think he knew yet, what I was talking about.
- Q. That was in the morning?
- A. Yes sir.
- Q. You say he distinctly understood what you were saying on the morning of the 12th?
- A. Yes sir.
- Q. When did you next see him on that day?
- A. In the afternoon.
- Q. Do you know what time?
- A. Well it was right after my dinner.
- Q. How long did you remain there?
- A. I was most of the time there the whole afternoon.
- Q. From what time to about what time, were you there in the afternoon, as near as you recollect?
- A. Well I take my dinner about one o'clock, I made it my first call
- (8)

and stayed there till dark.
2. And how long did you remain there?

A. I was most all the afternoon there until it became dark, and then I went away, and went there again afterwards.

2. What was his condition on the 12th of November, in the afternoon?

A. He was absolutely out of his mind and knew nothing about himself.

I would lift him up and put pillows behind his back, and lay him in a decent position - He was laying down all cramped on his side, so he couldn't breathe easy. He didn't seem to care whether I did it or not, I asked him did that feel better, and he only moaned.

2. He was speechless was he?

A. He didn't speak to me.

2. Was he in a condition to speak?

A. He moaned, he didn't speak.

2. Was he helpless?

A. I call that helpless.

2. He couldn't move himself at all?

A. He dragged himself around on his side and afterwards when I came

//

the last time I again several times lifted him up in the same position as I did the first time.

2. The condition you have described Mr Boltz, do you consider he was in a state of coma?

A. Well no, I wouldn't call that coma, he was in a stage of full exhaustion, but he was not entirely comatose then; in the evening he was.

2. Was he capable of comprehending anything that was said or done in his vicinity?

A. No sir, he didn't comprehend anything in the afternoon, in the morning he nodded when I said anything, but in the afternoon he didn't seem to comprehend anything ~~any~~ that I said.

2. Was he in a comatose condition at that time?

A. Well his pulse was very rapid, but you can't call it comatose exactly but he was irresponsible. He didn't care for anything. He looked as though he didn't understand what you were asking him.

2. Was he in a condition to transact

- a. any business or any private matters
no, not the whole day. In the morning he mumbled something but he didn't comprehend what I was saying though.
2. do I understand you to mean, in the morning his mind was wandering?
- a. He was off and on - sometimes he would know what I was talking about, by nodding. I would say "don't you feel better Mr Bolt", he would groan.
2. He could not speak in the morning?
- a. No sir.
2. Was he in a condition in the morning to write his name on paper?
- a. Well great God no, I wouldn't think so.
2. Was he in a condition to write his name?
- a. No sir.
2. The day he signed his will he was scarcely able then?
- a. Yes sir.
2. And on the 12th in the morning he was not in a condition to sign

his name to any document?

A. No sir, I didn't consider him to be in that condition that day.

Q. He was not in condition on the morning of the 12th when you called there, to sign his name to any document?

A. No sir, he was too weak and low to sign any paper that morning. I made a remark to his relations I said, "It is a good thing, we had that ~~Will~~ signed yesterday this morning he would not be able to do so."

Q. Was he in a condition in the afternoon, during your afternoon visit at any time, to transact any business?

A. No, under no circumstances was he able to do it.

Q. You called a third time on the 12th of November?

A. Yes sir.

Q. What time?

A. In the evening from half past 7 to half past 9 or 10, I couldn't tell exactly.

Q. What condition was Mr Bolt in at that time if you know?

- A. He was just in the same condition we don't consider that patients with that disease would die so quick as he did. I did not expect him to die the next morning - I have seen patients lay four days in the same condition until exhaustion sets in, and they drop off. I did not expect him to die by morning - I told him I would be there early in the morning.
- L. You say that in the evening when you called, his condition was still weaker than it has been during your afternoon visit?
- A. Yes sir.
- L. Was he at any time in a state of coma?
- A. Yes sir, it was not coma but deliriousness.
- L. In the evening?
- A. Yes sir.
- L. During the entire time you were there?
- A. Yes sir, I was going to tell you it was delirious, instead of coma.
- L. Do I understand you to mean that in the morning visit he was sometimes delirious, and his mind

was wandering.

A. Yes sir.

L. And in the evening visit his mind was wandering?

A. Yes sir, he didn't answer me in the evening at all, even by nodding. In the evening he raved. If you asked him questions he would answer them foolishly.

L. His answer had no connection with the question you may have asked him?

A. No sir. In the evening I spoke to him and the Minister spoke to him too, but he would only moan.

"I am going out tomorrow," he would answer. That showed he was entirely off - How could he go out tomorrow.

L. Do you mean his mind was raving in the evening, afternoon and morning?

A. Yes sir. In the afternoon he was not raving, but he was in that delirious condition, and if he would speak at all he would speak nonsense.

L. In your evening visit was Mr

Bolt able to intelligently understand any matters concerning which he was questioned, or was he in a condition to sign his name to any instrument?

A. He was absolutely not able.

Q. During the three visits that you made to his house on the 12th of November was anybody present?

A. Yes sir a number of people.

Q. Who were present on the first visit that you know?

A. Both of the girls I don't know their names

Q. What do you mean by both of the girls?

A. His two daughters, one is Rosa, I don't know the other's name.

Q. Is it Annie?

A. Yes sir, the youngest - the other one is Rosa?

Q. Then in your morning visit you saw there the two daughters of Ewald Bolt, Annie and Rosa Bolt?

A. And there was another person present, a girl, but I don't know her name, she appeared to be on friendly terms with the girls

Q. Did you see Henry Bolt there, the son

of Bolt deceased?

A. No sir.

L. Did you see Mr Kelly there?

A. No sir.

L. You knew Mr Kelly at that time did you?

A. I did, yes sir.

L. During your afternoon visit who if any one was present - Prior to the 12th of November 86, did you know the defendant Mr Kelly?

A. I knew him prior to the 12th of November by sight. I was not introduced to him, but I saw him in the parlor in that house when they transacted some business. I was told that was Mr Kelly - There was a transaction in Mr Bolt's house - I came there to see Mr Bolt as a patient and Mr Kelly, and several other gentlemen were there in the back room, and I intended to go in that room because I wanted to see my patient but I was taken back, and told that this Mr Kelly was a Lawyer and there was some transaction about a lot.

L. Do you think you could recognize

- Mr. Kelly if you saw him?
- A. How?
- L. Yes.
- A. I should say so.
- L. Look around the room -
defendants Counsel admits that
the witness knows Mr Kelly.
- L. Then you are positive that this gentle
man sitting here is the same
identical individual, you saw
at the house of Ewald Bolt at
the time you just spoke of, in
relation to some lots?
- A. Yes sir.
- L. Who was present at the house of
Ewald Bolt during your afternoon
visit on the 12th of November 1886.
- A. Well, there was both of the girls
again.
- L. Who do you mean?
- A. Rosa and Annie Bolt, the two
daughters of the deceased?
- L. Who else if any?
- A. There was one gentleman from down
town, I forgot his name, he was
a friend of the family, and Mr
Sackee, I am not quite sure though.
- L. Did you see a minister there in
the afternoon? (17)

- A. Now wait a moment, well I saw the Minister that day. but I don't know at which visit I saw the minister, I won't swear to that.
- Q. Do you think it was at the morning?
- A. No it was not.
- Q. You are not certain whether it was the afternoon visit or evening?
- A. If it was in the afternoon visit he came just before I left.
(Defendant's Counsel moves to strike out what he thinks.)
- A. I saw him positively that day I don't remember whether it was just before I left the second visit or right after I came in I think I am wrong, I remember now, when I made the last visit there were several parties there from down town - There were several gentlemen from down town that stand with the minister, and he came and went away while I was there.
- Q. What time in the evening?
- A. Perhaps half past seven or eight o'clock.
- Q. During your afternoon visit did

you see the defendant Bernard J. Kelly there?

A. No.

L. If he has been there would you have seen him?

(Objector to, that is a matter of calculation and inference)

L. Motion withdrawn for the present

L. Are you familiar with the construction of that house, doctor?

A. I am.

L. How many entrances are there to that house?

A. At that time there was only one to get to the house?

L. Where was that entrance?

A. On the side of the house

L. Leading to where?

A. Leading direct into the sick room.

L. How many rooms were there on the first floor?

A. There was a kitchen, bedroom and a little bit of a bedroom along side of that room where you had to go through, and the room what they call a parlor the front room.

L. Where was Ewald Bolt lying? (19)

- A. You come from the stoop, and walk right into a little hallway and then into the bedroom.
- L. It was a little off the entrance to the house?
- A. Yes sir.
- L. Where were you sitting during the morning visit?
- A. I always sat along side of the bed.
- L. From the place ~~where~~ you were sitting could you command the entrance of the door?
- A. Yes sir.
- L. Could you see every body leave and enter the house?
- A. Yes sir.
- L. If the defendant Mr Kelly had been at the house could you have seen him enter?
- A. Yes sir, I was in every room, every time I was in the house.
- L. I am talking of the 12th of November 1886?
- A. Yes sir.
- L. If he had been there on the 12th of November 1886 during your morning visit could you have seen him?

- A. Yes sir, I would have seen him.
- L. He could not come there without your seeing him, and enter any room on the first floor?
- A. Not unless I saw him, no sir.
- L. During your afternoon visit where were you sitting?
- A. Right near the bed again just as before. I walked through the same rooms.
- L. And during the entire afternoon visit the entrance to this house was constantly before you?
- A. Yes sir.
- L. Could anybody have entered that house or could they have left that house on the afternoon of the 12th of November 1886 during your afternoon visit without you seeing them?
- A. Nobody could come in that room without I saw them.
- L. If Mr Kelly had been there on that afternoon visit could you have seen him?
- A. Yes sir, I could have seen him.
- L. So then, to your personal knowledge, during the time that
- (21)

you were there in the morning and in the afternoon, was Mr Kelly there on the 12th day of November 1886

A. Not during my presence

L. Where were you in the evening - what room were you in, in the evening?

A. That same room

L. Did the position you had, enable you to see every person entering and leaving the house?

A. Yes sir.

L. So that if Mr Kelly had been there on the afternoon of November 12th 1886 at the house of Ewald Bolt, you would have seen him

A. I would have seen him if he came in the parlor floor - If he went down the cellar I could not have seen him.

L. To your personal knowledge during the time that you were there in your evening visit on the 12th day of November 1886 was Mr Kelly at the house of Ewald Bolt? I am talking of the defendant

A. Not during the time I was there

- Q. You speak of a cellar - where is the entrance from the cellar to the house?
- A. That is something I cannot tell.
- Q. During your evening visit at the house, who if any one was present on the 12th day of November 1886 at the house of Ewald Bolt?
- A. His two daughters Annie and Rosa again, and the Minister and several gentlemen from down town - They came and staid there a while I was there and went away again.
- Q. How long did you remain there in the evening visit?
- A. Probably two hours.
- Q. From what hour to what hour?
- A. From about 7.30 until 9.30 maybe 10 o'clock, I cant tell the minute.
- Q. And when you left at 10 o'clock had the condition of Mr Bolt improved?
- A. No sir not a particle.
- Q. Was his condition any worse than it was during your afternoon visit?
- A. Yes sir.

- Q. Do you know when Mr Bolt died
- A. Well I was not present when he died.
- Q. How soon did you go to the house of Evals Bolt after your last visit on the 12th of November 1886 - after you left him on the 12th of November when did you again call at the house of Evals Bolt?
- A. I cannot tell exactly whether I was there the next day or the following day - I couldn't tell that exactly - I didn't take any interest in this matter

Cross-examination by Mr Lowe

- Q. What time on the 11th, doctor was that will executed?
- A. On the 11th?
- Q. Yes?
- A. Well, I knew it once - It was in the afternoon, I couldn't tell you exactly the hour now
- Q. Can you remember about the hour?
- A. I won't state it now

Q. Was it early or late in the afternoon?

A. It was in the afternoon - I cannot tell you exactly.

Q. What was his condition at that time?

A. He was very weak and trembling with his hands, but his brain was clear.

Q. In full possession of all his faculties?

A. Yes sir.

Q. Patients suffering from consumption are not apt to lose their mental faculties?

A. Not as a rule no sir.

Q. And he didn't?

A. Not up to that time no sir.

Q. Didn't he maintain his faculties up to the time of his death?

A. No sir, not to the time of his death.

Q. Were you a witness before the Surrogate of New York County on the proceedings taken for the probating of the will of the deceased?

A. I was.

Q. Did you use this language on that

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occasion in your testimony? A. I know positively that his capacity was as true as gold, and that his mental capacity was perfect."

a. On the 11th

2. Yes?

a. I say that now too

2. Did you testify that it was at 9 o'clock in the evening that he made the will?

a. I don't remember what I testified to, but it was true.

2. Was it not ~~it~~ very late in the evening?

a. My memory was sharp then, I don't remember now.

2. Were you asked on your examination at that hearing this question: "Did you consider him at that time as being ill, that is on the 11th of November, when the will was executed", and did you answer "I did not."

a. Well ill, that would be foolish, he was ill for two years, in fact, if I did. I certainly misunderstood the question.

2. Did you say so?

a. I don't think I did.

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2. Were you asked, "you didn't know he was going to die", and did you answer "No he died very suddenly" did you say that?

A. Did I know he was going to die, we all have to die.

2. Were you asked this question? You didn't know he was going to die -

Mr. Levy: I think if the witness is asked any question, he should be given the question and answer, and asked if it is true.

A. He died suddenly, that is I didn't expect him to die, the night he did die, he might have lived three days in the same condition, that is what I mean by that.

2. Were you asked this question at that trial? "Was he perfectly rational on the first day he spoke to you" and did you answer, "He was rational to the last day he died"

A. Well, so he was.

2. Just say yes or no. I only want to know whether you gave that answer to that question?

A. I can't remember - whatever I said then was true, I always

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state the facts. what I said there was true.

2. Did you say he was rational to the last day he died?

a. On the 12th in the morning he nodded to me when I spoke to him. HE died on the 13th

2. Was he rational up to the last day that he died?

a. HE was rational up to the 12th ~~day~~ in the morning

2. Was this question put to you at the hearing before the Surrogate? Was he perfectly rational on the first day, he spoke to you", and you answered as follows- "HE was rational to the last day that he died" (Objected to by Mr. Conner, on the ground that the testimony before the Surrogate is a matter of record.)

2. Was that question put to you and did you give that answer?

a. Whatever you got down there, I suppose I said.

2. Did you give that answer, that "HE was rational to the last day that he died?"

a. If it is there then I did, I

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cannot remember.

Q. You don't say you did not?

A. I don't say I didn't and I don't say I did.

Q. You don't deny it?

A. I don't deny it.

Q. What kind of a man was he in force of character, was he a determined and resolute man?

A. He was a very determined man.

Q. You testified before the Surrogate did you not? I don't think that the old man could be influenced by anybody.

A. I remember that now.

Q. That is your opinion still is it not?

A. Yes sir, that is my opinion still.

Q. What time did you go there on the 12th first?

A. During my office hours.

Q. Well, at what time?

A. Between 8 and 10. probably 9 o'clock.

Q. About 9 o'clock?

A. Yes.

Q. Was he sitting up in his rocking chair?

A. On the 12th?

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2. Yes?

A. No sir, they might have taken him up to make the bed.

2. Do you remember this question being put to you on the trial before the Surrogate and he died about 3 o'clock on the morning of the 13th of November was not that so" to which you answered- "Yes sir 1886, yes sir, he was sitting up in his rocking chair". Do you mean to say he was sitting up at the time he died?

A. Oh, no, the next day before, that would have been the 12th.

2. Was he sitting up on the rocking chair on the 12th?

A. I cannot tell you that, that is too long ago.

2. Don't you remember testifying to that before the Surrogate?

A. No sir, I don't.

2. And you were asked- I ask you whether he was sitting up in his chair at the time that he died"- You answered- "No he was sitting in his bed, sitting right straight up, and he had four or five pillows right behind

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him" that is when he died. Before that the question was- "Do you mean to say that he was sitting up at the time that he died" and you answered- "Oh, no, the next day before"- "He died after you left, but had he not been sitting up in the rocking chair before you left?"

A. The bed was in a terrible condition. The man had no comfort - He was taken out of it I think, but I don't know what time it was - I couldn't tell you the day to save my neck I would be willing to tell you.

2. How long did you remain there on the morning of the 12th at 9 o'clock, how long did you stay

A. That is pretty hard to say now. It was during the office hours between 8 and 10 - possibly half an hour I remained - I only went to see him in a hurry during my office hours.

2. Then you left there about half past nine o'clock?

A. Some where's around there yes sir.

2. It was before 10 o'clock?

A. Yes sir, it was during my office hours. It was about half past nine o'clock, I know it was before ten because it was during my office hours.

2. When was your next visit there on that day?

A. It was in the afternoon right after dinner.

2. What time about?

A. Well, I have dinner at one sometimes two o'clock.

2. What time did you go there do you suppose?

A. Maybe half past one or a quarter to two was my second visit.

2. How long did you remain there?

A. I staid until it got dark.

2. That would be about what time, in that month?

A. Well possibly half past five or five o'clock.

2. You staid there until it got dark?

A. Yes sir, several hours.

2. Then you went away and you went back the same evening?

A. Yes sir.

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Q. That was your third visit?

A. Yes sir.

Q. You made that third visit about what hour?

A. After supper half past seven or seven o'clock.

Q. How long did you remain there?

A. I remained there about an hour and a half or two hours about 10 o'clock, somewhere along there I left.

Q. Now in what room was the bed located in which Mr. Bolt was lying, and in which he died, was it a regular bed room or a sitting room?

A. I don't know what they call sitting room.

Q. How often had you been there before he died?

A. In that very room, I only saw him from that last days sickness. After the 11th they had him moved into that bed - before he had laid on a lounge.

Q. Was it in the middle room between the parlor and the kitchen?

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- A. Yes sir, there is two middle rooms
there.
- L. ~~Adjoining~~ ^{adjoining} the parlor are they?
- A. ~~Adjoining~~ ^{adjoining} the parlor is one
room and adjoining that room
again is another.
- L. Now look at that and see?
- Witness is shown a diagram.
- L. Now then there are two entrances
to that house?
- A. Yes sir.
- L. There is the entrance you came
in on the East side from the
yard?
- A. Yes sir.
- L. Now how did I understand you
to say you entered the house?
- A. From the side part of the house
always.
- L. What do you call the side part?
- A. Not from the front but the side.
- L. On the East side?
- A. Yes sir.
- L. You always entered from the
East side?
- A. Yes sir.
- L. The house fronts North?
- A. Yes sir. it does.
- L. And the front door as you call it

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is on the North side of the house? leading into a hallway you say goes into the rear, and you entered by the door on the Side?

A. I always went in this door, and this way.

Q. You always entered from the yard?

A. Yes sir.

Q. And never from the front?

A. Never from the front.

Q. When did you first discover that deliriousness?

A. Late in the evening.

Q. About what hour?

A. In the afternoon he was stupid

Q. What time?

A. In the afternoon when I came there.

Q. That was the evening before he died?

A. It was between half past one and five o'clock.

Q. That was the day before he died?

A. I call that the day he died - it was in the night he died.

Q. Tell it was on the 12th?

A. Yes sir, I call that the last day.

- Q. Were you asked this question at the hearing before the Surrogate: "Will you describe the effect that consumption or ordinarily has upon the mind of a man?"
- A. Answer - "Very little or none in the majority of cases".
- Q. I did say that.
- Q. Question again - "No effect upon the mind" Answer - "No not at all, I wount say but that at times you will find cases where they get somewhat delirious, but this old gentleman didn't though, as he got his senses up to the time he died and I seen him". How did you testify to that?
- A. That means not the last day.
- Q. Did you say that?
- A. If I said it you have it down.
- Q. Did you say that?
- A. You have it down so, but my meaning is different. Whatever is down I must have said.
- Q. Did he have his senses up to the time he died?
- A. No sir, he did not.

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2. What did you mean by saying this old gentleman didn't get delirious?

A. Not until the last moment.

2. What do you mean by the last moment?

A. The last 24 hours.

2. Was he delirious for 24 hours before he died?

A. No sir, in the morning he was not delirious, in the afternoon and evening he was.

2. That is the evening of the 12th?

A. Yes sir.

2. Re-direct examination by Mr. Levy

2. When you testified before the Surrogate, that consumption ordinarily had no influence upon the mind, the exact words were these - Question "No effect upon the mind" Answer - "No not at all, I won't say but that at times you will find cases where they get somewhat delirious but this old gentleman didn't though as he got his senses up to the time he died and I seen him" - what did you mean by the statement?

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A. I did not see him die, that shows what I meant by itself - I meant simply up to the last 48 hours. Even I would call that until the last - They are delirious for weeks sometimes.

Q. You mean when you say he had his senses up to the time he died you mean it was ^{within} ~~between~~ the 24 hours preceding his death, is that your meaning?

Objected to by defendant's Counsel on the ground that it is leading.

Q. Is that your meaning?

A. Yes sir, exactly.

Q. When you testified before the Surgeon that Mr Bolt was rational up to the last day that he died what was your meaning?

A. Well my idea was, that the 12th was the last day before he died, and on the 12th in the morning he was rational, that is he seemed to understand what I said to him by nodding - That was in the morning, and in the afternoon, he was more stupid and didn't seem to care what you said to him, and in the

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evening he only muttered.

Q. You didn't consider at the time you made these answers that the 13th of November at 3 o'clock, was another day?

A. No, I did not.

Q. You considered the fact that he died on the morning of the 13th at 3 o'clock, was a part of the evening of the 12th?

A. Yes sir.

Q. And when you testified he was perfectly rational to the last day he died what was your meaning as to that, within how long?

A. Within the last 24 hours.

Q. You were cross-examined in relation to the entrance to this house. Could you by any possibility enter the sick room where Mr Bolt was lying from the front entrance without passing through or near the side door that you have mentioned in your direct testimony?

A. You could not enter the sick room without going through the very door that I did.

Q. The side door opened into an

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alley.

A. I mean to say the ~~same~~ same entrance into the sick room not into the house.

Q. The side door, as I understand it entered into an alley and from the alley you had to go into the sick room?

A. I did.

Q. Did the entrance from the front door open and lead to the same hall that you must enter, before entering into the sick room?

A. Yes sir.

Q. So that whether a person entered from the front door, or whether they entered from the side door the position you testified you occupied on your three visits on the 12th of November 1886, enabled you to see all that entered, and all that went out of that house on that 12th day of November, during the time you were there.

A. Yes sir, I could see the parlor also. There was a glass door between the two rooms, and it was not always open, we went in and out all the time.

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Q Do you know how the top of the house was?

A No I do not.

Prosecution says

Defense

David N. Carvalho, a witness ^{defendant} _{for} being duly sworn testified as follows =

Direct Examination by Mr Lowe

Q Where do you reside?

A My place of business is 291 Broadway.

Q And your business?

A Examiner of questioned handwriting.

Q How long have you been in that business?

A About twelve years.

Q What experience have you had?

A I have testified in something like 170 odd cases in open Court.

Q As an expert?

A Yes sir.

Q An expert in handwriting?

A Yes sir.

Q Are you in any manner connected with Mr Kelly the party accused here?

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A. None whatever sir.

Q. How long have you known him?

A. I met him for the first time at my house a few months ago.

Q. In regard to this case?

A. In regard to this case.

Q. Had you previously been called on by any one else in regard to it?

A. I had seen the signature before sir.

Q. At whose instance.

Mr Levy: Objectio to as incompetent irrelevant and immaterial whether the witness was called upon before or at any time subsequent - nothing to do with the issue in this case.

The witness is shown a paper purporting to be an assignment of a mortgage dated November 12th 1886 from Awald or Ewald Bolt to Henry Bolt, being the paper upon which this charge is based, and which is marked Peoples Exhibit "A", having been offered in evidence by the People and is asked whether or not he has examined the signature, purporting to be that of the said

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Ewald Bolt - Have you examined that signature?

A. I have.

Q. Have you examined that signature in connection with any other signature purporting to be of the same party?

A. I have.

The witness is shown a paper purporting to be articles of agreement made the 14th of August 1886, between the said Ewald Bolt and Ellen Kelly, and he is shown the signature to the same purporting to be that of the said Ewald Bolt, and he is asked whether he has seen that signature before?

A. My best recollection is that I have sir.

The witness is asked whether he examined the probated will of Ewald Bolt now on file in the office of the Surrogate of New York County, and whether he examined the signature of Ewald Bolt to that instrument - Did you examine the signature?

A. My reply is yes to both questions

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2. Now sir, will you be so kind as to say as an expert, whether in your opinion the signature just shown you of Ewald Bolt to the plaintiffs exhibit "A" and defendant's exhibit "A" just now put in evidence by defendant - whether or not they are in the same handwriting?

Objected to ^{by the jury}. The charge is that defendant was guilty of falsely certifying as a Notary Public, a certain ^{assignment} ~~assignment~~ of mortgage. There is no allegation in the complaint that the signature of Ewald Bolt was forged or that it is a forgery - we are proceeding under a certain section of the Penal Code which makes the false certification of a Notary Public, forgery in the first degree.

Defendant's Counsel: The defendant offers the testimony first in rebuttal of the evidence offered by the people, that Ewald Bolt on the 12th day of November 1886 was not able to sign his name to any paper, in connection with the fact that the paper which it is alleged he did sign

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bears date on that day, and also that the people have offered in evidence that Henry Bolt, the assignee had not been present at his fathers house for three weeks before his death and that Kelly, the Notary Public who took the acknowledgment had not been there.

Objection withdrawn.

L. Did you examine those signatures

A. Yes sir. in connection with each other.

L. What is your opinion in regard to the them?

A. I believe they are the work of one hand.

L. Did you examine the signature to the will of Mr Bolt?

A. I did sir.

L. And have you compared that signature, with the signature to the peoples Exhibit "A"?

A. I have

L. And also to the paper - the defendants Exhibit "A"?

A. I did sir.

L. What is your opinion as to the identify of that will, and these

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two instruments?

A. If the signature to the will, be the signature of Ewald Bolt, then the signature attached to the paper marked plaintiffs Exhibit "A" is the same handwriting and written by the same person.

Q. Did you examine any other paper purporting to be signed by Ewald Bolt?

A. I think not.

Q. Was any other paper shown you for the purpose of comparison?

A. I believe there was a piece of paper with some writing - whether it was his handwriting or signature I don't recollect distinctly. I made no memorandum of it at the time.

Q. Have you any doubts sir, as to the genuineness of the signature to plaintiffs Exhibit "A"?

A. I give you my best judgment.

Cross-examination by Mr. Jimerson

Q. Is the signature to the Peoples Exhibit "A" written the same or with the same boldness as the

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signature to the last will and testament?

A. My best recollection is that they are ^{clearly} contemporaneous

Q. Well do you mean to say that these two signatures are written in the same manner?

A. No I will not say that, I cannot recollect that fact, what I do mean to say is that both of the signatures look as if they were written under excitement. general tremulousness in both the signatures.

Q. Is there less tremulousness in that signature than there is to the will?

A. I will not say sir.

Q. From your recollection is there less tremulousness in this one than there is to the will?

A. My best recollection is this - I made an examination of the two papers, and my judgment was they were one and the same handwriting - I noticed there was a degree of tremulousness in both of the signatures which seemed to me to be contemporaneous

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each with the other, but as to one being more or less than the other it did not impress itself on my mind at the moment sir.

L. You can't now state whether it appears more on the will than on this paper?

A. Not now, without the other paper.

L. How long since you examined the two papers?

A. About four months ago.

L. Therefore you are testifying as to your recollection of four months ago?

A. Yes sir.

L. Now supposing it were a fact that the signature to the will showed it to be written by a person with a trembling hand, a great deal more than this, and you since ascertained the fact to be, that this signature was written the day after the signature to the will, and with the possession of the further fact that his condition - his physical condition was worse on the day after than it was the day before would that change

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your mind in regard to the similarity of the signature?

A. The experience I have had in the examination of signatures of wills - the signing of the will is an event in a man's life so the signature varies somewhat from his business signature - I would expect to find the signature not so good as to a business paper.

Q. That is not what I want to ask you - The doctor has testified that the deceased was very ill on the day that he wrote the will - The will as I remember it - the signature to the will was one written by a very trembling man, now the doctor testifies that the next day he was delirious, his physical condition was considerably weaker, in fact he was helpless, and this signature is purported to have been written on that day, and he was growing worse instead of better from the day before, would that change your mind?

A. I think this signature and

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exhibit "A" indicates there was something physically wrong with the writer, but the amount or extent of course I cannot judge.

L. Did you examine this simply with your naked eye?

A. No sir, with a glass.

L. Did you try it by photograph

A. No sir.

L. Is it not the best way

A. Only for use before a jury.

L. Does not it bring out the resemblance to handwriting better than any other way?

A. It is better because you have got it before you all the time instead of covering only a single letter.

L. Have you ever examined in photograph the signature of Ewald Bolt?

A. I don't think I have. - I will take that back, I think somebody did show me a photographic signature. I will not swear to it - I can't remember but I will state you would have to have a

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very large photograph - I might have seen a small one but I don't remember

L. Do you know Mr Ames?

A. Very well indeed.

L. Is Mr Ames considered to be a competent man?

A. I have heard him testify.

L. You have been opposed?

A. Yes and been with him.

L. Did you examine defendants exhibit "A", with the will?

A. I think not sir.

L. You simply examined the defendants exhibit "A", and compared it with plaintiffs exhibit "A"?

A. I examined plaintiffs exhibit "A" in connection with the will and subsequently this paper.

L. But you did not examine defendants exhibit "A"?

A. No sir.

L. You simply make this statement of the signature, from a comparison you have made with the plaintiffs exhibit "A"?

A. Yes sir.

L. About what time was it, you made the examination of the will?

- A. About four months ago.
- L. And you have not examined the will since that time?
- A. No sir.
- L. When did you make the examination between the defendants exhibit "A" and plaintiffs?
- A. 3 months ago.
- L. With the aid of a glass?
- A. Yes sir.
- L. In connection with plaintiffs exhibit "A"?
- A. Yes sir, I always carry a little glass with me.
- L. Please examine exhibit "A" - defendants and people, now with your glass?
- A. I have already examined them.

Mary Kelly, a witness for defense being duly sworn testified as follows =

Direct examination by Mr. Lowe

- L. What is your name?
- A. Mary C. Kelly
- L. Where do you reside?
- A. 212 East 73rd street.

L. You are not married?

A. No sir.

L. You are a sister of Mr Kelly, who is the accused party here?

A. I am sir.

L. How old are you Miss Mary?

A. 21 years.

L. You live with your family?

A. Yes sir. with my parents.

L. They are both living?

A. Yes sir.

L. In New York City?

A. Yes sir.

L. And your brother lives there too?

A. Yes sir, he lives there also.

L. He is an unmarried man, is he not?

A. Yes sir.

L. Did you know old Mr Bolt, Ewald Bolt?

A. Yes sir, I have seen him at his house.

L. You knew him?

A. Yes sir.

L. Where did you see him?

A. I saw him at his house in East 161st street.

L. When did you first see him there do you remember what day?

A. I cannot say the exact day, as I have seen Mr Bolt, two or three different times. I saw him in the month of August 1886 and also in the month of November 1886.

Witness is shown defendants exhibit "A" and she is asked whether that is her signature - Mary C. Kelly -

A. Yes sir it is

L. Did you sign that paper as a subscribing witness?

A. Yes sir, I did.

L. Who signed that signature there purporting to be Ewald Bolt?

A. Mr Ewald Bolt, himself.

L. In your presence?

A. Yes sir. it was on August 14th on Saturday afternoon or evening near eight o'clock.

L. With whom did you go to Mr Bolt?

A. On that occasion?

L. Yes?

A. With my mother and Mr brother Bernard.

L. That is, this gentleman who is

now here?

A. Yes sir.

L. And your mother?

A. Yes sir, she was present there also at that time.

L. What is your mother's name?

A. Ellen Kelly.

L. She is the same person mentioned in this paper?

A. Yes sir, she is.

L. You say Mr Bolt signed his name to it?

A. Yes sir, I was present when he signed it - I signed mine immediately afterwards in his presence.

L. How often did you see him after that, do you remember?

A. Well, I saw him the next time on the 12th of November 1886. The witness is now shown people's Exhibit A - You say you were at Mr Bolt's house on the 12th of November 1886?

A. Yes sir, I was.

L. What hour in the day was it?

A. About half past ten o'clock in the morning.

L. With whom did you go there?

- A. I went with my brother Bernard
L. At what door did you enter the house?
A. We entered on the east side of the house - on the side door.
L. And went into the room where he was?
A. Yes sir.
L. Was he in bed?
A. He was in bed yes sir.
L. What room was he in?
A. Between the parlor and the kitchen - the centre room
L. The outer door leads into the hall and there was a door from the hall into that room?
A. Exactly.
L. Where was the bed located?
A. South of the centre of the room.
L. Was he in bed at the time?
A. He was sitting up in bed.
L. Well now, was anybody else besides your brother, there?
A. No sir, except Mr Bolt, me and my brother, that is all.
L. Did you see any one else there when you went in?
A. No sir, nobody in that room - we didn't go any further through the (56)

house.

L. How long were you in there?

A. Well about 10 minutes.

L. Well now please state what took place?

A. Well on entering the room Mr. Kelly said "Good morning Mr. Bolt how are you" he said, "Very bad", then Mr. Bernard, my brother, then said, "Mr. Bolt I have come to pay off the \$500. of that mortgage" - He took from his pocket-book fifty ten dollar bills, and tendered them to Mr. Bolt - He refused to take them, he said he did not want money, he wanted to give the mortgage to his son Henry, as he had been good to him - He said, "I don't want the money, I want to give the mortgage to my son Henry, you write his name on the paper and I will sign it" - My brother took pen and ink from his pocket, and filled in Henry Bolt's name in the assignment of the mortgage.

L. How then did your brother carry
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this paper, which I have just shown you - people's exhibit "A" with him there?

A. Yes sir.

Q. And at the time he carried it there the place for the name of the assignment was blank?

A. Yes sir.

Q. What was the reason he carried it there?

Objection to by Mr Levy.

Q. Do you know the reason why your brother carried that paper there in that condition?

A. Yes sir, I do.

Q. I want you to state the reason?

A. That place was left blank to pay off the mortgage.

Q. What did your brother say?

A. Mr Levy, object to any conversation had between the brother and the sister in regard to this matter.

Objection withdrawn -

Q. Did you have any conversation with your brother before you went to the house, in regard to this paper?

A. Yes sir.

L. What did he say?

A. He said he was going to pay Mr Bolt the money for the mortgage and give it to me and have my name put in the blank space.

L. In the event of Mr Bolt consenting to it?

A. Yes sir.

L. Mr Bolt said no he wanted to give it to Henry?

A. Yes sir.

L. Did your brother tell Mr Bolt about this?

A. Yes sir, he said he wanted to pay the money and have it assigned to his sister - Mr Bolt said no he wanted to assign it to Henry - He filled in Mr Bolt's name, then he said he would sign it himself -

L. Your brother took his pen and took out of his pocket and filled in the name of Henry Bolt as assignee in this paper?

A. Yes sir.

L. Did he at the same time fill in the date?

A. I believe the date was filled (5-9)

in at the time he took the paper into the room.

L. Very well then after that what did Mr Bolt do?

A. He signed his name immediately afterwards opposite the seal.

The witness is shown the signature -

(2) L. Did you see him sign his name there as a witness?

A. Yes sir.

(1) L. Did you see him sign his name there?

A. Yes sir.

L. Did your brother take the acknowledgment of the assignment?

A. That was written later.

L. The acknowledgment?

A. Why yes, Bernard said to him, after he had signed it "do you acknowledge this to be your act and deed" - He said "yes".

L. You say your brother signed his name there?

A. Yes sir.

L. He put this on afterwards at (60)

his house, when he came home?

A. That part was not put in until later - The acknowledgment was not filled in at Mr. Boll's house.

Q. He asked him that question?

A. Yes sir, and he replied "yes".

Q. Did you say that he filled this in at the house afterwards?

A. Yes sir, at the house.

Q. Afterwards when he went home he filled in the acknowledgment?

A. Yes sir.

Q. On the same day?

A. Yes sir, the 12th of November.

Q. How do you come to remember that day the 12th of November so particularly?

A. I recollect it because on the afternoon of that day, I went down to the insurance company in William Street and got a receipt for the insurance policy - that is the receipt I got.

Q. On the same day - on the afternoon of the same day that the exhibit "A" was executed by Mr.

Bolt, you went down to the Liverpool & London Insurance company and received this receipt?

A. Yes sir.

Q. Do you remember whether or not Bolt used his spectacles?

A. Yes sir, they were on a table at the end of the bed.

Q. The Spectacles were on a side table?

A. Yes sir, at the foot of the bed. When my brother handed the assignment to Mr Bolt - Mr Bolt pointed to his eyes, then toward the Spectacles - Bernard then handed them to him.

Q. He put them on and signed it?

A. Yes sir.

Q. How did he sign it was he sitting up in bed at the time?

A. There was two pillows placed at his back - He was sitting up in bed when we entered. There was only one when we entered, the second one was put to his back by my brother - The assignment was placed on a long leather pocket book - He took

it from his pocket and placed it under the assignment paper, for him to sign his name on it, and then he signed the paper - He placed his head down close to the paper and grasped the pen, and put his name down.

Q. Did he appear to know what he was about?

A. Yes sir, he appeared to be very sick but knew what he was doing -

Objection to by Mr Levy -
Sustained out -

Cross-examination by Mr Conner

Q. Miss, when were you 21 years of age?

A. Last November.

Q. What day?

A. The 15th.

Q. You brother according to your story made the assignment when you were a minor - under 21. That is so you were not 21 until the 15th?

A. I don't think I was.

- Q. How long were you in the house of Mr Bolt that day?
- A. About 10 minutes.
- Q. Your brother remained with you all of that time?
- A. Yes sir.
- Q. What time did you leave your own house to go there that morning?
- A. About half past nine o'clock in the morning.
- Q. And proceeded directly there?
- A. Yes sir.
- Q. When did your brother first speak to you about going to Mr Bolt?
- A. On the morning of the 12th of November.
- Q. The day you say the assignment was executed?
- A. Yes sir.
- Q. What time in the morning?
- A. About half past eight o'clock.
- Q. What room in the house did he speak to you about it - in your own house?
- A. In the parlor.
- Q. Before breakfast?
- A. I can't say exactly - most likely after breakfast.

Q. Had he ever spoken to you about it before that morning?

A. No sir.

Q. That was the first you heard of it?

A. Yes sir.

Q. Tell me what he said to you?

A. He said that he would pay the mortgage - the \$500. mortgage of Mr. Bolls, and he would present me with this assignment as a gift for my birthday.

Q. He would present you that assignment as a birthday gift?

A. Yes sir.

Q. Did you see him prepare the paper in the house?

A. Yes sir, I did.

Q. Did you read it?

A. I read it after he had it filled out.

Q. In the house?

A. In the house.

Q. Didn't you state there was a blank left there for the purpose of putting some name in?

A. Yes I did.

Q. Did he show you where your name was to go?

A. Yes sir.

Q. How long were you together talking about the matter in your house that morning?

A. While he was writing out the paper before he told me what he intended to do, and requested me to go with him there, and while that was being filled out I was preparing to accompany him.

Q. What time did you leave the house that morning?

A. About half past nine o'clock.

Q. Did you ever see a paper drawn up before, a mortgage assignment?

A. I have seen many papers.

Q. An assignment of a mortgage?

A. I don't believe I did.

Q. Did you ask him if it was necessary for you to go?

A. No sir, I did not ask that question.

Q. Did you know that it was not necessary for you to be present?

A. It could have been drawn up without my being present.

- Q. You know that?
- A. I do.
- Q. Why did you go?
- A. Because he asked me.
- Q. For what purpose.
- A. Just to see it filled out.
- Q. Where do you reside?
- A. 212 East 73rd Street.
- Q. What route did you take to go to the house?
- A. The Third Avenue street cars at the corner proceeding to this side of the Bridge, and then to the street cars again, and went as far up as 159th Street then westward to Elton Avenue, then towards Cortlandt.
- Q. Had you ever been there before?
- A. Yes sir, I had.
- Q. You went westward from Elton Avenue to Cortlandt?
- A. Yes sir.
- Q. Then what direction did you take?
- A. The house is on the East side of Cortlandt Avenue, it was not necessary to go so far.
- Q. Where is the house, what street?
- A. 161st Street, between Elton and

Cortlandt Avenue.

L. Who entered the house first?

A. My brother Bernard did.

L. Did he ring the bell?

A. No sir, he did not, we entered at the side gate.

L. Open the door?

A. It was partly open - he gave a double rap.

L. After he gave the double rap nobody answered it?

A. No sir, the other door was open.

L. I only ask you how he entered?

A. He had to go that way.

L. How did your brother enter - nobody came, then he entered into the hall?

A. Yes sir.

L. And you proceeded from the hall into the bedroom where Mr Bolt was?

A. Yes sir.

L. You inquired for nobody?

A. There was nobody there - nobody answered the door.

L. You did not inquire for anybody?

A. No sir.

L. What was the next thing he

did?

A. He spoke to Mr Bolt - He said "Good morning how are you to day" - He said "Very bad"

Q. Did your brother take his hat off?

A. Certainly, he always takes his hat off in the house?

Q. He took his hat off - did he take off his coat?

A. No sir.

Q. Didn't take his overcoat off?

A. No sir.

Q. Did you sit down?

A. No sir.

Q. You stood?

A. Yes sir.

Q. Constantly while you were there?

A. Yes sir.

Q. And you saw none of the inmates of the house?

A. No sir, no one but Mr Bolt.

Q. And when you transacted the business, regarding the assignment you left the house - both of you?

A. Yes sir.

Q. Did not inquire for anybody else?

A. No sir. said good day and walked

out.

L. You were in the house how long?

A. About ten minutes.

L. Did Bolt ask for his spectacles

A. He did not ask for them, he pointed to his eyes and motioned for them.

L. Did your brother show him the \$70?

A. Yes sir, he took it from his pocket and tendered it to him.

L. Which pocket?

A. He took it from a pocketbook it was in the inner pocket of his overcoat.

L. He took the pocketbook out of a pocket in his overcoat and the money was in that pocket book?

A. Yes sir.

L. You saw the money?

A. I saw the money.

L. Was that the first time during the day you had seen it?

A. No sir, I saw it at the house before he went up there.

L. Fifty ten dollar bills?

A. Yes sir.

L. You did not count them?

- A. I saw him count them - I was present by.
- L. Did he tell you he was going to pay off that mortgage?
- A. He did sir.
- L. And you say he was going to give it to you?
- A. Yes sir, he was going to pay it off and give it to me.
- L. After Bolt refused and said he wanted the mortgage assigned to his son, what did your broker do with the money? with the \$500.?
- A. Mr Bolt refused to take the money - He placed it in the pocketbook again, and handed Mr Bolt the mortgage, as he requested.
- L. Could you understand every word Mr Bolt said?
- A. Yes sir.
- L. What language did he speak in?
- A. Broken English.
- L. You had no difficulty in understanding?
- A. No sir.
- L. Did he speak in a strong vigorous tone?

A. No sir he did not.

Q. Was his language ~~correct~~ correct?

a. It was a kind of Broken English he used.

Q. Did he speak clearly?

a. In a low voice.

2. How near the bed were you?

a. About a foot from the bed.

2. Nobody came in?

a. No cir.

2. You and your brother entered that room, transacted the business and departed without seeing a person but Bolt?

a. ¹ Yes sir.

2. What time of the day did you leave there?

a. Well it was about a quarter to eleven. - I don't say exactly

4. we arrived there about half past ten and staid there about ten minutes.

2. Talked with your brother about this matter since?

a. Yes sir, I have.

2. Did he call your attention to any facts that you have testified to here?

a. He requested me to tell him (7)

as far as I could remember, and I did.

2. You knew this matter has been under investigation for some time?

A. I did.

2. Have you read any testimony taken at the former examination?

A. No sir.

2. Positive about that?

A. Positive.

2. Has your brother told you the purport of the ^{testimony taken} ~~conversation~~?

A. No sir.

2. Has not told you what the witnesses swore to, and who swore to it?

A. Well, I saw the witnesses myself in the Court-room.

2. I want to know if your brother told you, what was sworn to by the witnesses?

A. No sir.

2. Not any part of it?

A. No sir.

2. Nothing at all?

A. Nothing at all.

2. You know Mr. Reilly the counsellor?

- A. Yes sir.
- Q. Have you talked with him about the case?
- A. Very little I spoke to him once?
- Q. When was that?
- A. It was the first time that my brother Bernard was requested to come here.
- Q. Before any testimony was taken?
- A. Yes sir.
- Q. You never heard the purport of the testimony from Mr Reilly?
- A. I have not.
- Q. Or from any of the gentlemen who appear here?
- A. No sir.
- Q. You have not talked to them about the testimony and the case?
- A. I don't clearly understand ~~understand~~ that question.
- Q. Have you talked with any of the gentlemen here about the case about this case, Mr Love or Docky?
- A. I have spoken to Mr Love about the case but not about other peoples testimony.
- Q. What direction did you take with your brother when you

left Mr. Bolls house, on the 12th of November?

A. We went back the same way we came - We came to Elton and then to 3rd Avenue took the cars over the Bridge, and then took the other street cars to 73rd street.

Q. Where did you go?

A. We both went directly home.

Q. How long did your brother remain in the house after he reached home that day, if you know?

A. Well I can't exactly say how long - I went down to the Insurance company - I left him at home.

Q. What time did you leave the house to go to the Insurance company after lunch?

A. About half past one o'clock.

Q. Did you find your brother at home when you returned?

A. No sir - I did not.

Q. Your brother was in your company on this 12th day of November from about half past nine in the morning until

about half past one in the afternoon -

A. The exact time I cannot say - from lunch I went down to the insurance company, after he came home - I cannot recollect any further - we came home and had lunch, I don't know where he went.

L. What I want to know is this - from about half past nine o'clock on that day, he was in your company until you left the house, after returning from the Bolts to go to the insurance company?

A. Well that question I cannot answer positively - He was in the entire time.

L. Do you know the time you reached the house from the Bolts?

A. Well it must have been about half past eleven.

L. And did he leave the house before you went to the insurance office?

A. I can't answer that question because I am not positive.

L. You had lunch together?

- A. Yes sir.
- L. What time did you lunch that day?
- A. About twelve o'clock.
- L. What time did you get through lunch, about?
- A. I don't time myself very often. I cannot exactly say - about half an hour or so.
- L. And then you left the house about half past one?
- A. Yes sir, about that time.
- L. That brings your brother and you in company together up to half past twelve, after lunch - do you know whether he left the house after lunch before you or not?
- A. I don't know - I had business to attend to - whether he remained at his office or remained home.
- L. When you returned home that day was your brother at home?
- A. No sir, I don't think he was. I don't say positively.
- L. Tell me the first thing Bolt said to your brother on that day?

A. The very first thing he said?

L. Yes?

A. He was asked how he was, he said "Very bad" - Those were the first words.

L. What next did your brother say to him?

A. He said he had come to pay off the mortgage, showing him the money - tendering him the money.

L. How did he tender it to him?

A. He took the pocket-book from his pocket, took out the money and tendered it right over to him.

L. Did he lay it on the bed?

A. Right over towards his hand

L. Did he say, here is the money for you?

A. Yes sir.

L. For what?

A. For the mortgage.

L. Did he say the mortgage?

A. He took the money and he handed it over to him and said "Here is the money for the mortgage, I want to pay it off and have it assigned to my

sister Mary."

Q. What did he say?

A. He said he did not want the money, he wanted to give the mortgage to his son Henry - "you write his name on the paper, I will sign it" - He didn't say it so clearly.

Q. "I don't want the money, I want to assign this mortgage to my son Henry - you prepare the paper, you write his name in the paper" - Did he say that connectedly without any interruption from you or your brother?

A. Yes sir, I never said a word. I stood at the foot of the bed.

Q. What did your brother do then?

A. He then took a paper to the bed, and filled in Henry's name.

Q. Did you see him?

A. Yes sir.

Q. How near were you to him?

A. Right alongside of him.

Q. Did he lay the paper upon the table?

A. Yes sir.

L. And did you see him put the pen and ink in his pocket that morning, before he left the house?

A. I don't know whether he put it in, but I saw him take it out.

L. What kind of an ink bottle was it?

A. He carried two small ones.

L. Did you ever see them before?

A. Yes sir.

L. And since?

A. Yes sir.

L. Where are they now do you know?

A. No sir.

L. What color ink was it?

A. I believe it was black. I did not inspect the ink - it was dark -

L. Any red in the other bottle?

A. No sir, both were black ink. I am not positive.

L. When your brother laid the paper upon the table alongside of where you were standing, did he stand up to fill the

Henry's name on the paper?

A. He bent over the table.

L. He wrote it standing?

A. Yes sir.

L. Took no chair?

A. No sir.

L. How did he blot it - How did he dry the writing?

A. I believe it dried itself - I did not notice - I think it dried itself.

L. Did he use any blotter?

A. I cannot say.

L. And then did he take the paper to Mr Bolt?

A. Yes sir, after he had filled in Henry's name.

L. Did he show him where he had filled in his name?

A. Yes sir.

L. What did he say?

A. He told him, it was filled in, and showed him where to sign his own name.

L. What did Bolt say if anything?

A. He was handed the paper - this envelope was put under the paper.

L. I thought you said a pocket book?

A. It is a pocketbook in form - it (80)

holds papers.

L. It was the same pocket book he took the money out of?

A. Yes sir.

L. You called it an envelope now?

A. Yes sir.

L. He brought the paper containing Henry's name over to Bolt and said "Sign your name here", was that it - when your brother filled in Henry's name, and brought the paper over to Bolt what did he say?

A. He then handed the paper to him and pointed to it.

L. He brought the paper to him and pointed to where he had written Henry's name?

A. Yes sir.

L. Now what did your brother say then if anything?

A. The exact words I don't remember - I saw Mr Bolt write his name without saying anything.

L. Your brother pointed to the place where Mr Bolt was to sign his name?

A. Yes sir.

L. You don't remember whether he

Said a word?

A. No sir.

L. And you swear, that is, the signature presents here?

A. Yes sir.

L. You saw everything that occurred between your brother and Bolt that day?

A. Yes sir.

L. You observed everything - did you see Bolt read the paper?

A. Why certainly he read the paper?

L. The whole of it?

A. I cannot say whether he read the whole of it.

L. What part of it?

A. I cannot say, what part he read.

L. How do you know that he read it - did he read it out aloud?

A. No sir.

L. How long did he have it in his possession - reading it as you say?

A. Well, the exact time I cannot say - I know he had it in his hands reading it after the spectacles were given to him - The time I cannot say.

L. And he did not read it out loud?

A. No sir.

2. Did you hear him repeat any of the text of the paper at all?

A. My brother Bernard explained it to him.

2. What did he say - what did he explain - what words did he use till me that?

A. When he handed the paper to Mr Bolt, or when he first tendered him the money, Mr Bolt said to him - "write Henry Bolt's name in the paper and I will sign it" - He wrote Henry Bolt's name in, and handed it back to Mr Bolt, and he signed it.

2. And that was all he did with the paper?

A. Then he fixed the seal.

2. That was all that Bolt did, just as you describes?

A. Then he requested my brother Bernard to give that assignment to his son Henry.

2. Give us the language that he used, when he requested your brother Bernard, to give that assignment to him?

A. I cannot imitate him.

2. Give me the words?

- a. He said Mr Kelly give this paper to my son Henry.
- L. Mr Bolt spoke in broken English?
- a. Yes sir.
- L. Could you understand every word of it without ^{any} difficulty?
- a. Yes sir.
- L. And you have told us that he read that paper?
- a. I presume he did.
- L. Do you know whether Mr Bolt could read or not?
- a. No doubt he could.
- L. Do you know that?
- a. Yes sir.
- L. Did you ever hear him?
- a. No sir.
- L. Then how do you know he could read?
- a. It is most natural.
- L. But of your own knowledge?
- a. I saw him sign his name before?
- L. Did you ever hear him read?
- a. Not aloud.
- L. Then you don't know that he could read?
- a. I know he could read.
- By the Court: You need not answer the question - Exception - (84)

- Q. Did you ever have any conversation with your brother about this assignment, before the 12 of November when he said he would make you a birthday present of it?
- A. He spoke about it before, but never about presenting it to me before that morning.
- Q. What did he say to you about it before that?
- A. I knew he had taken the mortgage on that lot.
- Q. What conversation did you have with him about it?
- A. That was about all, I knew he had taken the mortgage on the lot.
- Q. Did you have a talk with him about it?
- A. No sir no important conversation.
- Q. And this room that Mr Bolt laid in, sick, was on the street floor?
- A. No sir, up one stairs.
- Q. Was the door of the bed-room open, that he was in, while this transaction was going on?
- A. Yes sir, it was just as it was

when we entered - we did not touch it.

2. You say after the transaction was concluded, you both left the room, and the house without seeing a soul?

A. Yes sir.

2. And you knew Bolt, was there sick?

A. He appeared to be very sick.

2. Very feeble?

A. Yes sir.

2. You say the body of the instrument here, written by Bernard J. Kelly, Notary Public - was not signed in your presence?

A. That was signed at the house.

2. The acknowledgment was not taken in the presence of Bolt?

A. No sir.

2. When did you see your brother that morning first - in the house?

A. Yes sir.

2. About nine thirty?

A. Yes sir.

2. In the morning?

A. Yes sir.

2. You don't know where he was before that?

A. No sir.

L. Do you know what time he got up that morning - do you know anything about it?

A. No sir I can't give the exact time.

L. Well about, can you tell?

A. I have not the least idea, probably seven o'clock.

L. The first you saw of him, was about nine thirty?

A. Yes sir. I saw him that morning - I saw him at breakfast, but I don't know what time it was.

L. Your memory is not clear on that?

A. No sir.

L. You left the house at 9.30 with him?

A. Yes sir.

L. And went up there, and rapped at the door - your brother did - there was no response and you both walked into Bolt's bedroom?

A. Into the hall.

L. And from the hall into the bedroom - You didn't make any further effort to attract attention?

- A. We rapped at both doors.
- L. Nobody answered?
- A. No sir.
- L. And when this assignment took place in the room, and nobody present but you, your brother and Bolt?
- A. That's all.
- L. The transaction completed, you left the house without seeing anybody?
- A. Yes sir.
- L. Without attempting to call the attention of anybody in the house?
- A. There didn't appear to be anybody in the house - We didn't see anybody.
- L. From the bedroom where you were could you see into the parlor?
- A. That door was closed. The kitchen door was open.
- L. You didn't see anybody in there?
- A. Not from the place where I stood. I didn't.
- L. You say that morning you had breakfast about half past eight and left about half past nine, now from eight thirty to nine thirty was your brother in the house?

- A. I cannot say positively, whether he was in, or whether he came in again - I know he filled out that paper I saw it.
- L. That was before breakfast was it?
- A. No, it was later.
- L. After breakfast?
- A. Yes sir.
- L. You first saw him about half past eight, then he spoke to you about this matter before breakfast?
- A. I believe it was after breakfast.

Re. direct examination by Mr Lowe

- L. Now how many steps are there going up from the yard, to the outside door, that you went through, about. This is on the ground floor, the next floor after you go up the yard steps?
- A. You wouldn't call it the ground floor - it is up stairs - it is one story above the street.
- L. It is above the street - you went up some steps, and went into the hall and from the hall into his bedroom

A. Yes sir.

L. You didn't go up any steps after you got into the house?

A. No sir.

L. Now on your examination in chief you said something about acknowledgment - what did your brother say to Mr Bolt about it?

A. He did say so that is a fact.

L. Now is that the book - was it a book like that your brother had on the occasion you have testified to, on which the paper was placed when Mr Bolt signed it?

A. Yes sir, that is the book.

L. A leather pocket book?

A. Yes sir.

L. Something like an envelope in shape?

A. Yes sir.

L. That is what you mean?

A. Yes sir.

L. Now in going from up to Bolt's house, you went up ^{from} 159th St. to 160th street on Elton Avenue and then along 160th street to Bolt's house?

A. Yes sir. from 159 to 160th street.

L. How did you go from your home

to his?

A. We took the street cars at the corner of 73rd street and went up to the bridge, then took the other cars on the south side of the bridge up as far as 159th St. I believe, then walked to Elton Avenue, and then we walked up a block or two, and then across to Cortlandt.

L. What street was that?

A. 161st street.

L. Near Cortlandt Avenue?

A. Yes sir.

L. Was it the same street that the house was on - Bolt's house?

A. Yes sir.

Re. cross-examination by Mr. Conant

L. Bolt's house is on what street.

- A. Melrose.
- Q. What number?
- A. 612.
- Q. East or West?
- A. There is no East or West up there.
- Q. What is your fathers name?
- A. Ewald Bolch.
- Q. Cbs he alive or dead?
- A. He is dead.
- Q. When did he die?
- A. He died the 13th.
- Q. Of what?
- A. He died on the 12 of November.
- Q. Of what year?
- A. Eighteen hundred and —
- Q. Can you tell me the year, do you know what year this is?
- A. Yes sir.
- Q. What year is it?
- A. Eighteen hundred —
- Q. Can't you remember what year this is?
- A. 1880.
- Q. You asked me if this is 1880. What is a question you must answer, I asked you if you knew what year this is.

now can you answer that, we
are waiting for your answer?

A. No sir.

2. Do you know what day of
the week this is?

A. Yes sir.

2. What day of the week is it?

A. Wednesday.

2. Do you know what month of
the year this is?

A. The 20th.

2. What month?

A. July.

2. Now what date of the month
is this?

A. The 20th.

2. Now can you tell me what
year last year was?

A. 86, and this is 87.

2. And you know your name
of course?

A. Yes sir.

2. Can you read and write?

A. I am a very poor writer.

2. You read English?

A. Yes sir, I cannot write it
very good.

2. But you read English?

A. Yes sir.

Q. And you read german?

A. No sir, I can't read german.

Q. Then you know that this is Wednesday, & the 20th of July the year 1887?

A. Yes sir.

Q. And you know last year was what?

A. 1886.

Q. Now can you tell us when your father died?

A. My father died the 13th of November 1886.

Q. Was that last year or the year before?

A. That was last year.

Q. What time of the day did your father die do you remember?

A. My father died in the morning - 3 o'clock on Saturday morning.

Q. 3 o'clock on Saturday morning.

A. Yes sir.

Q. Who was with him at the time he died?

A. ~~Who was with him at the time~~

~~he died?~~

A. Nobody was with him.

2. How long had you been with him before he died?

A. Well, before he died I was with him 2 months right along.

2. Were you with him the day before he died?

A. Yes sir, the day before he died I did not leave his bed side.

2. Now what day of the week was that?

A. On a Friday.

2. Were you present when he made his will. Do you know that he made a will?

A. Yes sir.

2. Were you present when he made the will?

A. I was not in the room he sent me in another room.

2. You were by?

A. Yes sir, he was too sick for me to leave him.

2. Do you know what day he made his will?

A. He made his will on the 11th

day of November.

2. What time of the day, if you remember?

A. I believe it was in the evening about 6 o'clock. A couple of gentlemen came to the house

2. Well what was on Friday was it?

A. Yes sir, on Friday.

2. I am speaking of the will?

A. On Thursday the 11th.

2. On Friday the 12th do you remember, if you can carry back your thoughts to that day, Friday the 12th do you remember what time - Let me ask you did you sleep in his room at night?

A. I didn't sleep at all that night - for three nights before he died I did not go to bed at all.

2. Didn't you take any sleep during those three days?

A. No sir.

2. Didn't close your eyes?

A. No sir, he coaxed me to go to bed but I wouldn't. I didn't

go to bed for three days and nights.

2. Did you go out of the room?

A. No sir, not for three days or nights?

A. On Friday the 12th did you see everybody that came in his room?

A. Yes sir.

2. Will you tell me who they were?

A. Nobody came in the room, but the Doctor and the Minister and a friend of ours from Harlem.

2. Now what is the Doctor's name?

A. Doctor Hupfield.

2. And what is the Minister's name?

A. His name is Mr. Matur.

2. The Doctor came on that day the 12th of November?

A. Yes sir.

2. And the minister came on that day?

A. Yes sir.

2. That was the day before he died?

A. Yes sir.

2. He was laying in bed?

A. Yes sir.

- Q. He did not leave the bed?
- A. No sir, he was not able to.
- Q. You attended him?
- A. Yes sir.
- Q. You were in his room the night before?
- A. Yes sir.
- Q. And all that day and night?
- A. Yes sir, I didn't leave his bed-side for three days, up to the time he died in my arms.
- Q. Do you remember this gentleman Mr. Kelly?
- A. Yes sir.
- Q. Did you ever see him in your house?
- A. Yes sir, four weeks before my father died.
- Q. Was he in your house on the 12th day of November?
- A. No sir, he was in on Sunday. My father died on Saturday morning, and he came in on Sunday after my father died.
- Q. And you were present when your father died?
- A. Yes sir, he died in my arms.
- Q. You alone?

9th

- A. Yes sir.
- Q. Did you see him write anything on the 12th day of November?
- A. No sir, he was not able to.
- Q. Did he?
- A. No sir, he did not.
- Q. Did he have a pen in his hand?
- A. No sir.
- Q. Did you see anybody come there to him with an instrument. Look at that? (Paper shown to witness)
- A. No sir.
- Q. Nobody did?
- A. No sir.
- Q. Then you are positive, that on the 12th day of November, Tom Kelly was not in your father's house?
- A. No sir, he was not.
- Q. Was your brother there?
- A. No sir.
- Q. What is your brother's name?
- A. Henry Bolt.
- Q. Have you more than one brother?
- A. No sir.
- Q. He was not there?
- A. No sir, he was not there three weeks before my father died.

10th

2. Then nobody could come in without seeing you?

A. No sir.

2. Was he sensible?

A. Yes sir.

2. Was he able to rise from the bed at all?

A. Well No sir, he was not, I helped him up whenever he wanted a drink. He could not leave his bed, he was sick.

2. Now miss as a matter of fact he was not out of his room ~~the whole~~ ^{the whole} day of November?

A. No sir.

2. How long before the 10th of November was he out of his room or house?

A. He was not outside of the house for two months, not outside of the door.

2. You are positive of that?

A. Yes sir.

2. You were present all the time?

A. Yes sir, I went home to take care of him.

2. You went to his house to take care of him?

(82)

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- A. Yes sir.
- Q. When did you go there?
- A. I went there, I believe it was two months before he died.
- Q. About two months before he died?
- A. Yes sir, but I could not just tell you the date.

Cross examination by Mr. Lowe.

- Q. You say you can read and write?
- A. Well I ain't a very good scholar.

Q. Can you read and write?

A. A very little.

(The witness is shown the assignment attached to the complaint.)

Q. Will you please read some of that to me? - Can you read any of it?

A. No sir.

Q. Is there any word of it, you can read?

A. There were some words - There was "Bolt".

Q. Where is "Bolt"?

Q. What word is that?

A. That's Edwards Bolt last.

By the Court: What is the object of the question?

By Counsel: She said she could read and write.

By the Court: - C will allow it.

A. C said a very little

Q. Read some of that?

A. There is a great many words
C could not read.

Q. Well read some of that?

By the Court: - Can you read the printed
part of it - Can you read any
of this part of it here?

A. Some of it.

By the Court: - Well read some of it. Commence
here and read along here, if you
can

The witness reads the word "Of"

By the Court: - Well that is enough time
to spend on that.

Q. You can't read the printed part
of the paper?

A. No sir, not all

Q. Can you read any of it?

By the Court: - She read two words of it, that
is all she can read.

Q. You say you staid up three days
and three nights before your
father died without sleep at all

A. Yes sir

Q. You never laid down?

A. No sir.

Q. You never closed your eyes?

A. No sir, I did not, I was worn out.

Q. Who attended to the household duties?

A. Well when my sister came home from work, I used to go to the store in the evening and she would stay with my father but for three days and three nights I did not go anywhere.

Q. You did not leave the house?

A. No sir.

Q. That you swear positively?

A. Yes sir.

Q. You went to no store for any purpose?

A. No sir.

Q. Where was your sister during those three days?

A. She went to work.

Q. What time in the morning?

A. Seven o'clock and sometimes eight o'clock in the morning.

Q. What time in the evening would she come back?

A. Six o'clock in the evening.

Q. And you were left alone with your father?

A. Yes sir.

Q. Did you have any servants in the house?

A. No sir.

Q. No one came except the Minister and Doctor?

A. That's all.

Q. Who did the marketing for the house on those three days?

A. My sister.

Q. About what time in the day did she do it.

A. She would bring home something when she came from work.

Q. What the marketing for the following day?

A. Yes sir, she would have it sent to the house.

Q. What did your father die of?

A. Objections to.

Q. Was it a rapid disease?

A. Suppose his lungs troubled him.

Q. Did he fail gradually?

A. Yes sir.

Q. He sunk gradually?

A. Yes sir.

Q. How was he ~~thawed~~ before he died?

- A. Pretty well sir.
- Q. How was he five days before he died?
- A. He felt pretty good.
- Q. All the three days?
- A. Three days before he died, four days before he died, he took a pain in his side, and he was dead four days afterwards.
- Q. He kept possession of his mental faculties?
- A. Yes sir.
- Q. Knew what he was about?
- A. Yes sir.
- Q. He was not out of his mind at any time?
- A. No sir.
- Q. He was a man of intelligence. I don't mean a scholar, but a man of general intelligence.
- A. Yes sir.
- Q. And a very good father too?
- A. Yes sir. He was a good father.
- Q. Your mother is dead?
- A. Yes sir.
- Q. There ^{were} ~~was~~ ~~just~~ only three children. There was your sister, and your brother Henry and yourself.

A. I have got a step sister.
Q. But you there were your father's only children?

A. Yes sir.

Q. How old was Henry when your father died?

A. I believe he is 32 now.

Q. Then he was about 31?

A. Yes sir.

Q. Did Henry live with the family?

A. No sir.

Q. Where did he live?

A. About two blocks from the house.

Q. Was he married?

A. Yes sir.

Q. When did he marry. How long has he been married?

A. About 6 years, or 7 years.

Q. Did Henry live with your father before he married?

A. Yes sir.

By the Court: Who is this man Henry Counsel? He is her brother.

Q. Henry had lived with your father up to his marriage?

A. Yes sir.

(16.)

- Q. Was he engaged in any work?
- A. Yes sir.
- Q. Didn't he (Henry) contribute during the time he lived with your father to the support of the family out of his wages?
- A. That is more than I can tell you.
- Q. Were not you there too?
- A. I was working out.
- Q. Was not your brother supporting the family at that time?
- A. That is more than I can tell you sir.
- Q. He was earning wages?
- A. Yes sir.
- Q. What was his trade?
- A. Varnishing.
- Q. Do you know what he got?
- A. No sir.
- Q. Was there much difference in your father's condition on the 11th and 12th of November. He died on the 13th?
- A. Yes sir.
- Q. Was there much difference in his condition on the
- (17)

11th and 12th?

A. No sir.

Q. Was not he about the same on both days?

A. He was a little weaker on the 12th than the 11th.

Q. But he was generally in about the same condition wasn't he?

A. Yes sir.

Q. He was dying of lung trouble?

A. I believe it was.

Q. He had full possession of all his faculties?

A. Yes sir.

Q. Didn't he make his will on the 11th?

A. Yes sir, I believe he did.

Q. That was the day before this assignment was purported to have been made - well the record will show for itself.

Q. Your father made his will on the 11th, two days before he died?

A. On the 13th he died, yes sir.

Q. What property did your father leave?

Objected to, the will speaks for itself.

By the Court: It is not material

Q. What room was your father lying in on the 12th?

A. We have a middle room between the front room and the kitchen. He was lying in the middle room.

Q. What part of the room was the bed?

A. Right in the center of the room.

Q. When the doctor and the Minister called who let them in?

A. I did sir.

Q. You went down to the front door to let them in?

A. No sir we could open the door from the bedroom. We did not have to go out of that room to open the hall door. My sister was home.

Q. Did she open the door for them?

A. Yes sir.

Q. He was in that same bed all the time was he? (18)

- Q. Yes sir, he died in that bed.
2. He was in bed how many days before he died?
- A. He was sitting in the chair before he died.
2. He occupied that same bed for several days before he died.
- A. Yes sir.
2. What time was it your father was sitting up?
- A. Four days before he died.
2. After that he remained in bed altogether?
- A. Yes sir.
2. He didn't leave his bed for four days before he died?
- A. On Wednesday night we put him to bed and Thursday, Friday and Saturday he did not get up.
2. All Thursday, Friday, and Saturday he remained in bed?
- A. Yes sir.
2. He died 3 o'clock ~~Friday~~ Saturday morning.
- Q. Yes sir, Thursday and Friday he was in bed (20)

Annie Baudel, a witness called and sworn on behalf of the people testifies as follows

Direct Examination by Mr. Conner

Q. What is your name?

A. Annie Baudel.

Q. Well, are you a daughter of Mr. Ewald Bolt who is dead?

A. Yes sir.

Q. A full daughter?

A. Yes sir.

Q. Are you a sister of the last witness, a full sister?

A. Yes sir.

Q. Then you are a married lady?

A. Yes sir.

Q. How old are you?

A. Twenty one.

Q. Where do you live?

A. I live in 160th street near Cortland Avenue, number 612

Q. Did you live there when your father died?

A. I did.

Q. And do you know where he died?

A. Yes sir.

- Q. Well will you please state when that was?
- A. Well, it was the morning of the 13th of November, it was on Saturday morning about 3 o'clock.
- Q. You were present when he died?
- A. Oh was, Yes sir.
- Q. Who was with you?
- A. My sister.
- Q. You live at home?
- A. Yes sir.
- Q. And how long had your father been sick?
- A. Well, he had been sick a terrible long while.
- Q. Give us your idea as to the time, a month?
- A. Oh more than a month.
- Q. A year.
- A. Well he was sick a year if not longer?
- Q. How long was he confined to his bed?
- A. Not very steady at all until the last half a week or so.
- Q. Three or four days?
- A. Yes sir.

2. What was his habit before that period of time, would he get up during the day?

A. Well he would not be out, he would be in the kitchen in his arm chair.

2. As to his going out of doors do you know when he went out last?

A. Well not for over two months I don't think.

2. Were you with him constantly?

A. No sir, I was at work, I was with him the last 3 days.

2. And did you see Mr Kelly, the gentleman here, at your house?

A. Well, what time.

2. Any time.

A. Well I seen him it was about ~~about~~ ^{went} ~~about~~ ^{say} cure, it was about 4 weeks previous to my fathers death.

2. And was he there on the 12th of November?

A. No sir.

2. How do you know?

A. Well, I was home.

2. Did you see every body who came

in that day?

A. Yes sir.

2. And Mr Kelly was not there?

A. No sir.

2. Did your father go out of the house on the 12th of November?

A. Oh, no he was too sick

2. You are positive as to that?

A. Yes sir.

2. You were in the habit of going to work?

A. Yes sir.

2. Before, your father died on the 13th of November, when did you last go to work?

A. Well it was three days I was home, before that I went to work

2. Do you remember the days you were at home?

A. Wednesday, Thursday and Friday.

2. And Saturday I suppose, the day of his death?

A. Oh, yes the day of his death I was home.

2. When was your father buried?

A. My father was buried on the

Tuesday after his death.

Q. You remember the Minister coming to see your father?

A. Yes sir, the Minister was there.

Q. What is his name?

A. Mr. Haffner.

Q. What denomination is he?

A. A Baptist.

Q. Was you present when the Minister was with your father?

A. Yes sir.

Q. You heard what passed between them?

A. Yes sir.

Q. It was about other matters not of this world?

A. It was all about death.

Q. Nothing about wills or assignments of mortgages, nothing of that kind?

A. No sir.

Q. Do you know whether your father knew anything about his approaching end. Did he ever state in your hearing that he was in danger of dying, that he thought he would die?

- A. He didn't care about dying.
- Q. Did he ever express to you, or in your hearing, any thoughts about dying or about his chance of dying?
- A. No sir, not to my knowledge.
- Q. On the 12th you say you were there?
- A. Yes sir, I was there the 12th.
- Q. Who sat up with him?
- A. Well my sister and I both sat up with him. About an hour before his death I got tired and I laid down.
- Q. Then she was alone with him?
- A. No sir, she woke me up when he got very sick, and the two of us saw him die.
- Q. Was your brother Henry there or anybody else?
- A. No sir, my father died Saturday, and Henry was not there for about three weeks.
- Q. You did not see him for three weeks?
- A. No sir.
- Q. You are positive he was not there for three days?

- A. I am positive of that because
C was home.
- L. Constantly?
- A. Yes sir, unless C would run
to the store and that would
not take me more than five
minutes.
- L. C's your husband living at
home?
- A. No sir, C was not married
at home, - My sister was
home when C went to the
store.

Cross examination by Mr Lowe

- L. What was your father's condi-
tion on the 11th of November
~~the~~ physical condition?
- A. Well of course he was not
as bad as he was the other
days, but he was very sick.
- L. How was he on the 12th?
- A. He got real bad towards
evening.
- L. How often did you go to the
store during the day?
- A. Well maybe once, sometimes twice.

2. Did you go to work at all during those three days?

A. No sir.

2. You didn't leave the house except to go to the store?

A. No sir, only to go to the store.

2. Did you sleep during those three days?

A. No sir.

2. Were you the whole time in your father's room?

A. Yes sir, and when he was taken bad I was there too.

2. During the day and at night?

A. Always yes sir.

2. Did your father die in your arms?

A. No sir, not in my arms, in my sisters.

2. Were you back at the bedside?

A. Yes sir, I was at the other end of the bed.

2. Any body present but yourself?

A. Only us two girls.

2. You say you went to the store sometimes, at what hour?

A. In the morning for what we wanted, anything I

should run out of.

2. What time did you go on the 11th.

A. Well on the 11th Cb cannot remember, but only going once.

2. When was that morning or evening?

A. On the morning.

2. Were you there when your father made his will?

A. Well Cb was in the house Yes sir.

2. Did you see him make it?

A. No sir, Cb did not.

2. Who was there besides you and your sister?

A. The witnesses of course. There was nobody else there but myself and my sister, and another lady friend of mine. We were in a different room.

2. Was he sitting up or in bed?

A. He was sitting up in a chair.

2. At the time he made his will?

A. Yes sir.

2. What hour of the day was that (29)

on the 11th?

A. On the evening.

Q. About what time?

A. About 9 o'clock.

Q. At night?

A. Yes sir.

Q. On the 11th?

A. Yes sir.

Q. Do you know the names of the people who were there at the time?

A. I think I do. There was Mr. Smith and Mr. Searing and Doctor Hipfield.

Q. Was he the family physician?

A. Yes sir.

Q. He was attending your father?

A. Yes sir.

Q. He was present?

A. Yes sir.

Q. Was the doctor one of the witnesses?

A. I believe he was.

Q. Now will you name all who were in the room, and how your father made his will, were your sister at that time?

A. My sister myself and another

lady friend, were in the front room, they were in the kitchen

2. Your father made his will in the kitchen?

a. Yes sir.

2. And you, your sister and this lady friend, were in the front room, so you did not see him make it?

a. No sir.

2. You three were in the front room at the time?

a. Yes sir, we were in a different room altogether.

2. The kitchen was adjoining the room?

a. No sir.

2. Was there a room between the kitchen?

a. Yes sir.

2. There was a bed room?

a. Yes sir.

2. Your father was sleeping in the middle room, and he made his will in the kitchen and you and your lady friend and your sister, were in the front room? (31)

- A. Yes sir. The doors were closed.
- Q. So you could not see or hear anything?
- A. No sir, we didn't see or hear a word.
- Q. Now let me see do you remember what time you went to the store on the 12th?
- A. On the 12th I believe I went somewhere near dinner time.
- Q. About when?
- A. In the morning. I must have went to the store about half past ten or eleven o'clock.
- Q. Between ten and eleven o'clock on the 12th?
- A. Yes sir.
- Q. Do you know whether Mr. Kelly had not drawn a will, or wills for your father, before this one made on the 12th?
- A. I believe I heard him say he drew the first one.
- Q. Did you hear your father say so?
- A. There was some talk about him.
- Q. You heard your father say so?
- A. I am not positive.

0135

Peoples Exhibit "A."

State of New York, } ss.
City and County of New York, }

I, **JAMES A. FLACK**, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, being a Court of Record, DO HEREBY CERTIFY,

That ~~the~~ *Bernard J. Kelly* was on the 12th-day of November 1886, a duly appointed ^{qualified} Notary Public for the City & County of New York.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the said Court and County, the 15th day of July 1887

James A. Flack Clerk.

2. Do you know whether he drew a deed of land, that your father sold to him?

A. I think Mr. Reilly done that.

2. Do you know?

A. I don't know anything about it.

Counsel for the People here offers in evidence, a certificate from the Clerk of the City and County of New York, certifying that Bernard J. Kelly, was on the 12th day of November 1886, a duly qualified and appointed Notary Public for the City and County of New York. Marked Exhibit "A", which said certificate of appointment was admitted and consented to by defendants counsel.

Further hearing adjourned until Tuesday July 26th at 10. A. M.

Cliff area County of New York ss.
July 25th 1887.

Personally appeared
before me Thomas B. Conner
Scriber, and certified
upon oath that the within
Manuscript of testimony was
correct as taken upon examination.

Thomas B. Conner

Andrew White
Police Judge

POOR QUALITY
ORIGINAL

0138

BAILED,
No. 1, by William Miller
Residence 212 E 4th St
No. 2, by 212 E 4th St
Residence 212 E 4th St
No. 3, by 212 E 4th St
Residence 212 E 4th St
No. 4, by 212 E 4th St
Residence 212 E 4th St

Police Court District.

THE PEOPLE, &c., 1870
ON THE COMPLAINT OF

Charles Jackson

Demond Miller

212 E 4th St

Offence Forgery

Dated July 7 188

Wm Miller Magistrate.

Office

Precinct

Witnesses

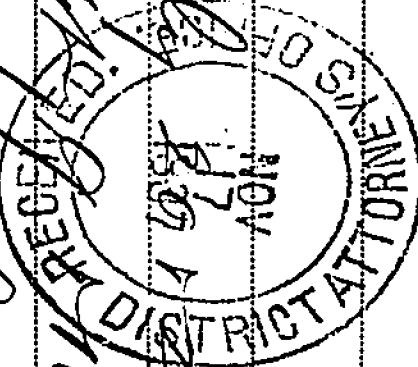
No. 1000 Street

No. 1000 Street

No. 1000 Street

No. 1000 Street

No. 1000 Street



It appearing to me by the within depositions and statements that the crime therein mentioned has been committed, and that there is sufficient cause to believe the within named Alfred A. A. A.

guilty thereof, I order that he be held to answer the same and he be admitted to bail in the sum of 1000 Hundred Dollars, and be committed to the Warden and Keeper of the City Prison of the City of New York, until he give such bail.

Dated November 12 188 A. J. White Police Justice.

I have admitted the above-named Alfred A. A. A. to bail to answer by the undertaking hereto annexed.

Dated November 12 188 A. J. White Police Justice.

There being no sufficient cause to believe the within named Alfred A. A. A. guilty of the offence within mentioned, I order he to be discharged.

Dated November 12 188 A. J. White Police Justice.

POOR QUALITY
ORIGINAL

0139

Sec. 612 & 619.

SUBPOENA.

Fifth DISTRICT POLICE COURT.

CITY AND COUNTY }
OF NEW YORK, } ss.

In the Name of the People of the State of New York,

To Ambrose De Bundy

No. _____ Street,

You are Commanded to appear before Hon Andrew J White
one of the Police Justices in the City of New York, at the Fifth District Police Court, at 125 Street
or Front Avenue in the said City on the 7th day of July
1887, at 9 o'clock in the fore noon of that day, as a witness in a criminal action prosecuted by the
People of the State of New York, against

Bernard J Kelly, and bring with you, a certain paper
writing in your possession purporting to be an assignment of mortgage
dated November 12, 1886 made by Albert Boel to Henry Boel.

And for a Failure to attend you will be deemed guilty of a Criminal Contempt, and liable to a Fine of
Two Hundred and Fifty Dollars, and Imprisonment for thirty days.

Dated at the City of New York, this 6th day of July, 1887.

A J White Police Justice.

POOR QUALITY
ORIGINAL

0140

New York General Sessions.

PEOPLE ON MY COMPLAINT,
VERSUS

Bernard J. Kelly

As complainant in the above case, I beg to recommend the defendant to such leniency and clemency as the Court and District Attorney may see fit to show; but I expressly assert that my reasons for so doing are not controlled by any advantage to myself.

After careful reflection I am satisfied the defendant committed no offence. I am led to this belief from the facts that have come to my knowledge since I made the complaint, which had I known at the time, would have been perfectly satisfactory to me and I should have made no complaint.

Dated New York Jan'y 19th 1888.

Paulus Sachse.

City and County of New York. On this 25th day of January 1888 before me personally came Paulus Sachse known and known to me to be the individual described in and who executed the within instrument and who duly acknowledged to me that he executed the same.

Daniel J. Hogan
Comr of Deeds
City & Co of N.Y.

Fifth District Police Court.

The People on the Complaint of
Paulus Sachse

against

Bernard J. Kelly

Charged with giving a false certificate as Notary Public, to the acknowledgment of an instrument.

The Accusation.

The People's Counsel sought to restrict this to a simple charge of falsely certifying an acknowledgment of an instrument, without bringing in question a charge of forgery of the signature of Avalt Bolt to the assignment of mortgage to which the acknowledgment was taken.

It is perfectly manifest that these two charges cannot be separated; and that if the accused is guilty of one, he is guilty of both, as principal or accessory, and, if innocent of one, he is unquestionably innocent of both, for the following reasons, viz: -

1st. That the assignment and acknowledgment both bear the same date, November 12th. 1886, and were either executed and acknowledged on that day, or they were forged, as of that day;

2nd. The People's witnesses testify that neither the accused nor Henry Bolt were at the house of the deceased for several weeks before he died; which is false as to Kelly; but if it be true, then the instrument could not have been executed and acknowledged one day before the death of Avalt Bolt.

Consequently the People, to establish the guilt of the accused upon the charge of giving a false certificate, must logically prove the forgery of the assignment.

T h e F o r g e r y

The People's Counsel did not dare to assert that it was a forgery; nor did they offer any proof whatever to that effect; on the contrary, having stated in open Court, that they proposed to call an expert in handwriting, named Ames, well known in the Courts of New York, they failed to do so.

Whereas, the accused produced the witness Carvalho, an experienced expert of many years standing, who testifies that he has been a witness in such cases in Court, one hundred and seventy odd times; and he swears positively that he examined the signature of Avalt Bolt to the assignment of mortgage, (People's Exhibit A.) and has compared it with his signature to a contract for the sale by him to Ellen Kelly of the

same property involved in this controversy (The Defendant's Exhibit A.) and that he has also compared it with the signature of Avalt Bolt to his Last Will and Testament, now on file in the office of the Surrogate of New York County, in and by which this Complainant, Paulus Sachse, is appointed Executor; the genuineness of which signature is not disputed; and the genuineness of which signature to the Defendant's Exhibit A has been proved without contradiction.

Carvalho swears that all three of those signatures were made by the same hand; and he specifically swears, if the signature to the Will be the signature of Avalt Bolt, then the signature attached to the paper marked Plaintiff's (People's) Exhibit A. is the same hand-writing and written by the same person.

This uncontradicted testimony clearly establishes the fact that there was no forgery. Why, therefore, should there have been a false certificate of acknowledgment to a genuine paper? If the paper was genuine what possible motive could Mr. Kelly have had to falsely certify to it as a Notary Public?

The Law does not require that the assignment of a mortgage shall be recorded, ^{to} ~~to~~ make it valid, as between the assignor and assignee, or their heirs at law, or personal representatives.

This is equally true as to a Deed of Conveyance of land. Recording is only to give notice, by which

subsequent grantees or assignees may be bound.

Again, if the paper was not a forgery, what possible motive could Mr. Kelly have in giving a false certificate of acknowledgment?

Again, if the paper was in any manner tainted, why should Mr. Kelly advise his father to purchase the assigned mortgage for four hundred Dollars, which is shown to have been about its market value, after paying broker's commission.

Old Mr. Kelly took the \$400 out of his bank, April 25 1887, gave the money to his son Bernard, who paid it to Henry Bolt in the presence of Mr. O'Reilly, as is undisputed.

\$250 of this money was paid by Henry Bolt to Mr. O'Reilly and Mr. Kelly, as his Counsel in proceedings taken in the office of the Surrogate of New York County to resist the probate of Avolt Bolt's Will, made November 11 1886, in favor of his daughters Rose and Annie, and to the exclusion of his son Henry, except to a small nominal amount.

R e p a r a t i o n .

It is evident that on November 12 1886, the old man repented of his having cut Henry off, and determined then to make him some amends, by assigning that

mortgage to him.

T h e A c c u s e d .

Mr. Kelly is a young man of honorable reputation, and just commencing life, in the practice of his profession.

Already the New York papers have flaunted his name before the public, as a forger in this case, to his great mortification and injury. To hold him now for the Grand Jury, although it is very certain that no petit jury could convict him on this testimony, would nevertheless have the effect so to brand and damage him, personally and professionally, that an acquittal by a jury hereafter, could never fully repair the wrong and injury done him.

T h e o n l y i s s u e .

The single issue in this case is, were Bernard J. Kelly and his sister Mary at the house of Avalt Bolt about half past ten o'clock on November 12 1886; and did Mr. Bolt at that time execute and acknowledge the assignment of the mortgage to his son, Henry, in the presence of Kelly and his sister, and did he request Kelly to deliver it to his son, Henry; and did Kelly deliver it to Henry, at his house at eight o'clock on

the night of that day; and was the same taken by Kelly and recorded in the office of the Register of New York County.

T h e E v i d e n c e .

The People's witness, Rose Bolt, denies the presence of Kelly and his sister on that day. But is she a reliable witness? She and her sister Annie, who also testifies for the People, flatly contradict each other in a most extraordinary manner. Rose swears positively that Annie was at work at the shop of Paulus Sachse, on each of the three days next preceding their father's death; that Annie left for her work at seven or eight o'clock in the morning, and returned home at six o'clock in the evening; that she, Rose, was left alone with her father; and that her sister, Annie, did the marketing for the house on those three days, bringing home something when she came from work, or having it sent home.

Annie, on the contrary, swears positively that she was with her father on all of those last three days; did not go to her work at all, and remained in the house all the time, except that she went to the store, once and sometimes twice during the day. On cross-examination, she says that, on November 12th, she went to the store about half past ten or eleven

o'clock; between ten and eleven o'clock.

A perusal of the testimony of Rose, in which she swore that she could read, and when tested, it was proved that she could not, is sufficient to show her general unreliability.

It was attempted to show by Sachse, that Annie was at home on those three days; but his evidence was entirely hearsay, and was stricken out, with the consent of the People's Counsel.

It was also attempted to sustain Annie's statement, by the testimony of Dr. Hupfield; which does not conflict with the testimony of the Defendant's witnesses, as to Annie's whereabouts on November 12th. as will be seen later; because the Doctor testifies that he paid three visits on that day, to his patient, Bolt, the first between nine and ten o'clock in the morning, leaving there before ten; the second, between half past one and five; and the third from half past seven to half past nine or ten P.M.; and that Rose and Annie were there at the time of each of those visits.

Now, of course, Annie was home that night; because she always came from her work before seven o'clock. As to her being there at the time the Doctor called in the afternoon, it is not at all improbable, as the distance from Sachse's shop to her father's house was

only about three blocks. She might naturally have gone there, from her work to ascertain how her father was. And the same explanation is applicable to her being at her father's house between nine and ten A.M. when the Doctor paid his first visit that day.

So that the Doctor's testimony on that point, does not necessarily corroborate her statement; nor does it contradict the positive statement of her sister, Rose, that she did go to work at seven o'clock each morning, on those three days, returning from her work at five or six o'clock in the evening.

Then we have the positive testimony of her brother, Henry, that at quarter past seven o'clock, November 12th. he saw Annie going down Cortlandt Avenue, in the direction of Sachse's house, Henry having been to the store, to buy things for breakfast.

Henry also swears that at ten o'clock, November 12th. he left his house and went to the barber's, got a segar, and sat by the window facing South, and saw Rosa with a basket on her arm, leaving her father's house about quarter past ten o'clock.

He went out of the shop and saw her go into William's fancy store, and thence to Theiss' butcher shop, and thence to Ferdinand Baumer's. He had previously met his wife at the corner of 160th. Street, at half past ten, and he knows the house because his wife asked him the time. He and his wife both saw

Rose at Baumer's. Rose left there and went down towards Sachse's store. She was about 100 feet ahead of Henry. She went to the store, and Annie came to the door and talked to her. After this, Henry went on to meet a business engagement. On returning homeward shortly after twelve o'clock, he saw Annie returning to her father's house, from Sachse's; which fully corresponds with the Doctor's testimony, that he saw Annie at her father's house when he paid his second visit at half past one; It is therefore evident that she had gone there to enquire after her father and then returned to Sachse's, because Henry testifies that he saw her again after five o'clock, returning in the direction of her father's house from the direction of Sachse's shop.

And this again corresponds with the Doctor's testimony, that he found her at home when he paid his third visit, at half past seven.

Rose says Annie went to work at seven to eight A.M. Henry says he saw her about 7.15 A.M. November 12th. going down Cortlandt Avenue towards Sachse's house; so that if the Doctor saw her at her father's house, between nine and ten A.M., she had evidently called to enquire about her father, and then returned to her work.

Consequently Annie is contradicted, on this most important point, by the testimony of her sister Rose,

and her brother, Henry and his wife; and she is, in no way sustained by the Doctor, as we have explained, nor Sachse, nor by any other witness.

Even if we take her own testimony; she says that on November 12th. she went to the store about half past ten A.M., or between ten and eleven; which was at the very time when Kelly and his sister were at her father's house; as they have sworn positively; and in this, they are corroborated by Henry Bolt and his wife who swear positively that at 10.30 A.M. November 12th they were standing but a short distance from old Bolt's house, and distinctly saw Kelly and his sister go through the gate into his house. Here then are these witnesses corroborating Kelly; viz: his sister and Mr. and Mrs. Henry Bolt; and Annie, by her own testimony, was at that hour away from the house.

Kelly was no stranger there. He had previously been Counsel and transacted business for Avalt Bolt; had prepared legal papers for him, such as a Deed and a Will &c., and had visited him for such and other business repeatedly.

Therefore, on November 12th. when he knocked at the door, which was ajar, and the door opened, and he saw Mr. Bolt lying there in his bed, he walked in without further ceremony, as was to be expected. He was there but ten or fifteen minutes.

It appears by the testimony, that there were

other occasions when papers, prepared by Mr. Kelly for the old man, were executed by him, and when neither of the daughters was present; as will be seen concerning the deed of the land in question, from the old man to Kelly, executed when Annie was not in the room, and Rose was not in the house, as they themselves respectively testify.

(See their cross-examination, at the Session of October 8 1887.)

And so, also, as to the execution of the contract of sale (Defendant's Exhibit A.) which Kelly swears was executed when neither Annie nor Rose was present. It was therefore not remarkable that the old man should have executed the assignment of the mortgage out of their presence. He had a good reason for doing so; because he was, in a measure, making amends to Henry for the undue preference that he had given to his two daughters, in the Will which he executed the day before. And right here, it must be remembered that the People's Counsel drew out from Henry, on his cross examination, that his sisters were unfriendly to him, and had created trouble between him and his father, which was the reason why he did not go to his father's house for some ten days before his death; as he did not wish to cause any further trouble to his father.

R o s e ' s A b s e n c e .

Annie having been seen by the Doctor at her father's house, between 9 and 10 A.M. on November 12th and having returned to Sachses store, where her brother saw her talking with Rose, between 10 and 11 on that day, it may be asked why Rose left the house during Annie's absence. The answer is plain. They both testify that their father was weaker on the 12th. than he had been on the 11th., but the Doctor says expressly that he did not, on the 12th., expect Bolt to die the next day; that he might have lived three or four days, as consumptive patients often linger a long time and that at his morning's visit between nine and ten on November 12th., Bolt was not delirious, though weaker, but that he was then in possession of his mental faculties. Therefore Rose felt no uneasiness in leaving the house for 20 or 30 minutes, to do her shopping, between ten and eleven A.M. on November 12; during which time Kelly and his sister were at the house.

C o u l d n o t s p e a k E n g l i s h .

This issue is hardly worth considering. The evidence taken, shows that old Mr. Bolt could understand English, and speak it well enough to be under-

stood. Papers were prepared and explained to him in English, on several occasions. Besides those witnesses produced and examined by the Defendant on that point, the Court will remember that the Defendant had a large number of witnesses present, ready to be called and examined to rebut the People's testimony on that point; but the Court decided that it was unnecessary to continue that examination.

W a s h e c a p a b l e ?

The Doctor testifies that Bolt was a man of strong determination and not to be influenced by any one; that he was slowly dying for months with consumption; that when he executed his Will on November 11th. he was in full possession of his faculties; and likewise, on the morning of the 12th.; that he first discovered delirium late in the afternoon of that day. The Doctor expresses the opinion that he was not physically able in the morning of that day, to sign a document. This is but an opinion, because the Doctor did not actually see him tested. And surely it would be unjust to oppose such a mere opinion to the positive oaths of Kelly and his sister, who swore that he did sign the paper in their presence. Take that in connection with the fact also, that Bolt was a man of strong will, as testified to by the Doctor.

The Detective.

We have purposely kept this interesting witness for the last.

He begins by telling us that apart from a memorandum which he had made and held in his hand, he had no recollection whatsoever, of his own memory at all, none whatever, in regard to the movements of Kelly on November 12th. On cross-examination, he says, "I have a very bad memory." Finding what was necessary to say, after hearing the argument of Counsel, he tells us that his memory is sufficiently refreshed by the paper to enable him to testify. Then he goes on to say that he saw Kelly leave his house on November 12 at 8.40 A.M. alone; that he took the elevated road at 76th. Street and 3rd. Avenue, and went to his office No. 17 Union Square, arriving there at 9.15 A.M.; that he, the witness, posted himself so as to command a full view of the door of that building, and that there was nothing to obstruct his view; that from 9.15 A.M. to 1.10 P.M. he never lost sight of that door; that at 1.10 P.M. Kelly came out and went to dine at a restaurant; that at 1.40 P.M. Kelly returned to his office and the witness went for his own dinner, and was gone about three quarters of an hour, until about half past two, when he returned to his watch at 17 Union Square and remained there until 4.40 and then saw Kelly come out of the building and take a train at 14th. Street

to 67th. Street and 3rd. Avenue, and get off and go to McGovern's real estate office, and thence home at 6.30 or 6.50 P.M. He swears positively that he had Kelly continuously under his watch from 8.40 A.M. to 6.30 or 6.50 P.M., except during the three quarters of an hour when he, the witness went to his dinner, from 1.40 to 2.50 P.M.; and that consequently Kelly could not have gone to Brooklyn.

Kelly himself and two respectable ladies swear positively that he was in Brooklyn between 4 and 5 o'clock, at the very time when the Detective swears Kelly was on the Elevated railroad in New York, going up to 67th. Street.

It is also false, as this man has sworn that Kelly reached his office at Union Square at 9.15 A.M. Mr. Spencer C. Doty, a respectable lawyer of this City, (in whose office, Mr. Kelly has a desk, at 17 Union Square) testifies that he reached his office at his usual time, between half past nine and ten, and that Kelly was not there, and did not come there until a quarter before 12; that he, Doty, and the witness Hoyt, were about executing a deed, as Executors of an estate, and were waiting for Kelly to come to take the acknowledgment, which Kelly did, on his arrival at the office; and that then he, Doty, immediately took the deed to the Register of New York County, to be recorded.

The witness, Hoyt, corroborates Doty, to the extent that the deed was executed by them, and acknowledged before Kelly, as Notary Public, at the office 17 Union Square, between the hours of 11 and 12, November 12 1886; but he is not clear in his recollection as to whether or not Kelly was in the office when he, Hoyt, arrived. Hoyt shows, at all events, that all of the rest of the testimony of Doty is true.

K e l l y ' s C o r r e c t i o n .

In his first direct examination, he was in error as to the time when he left his house for the office. But at a subsequent session, and before any testimony to the contrary had been given by the People, he corrected his testimony in accordance with the facts, having had his memory refreshed by looking at the Doty and Hoyt deed at the record office, the endorsement on which by the Register, showing that it had been recorded at 12.15 P.M. Mr. Doty testifies that he took it to be recorded immediately after its execution, at a quarter before twelve, and of which he made an entry at the time.

In like manner, Miss Mary Kelly fell into the same mistake, which is not unnatural, as she and her brother could not, on November 12 1886, have anticipated that a fact then so unimportant, would ever become

a matter of inquiry in such proceedings as these; and therefore they did not charge their memory with it.

I n t e r e s t o f K e l l y .

We have shown that Kelly could have had no interest in giving a false certificate on November 12 1886, for the benefit of Henry Bolt; because it must be remembered here that the assignment of this mortgage to Kelly's father was made long afterward, on April 25 1887, five months after the assignment from Bolt to his son Henry, and that the \$250 fee was paid to Kelly and O'Reilly April 25 1887, as Counsel for Henry Bolt in contesting the Will made by his father November 11 1886; and that the contents of that Will were certainly not known to either Henry Bolt or Kelly on November 12 when the assignment of the mortgage was made to Henry by his father; and consequently that there could then have been no intention to contest a Will, the Testator being still alive and the contents of his Will not disclosed; so that Kelly had then no fee in view, and no possible interest in the matter, to induce him to commit a criminal offense which would send him to State Prison. On April 25 1887 Henry Bolt sold the mortgage to Christopher Kelly, father of the Defendant, for its full market value, allowing for brokerage. Now is it reasonable

to suppose that the Defendant would have advised his father to take his money out of Bank, and invest it in a forged mortgage? for, as we have shown, if the certificate of acknowledgment is false, then the assignment is unquestionably a forgery; and that must have been known to the Defendant. The Bond and Mortgage were in the possession of Avalt Bolt when he made the assignment to Henry on November 12 1886, which he requested Kelly to deliver to Henry, as he did, at 8 o'clock on the night of that day, at Henry's house.

The Bond and Mortgage were not delivered by Avalt Bolt to Kelly with the assignment, for the reason that the old man was sick in bed, and such delivery was not necessary to the validity of the assignment.

I n t e r e s t o f R o s e & A n n i e .

It is not disputed that Sachse, the administrator of Avalt Bolt, is seeking to hold this mortgage for the estate; which, of course, is in the exclusive interest of his principal witnesses, the legatees, Rose and Annie; and it is apparent that this criminal proceeding against Kelly, is directed solely to that result. It is an attempt to destroy the assignment of the mortgage to Henry, by railroading to Sing Sing the honorable lawyer who drew and took the acknowledgment of that assignment; a most disreputable and des-

perate undertaking.

No lawyer can safely practice his profession, if such things be allowed by the Courts to go without the severest scrutiny; and without the sternest rebuke if discovered by the Court to be an attempt by the prosecution to prostitute its power to private ends of pecuniary gain or personal animosity

[Attention is called to a manifest error in the minutes.

In the direct examination of Henry Bolt, (Session of October 1 1887.) he is made to say, at page 7, speaking of the People's Exhibit A., viz: the assignment of the mortgage by his father to him, "I first saw this paper on the 1st day of November 1886," "at about 8 o'clock in the morning," "at my house," "Mr. Bernard J. Kelly brought that paper to me" "and delivered it to me" &c. &c.

He did not say "November 1st. at about 8 o'clock in the morning." He said, (as Kelly testified also,) "November 12 1886 at 8 o'clock in the evening."

It is an error of the Stenographer, as is very apparent from the cross examination of Henry Bolt by Mr. Simonson, at page 13 (Session of October 1 1887) as follows:

Q. "How do you remember it was November 12th. that you saw Mr. Kelly and his sister?

A. "Well, I remember it by one thing, because he came to the house that night with the assignment."

Again at page 21, (same Session)

Q. "You say Kelly came to your house at 8 o'clock?

A. "Yes, sir.

Q. "You took out your watch?"

A. "I looked at the clock." &c. &c.

We have not presumed to take undue advantage of the patience and courtesy of the Court, by an elaborate and detailed presentation of all the evidence, which, of course, the Court will examine for itself. We have invited attention only to the main and controlling points, upon which we confidently rely for the honorable discharge of our client.

Respectfully Submitted,

New York City, October 19 1887.

81 Cedar St. New York *E. Louis Lowe*
280 Broadway, N.Y. *H. O'Reilly*
of Counsel for the
Defendants

5th W. Police Court

The people, on the one hand
of Paulus Fischer
against
Bernard Kelly.

Original
Defendants Bridg.

Louis Love
J. C. O'Reilly
of counsel for the
Defendant

.....X
PEOPLE,
.....
____VS____
BERNARD J. KELLY,
.....X

BEFORE

HON. ANDREW J. WHITE,

Police Justice.

This prosecution is brought under Section 510 of the Penal Code, the charge being, the false certification of an assignment of Mortgage, by the defendant as a Notary Public.

The evidence for the People consisted of the testimony of Paulus Sachse, Executor of the Will of Ewald Bolt, deceased, Doctor Hupfield, Rosa Bolt, Annie Bandel, Detective Galpin, and others.

The substance of their testimony was as follows:

Ewald Bolt was confined to his house, on the South side of 160th Street near Cortlandt Avenue, suffering from consumption for a period of over a year.

On September 11th, 1886, he was the owner of a small lot of land adjoining his residence, which he, on that day, sold to defendant for \$900 taking a Mortgage back of \$500. On November 11th, 1886, Bolt made his Will, in which he left his son Henry Bolt, the sum of \$200.

Ewald Bolt, on the day that he made his Will, was very ill, but conscious of what he was doing. Doctor Hupfield says, that on November 12th, at nine thirty, A. M., Bolt was in a worse condition than on the previous day, but was still conscious. He was unable to answer his questions, except by a nod, and was in no condition to sign or execute any paper.

On the 12th of November, the two children of Mr. Bolt, Rosa Bolt and Annie Bandel, say that they were in their father's house all that day up to eleven o'clock, and that they both knew Mr. Kelly, the defendant, and his sister, and that neither Mr. Kelly nor his sister came there on that day to that house.

The defendant and his sister testified that they left their house in East 73rd Street, at nine thirty on the morning of November 12th, and took the Third Avenue horse cars to the Bridge, and then the cars to 159th Street, and they walked up from thence to Bolt's house, arriving there at 10.30, A. M. That they went in the side entrance, the door being open, and went in the room, and saw Mr. Bolt laying in the bed, appearing to be very ill. That Mr. Kelly (who, by the way, was a lawyer), said, "Good morning, Mr. Bolt", and had quite a consultation with Mr. Bolt, in the English language, in which he told him that he had come up there to pay off the Mortgage, and showed him \$500. That Mr. Bolt told him that he did not want the money, he wanted the Mortgage given to his son, and that Mr. Kelly thereupon

inserted his son's name in the assignment of Mortgage, which, as he and his sister say, was prepared by Kelly at his (Kelly's) house, before going up there, and had Mr. Bolt first read it, and then sign it, and he (Kelly) witnessed it, and then subsequently at his house drew up the acknowledgement. That no one was present in the room, nor did they attempt to ascertain whether anyone was in the house, and that Bolt told him (Kelly) to give the Mortgage to his son. Right here, the attention of the Court is called to the peculiarities of the statement of Mr. Kelly and his sister. The assignment of Mortgage as drawn by Mr. Kelly, prior to his going to Mr. Bolt's house, was drawn as he says, with the intention of presenting it to his sister. His sister at that time was a minor, as she testified. The consideration of the Assignment is One Dollar, and other consideration. The amount of \$500 was only the amount of the Mortgage, which was not then due, but upon which at that time, there was about two months' interest due. And no explanation is offered why he, as a lawyer, went to the house of a man sick unto death, and in the absence of any of his family, tendered to him, a less sum than was actually due him, in the hope of obtaining his signature to a paper, transferring his interest in that Mortgage.

Now Kelly seeks to bolster up his claim of being there by producing Henry Bolt, and Henry Bolt's wife, who testified that they saw him entering the gate,

going into the house at about the time, and on the day he speaks of. Henry Bolt's testimony is, that of an interested person. He swears that he also saw Annie Bandel, his sister, going to work that morning at Mr. Paulus Sachse's --- saw her at Mr. Paulus Sachse's --- saw her come home to dinner, and saw her come home to tea. He did not work that day. He was only able to tell the name of one person that he met, and he was unable even to give his present address. Bolt is attempted to be corroborated by the testimony of his wife, equally interested with the husband. His and his wife's testimony are flatly contradicted by the two sisters, Rosa Bolt and Annie Bandel, and by the further fact, as testified to by Mr. Sachse, that Annie was not working that day, and had not been working for two or three days prior thereto, he (Sachse) being sick and confined to his bed.

It is also well to call the Court's attention right here, to the fact that Ewald Bolt, when the pretended Assignment of Mortgage was made, was still in possession of the original Bond and Mortgage made by defendant, which subsequently came into the possession of the Executor, it never having left the possession of the deceased, he having died on November 13th, in the morning. No explanation is offered by Mr. Kelly, why he did not ask for and obtain possession of the original Bond and Mortgage at the time of the alleged assignment. In regard to this part of the whole story, the question

arises as to the probabilities of the two stories, which are directly conflicting.

The story told by Kelly and his witnesses, is improbable, in many of its aspects for the following reasons:

F I R S T : They claim that the door of Bolt's house was open. The Court will remember this was in November, and the sick man was then suffering and in fact dying from consumption, his bed-room being directly in front of the door, and it is highly improbable that under such circumstances, the door would be left open.

S E C O N D : It was clearly shown by the People's witnesses, that while Ewald Bolt could answer, "Yes", or "No", or say "Good morning", he could not understand English --- could not speak it, and could not read it.

T H I R D : It is improbable that a person of the thrifty habits and characteristics of Mr. Bolt, would have signed any papers on his sick bed, when brought to him by a lawyer against whom he had a claim for \$500 secured only by his Bond and Mortgage, without there being present some member of his family, who could understand the object and meaning of the papers submitted.

F O U R T H : It is highly improbable that the two daughters of Mr. Bolt, who were in constant at-

tention upon him, and who knew his dying condition, would have left their father, lying upon his death bed alone in the house unattended at the time, that Kelly claims he went there.

F I F T H : The testimony of the two girls is clearly corroborated by that of the detective, whose whole explanation of the whereabouts of Mr. Kelly on the day in question was not materially disputed or contradicted.

S I X T H : Although Mr. Kelly on November 12th, according to his own story, was willing to pay Mr. Bolt \$500, yet when he comes in April, 1887, to obtain an assignment from the son to Christopher Kelly, his father, he only offers him \$400, although the last assignment expressed a consideration of \$500 --- \$250 of the \$400 he retains for himself and Mr. O'Reilly as Counsel fee.

S E V E N T H : The attention of the Court is also called to another improbability in this case, which is as follows:-

On the 11th of November, Ewald Bolt made a Will, bequeathing to his son the sum of \$200. This fact, or rather the fact of the making of the Will, seems to have been unknown to Henry Bolt, until after the death of his father. Doesn't it look strange that Ewald Bolt having bequeathed to his son \$200 on the 11th of November, was so anxious on the 12th of November to give him

\$500 more.

E I G H T H : Another improbability of the defense is this: That Henry Bolt says, that he knew his father was dying, or dangerously ill. That he didn't go to see him, although he lived but two blocks away. Yet was not at all suspicious when he saw Mr. Kelly and his sister going into his father's house on the day in question evidently for some business purpose and knowing, as he says, that no one was with his father at the time, and never having asked him (Kelly) or questioned him, as to what was the object of his visit. And he further saw him come out, and didn't think at that time, it was worth his while to ask him even then, what occasioned his visit to his father, although Kelly and Henry Bolt were intimate.

As regards Mr. Kelly's whereabouts on November 12th, 1886, when he was first examined and his sister also, their story was, that they left Bolt's house to go to their own home, and had lunch there, and after lunch he went to his office. Since he told that story he has now thought of a new explanation, which is, that he did not lunch at home, but was at his office at fourteen minutes to twelve, and there took an acknowledgement for Mr. Doty and Mr. Hoyt.

In thus changing his story, he flatly contradicts his sister who was positive that they did lunch together at their home on that day, and that she left

the house after lunch to go down to some Insurance Company, leaving him in the house at that time, viz: 12.30, P. M.

In regard to the testimony of the witnesses produced at the last session as to Mr. Kelly's being over in Brooklyn in the afternoon of that day, their story is highly improbable.

The testimony seems to be that of two women who never saw him (Kelly) before that day, and yet they distinctly remember that it was on the 12th day of November --- that it was between four and five o'clock, and that Mr. Kelly was the man they saw.

One witness, Bridget O'Brien, testified that she had never spoken to anyone about this case, didn't know what she was to testify to, remembers the day by a receipt for rent which she opportunely brings with her, and can give no explanation of how she came to bring that receipt or how her memory has become refreshed as to that particular occasion.

This hurriedly disposes of about all the testimony in the case.

It is confidently asserted by Counsel for the People, that a case has been clearly made out against defendant, testified to by witnesses who have little or no interest in this prosecution, whose manner and conduct upon the stand were that of truthful, hard-working honest people, and that the defendant should be held upon this charge.

It is claimed by Counsel for the People, that the testimony of the defendant, and his witnesses, bear all the ear marks of a prearranged, and concocted story, dove-tailed together by documentary evidence and all the paraphernalia attendant with, and pertaining to, skilled and professional witnesses.

Respectfully submitted.

John M. Coman,	:	
	:	
George D. Simonson,	:	Of Counsel
	:	for the
Mitchel Levy,	:	People.
	:	

POOR QUALITY
ORIGINAL

0171

5th DISTRICT POLICE COURT.

PEOPLE

VS.

BERNARD J. KELLY.

0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-

BRIEF FOR PROSECUTION.

0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-

John M. Coman,
George L. Simonson,
Mitchel Levy,
of Counsel for People.

N.Y. GENERAL SESSIONS.

-----X
The People &c.

vs.

Bernard J. Kelly

To
Hon. John R. Fellows,
District Attorney,
b New York Co.

Dear Sir :

In the above action which has been referred to me for examination as to whether it should be put before a jury for trial, I respectfully report as follows:

I. Indictment found November 23rd, 1887.

The indictment charged the defendant with forgery in the first degree in that the defendant Kelly, on the 12th day of November, 1886, being then a Notary Public duly authorized in the County of New York, to take proof and acknowledgment of divers instruments which might be recorded &c., was authorized to take the acknowledgment of the assignment of a mortgage set forth at length in the indictment, made by Ewald Bolt to Henry Bolt, and that on the said 12th day of November said defendant "did feloniously and wilfully certify falsely that the execution of the said instrument" &c. was on said day acknowledged by the said Ewald Bolt, before him, said Kelly; that he, Kelly, did thereupon sign in his own proper handwriting a certificate purporting to be a due

and proper certificate of acknowledgment &c.. The indictment then negatives the statement contained in the alleged acknowledgment that Bolt personally appeared &c &c. In the indictment he is named Avalt Bolt, but upon the hearing before the Magistrate his name appears as Ewald Bolt.

II. As will be seen, this indictment is found under Section 510 of the Penal Code, and applies to "an officer authorized to take the proof of acknowledgment of an instrument, which by law may be recorded, who wilfully certifies falsely that the execution of such an instrument was acknowledged by any party thereto" &c. The indictment, it will be observed, follows substantially the language of the statute, but is destitute of any allegation of "intent to defraud". The statute contains nothing as to intent, while the preceding section 509, defining other acts which constitutes forgery in the first degree, uses the words, "with intent to defraud". But, inasmuch as the indictment follows the statute in this case it is perhaps, supported by the case of the People against D'Argencour, 95 N.Y. 625.

See, contra, where an indictment for false acknowledgment was held defective,

State v. Dufour, 63 Ind., 568.

STATEMENT OF FACTS.

III.

It appears by the undisputed evidence in the case taken before the Magistrate, that the defendant, a

lawyer, had previous to the 12th day of November, 1886, professional business with Ewald Bolt, the person named in and who is alleged to have executed the assignment referred to in the indictment. It also appeared that the mortgage referred to in the assignment had been made by the defendant to secure part of the purchase money of a certain piece of property which the defendant had purchased from Bolt in the preceding month of August or September; that on the 12th of November, Bolt was lying ill at his house at 160th Street Harlem; that he had a doctor who was attending him; and that at about 3 o'clock on the morning of the 13th of November, 1886, after Bolt is alleged to have signed and executed the assignment and the acknowledgment thereto, he died. It should be stated here, so that the testimony for the people can be readily understood, that the defendant claims that on the morning of November 12th, 1886, he and his sister (who corroborates him in every respect) left his house in 73rd Street and went to Bolt's house, getting there about 10:30 A.M.; that they went directly into the house, saw no person there but Bolt, who was in the bed-room lying upon a bed sick; that they stayed there about ten minutes during which time the defendant explained to Bolt that he had come to pay off the mortgage and wanted an assignment made of it to his sister, at the same time producing \$500 in bills; that Bolt said, "no", that he wanted the mortgage for his son Henry",

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and that thereupon the defendant filled in Henry Bolt's name in the assignment and that Ewald Bolt thereupon took a pen and signed his name to the assignment and acknowledged that he executed it before Kelly, as Notary; and that Kelly thereupon left the house with his sister, went home to his own house on 73rd Street and wrote out the acknowledgment and at eight o'clock on the evening of the 12, delivered the assignment to Henry Bolt.

The People's witnesses before the Magistrate were:

Rose Bolt,
Annie Bolt, or Bandel
Dr. Hupfield.
Mr. Sasche, Executor.
Detective Halpin,
Elizabeth Cox &
Mathildo Van Horn.

Rose Bolt, apparently a very illiterate girl for she could neither read nor write, testified substantially; that she and her sister lived with their father Avolt Bolt, prior to his death on the 13th of November, 1886; that she was with him before he died; that she was in the house on the 12th of November and did not leave his bedside; that she was also in on the 12th of November, when he made his will, and then she states facts that are hardly credible, that for three days before he died she did not leave his bedside; that she did not sleep any, did not go to bed during this time, did not leave his

room; that the only persons who came into the room on the 12th of November were Dr. Hupfield, the minister, and a friend from Harlem; that her father was so sick he could not leave his bed, and he died in her arms alone on the morning of the 13th; in which, however, she is contradicted by her sister Annie who swears she was also in the room when her father died. She further testified that she saw defendant in her father's house four weeks prior to his death; that he was not there on the 12th of November, but came on Sunday the 13th, after her father died; and she swears positively that no one could have come into the house on the 12th of November without her seeing him. She further testified that for three days prior to her father's death, her sister Annie was at work, leaving the house at six and seven in the morning and getting home at eight o'clock in the evening during which time she was alone in the house without servants, her sister doing the marketing. She admits that her father was in possession of his faculties on the 11th of November, and that he was an intelligent man &c.. But Annie Bandel, her sister, contradicts her and swears that she also was with her father the last three days of his life, and that she had not gone to work but she corroborates Rose, to the effect that she did not see the defendant or his sister there on that day. Her testimony on this point, however, is of little value, because she conceded that she went to the store on the

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morning of the 12th, between 10:30 and 11 o'clock and also near dinner time; and if this is so, it is extremely probable that she could not have observed the defendant and his sister when they state they came there. It is to be further noted that both she and her sister admit that when their father made his will that they were excluded from the room, and that neither of these girls pretend to testify that their father's signature to the assignment is a forgery in any respect, but they and nearly all the other witnesses for the People testify that Ewalt Bolt could neither read nor write the English language.

Paulis Sasche, a tailor, testified he had known Bolt for many years; was the executor named in his will and at the time of his death took possession of the original bond and mortgage from Kelly to Bolt, which he found among Bolt's effects.

Dr. Julius M. Hupfield, testified that he drew Bolt's will on the 11th of November, 1886; that at this time, although he was very sick, he was rational; saw him on the 12th between 8 and 10 A.M. - about nine o'clock; Bolt was sitting in his chair; the doctor remained there for a half an hour; and he further states that Bolt was in condition to know what he was doing at the time, and he saw him on various other times during the 12th of

November; but he subsequently swears that Bolt was out of his mind in the morning and afternoon, did not comprehend anything and was in fact delirious. Aside from these flat contradictions his testimony is of little value, because before the Surrogate he appeared as a witness to uphold the will, and testified that Bolt was rational to the last day of his life; that he could not be influenced by anybody; that he was a strong minded and determined man. He swore that he did not see the defendant present during the morning when he was there, but he could not have seen him because he admits that he was not there until nine o'clock and remained only a half an hour and did not come again until after lunch.

James T. Halpin, a private detective, states that on November the 12th he shadowed the defendant, and had been so doing since the previous October; that on the 12th he shadowed Kelly from 8:40 A. M. to 6:30 P. M. and he describes exactly where Kelly went and what he did, and swears that he did not go to Bolt's house that morning, nor to Brooklyn, where defendant testified he had gone in the afternoon.

IV. The defendant produced as witnesses David A. Carvalho, Mary Kelly, Christopher Kelly, Spencer C. Doty, E. D. Hoyt, Terence O'Reilly, Gaspar Schellhauer, Bridget O'Brien, and Maria Armstrong.

Carvalho, an expert in handwriting, testified that he had compared Bolt's signature upon the assignment with that upon his will made the 11th of November

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and upon the deed from Bolt to Kelly, etc., and swore that in his opinion the signature was the genuine signature of Bolt. His testimony was not contradicted.

Mary Kelly, a sister of defendant, corroborated defendant in every respect, stating that on November the 12th before breakfast her brother asked her to go with him to Bolt's house; told her what he wanted, showed her the blank assignment, counted \$500 in her presence; describes their trip to Bolt's house; that they got there at 10:30 o'clock, no one was there; they found Bolt lying sick in bed. Kelly then produced the assignment and \$500 and explained the matter to Bolt, that he wanted to pay it off and take an assignment to his sister, and Bolt said he wanted the mortgage for his son Henry; that he wanted Kelly to fill Henry Bolt's name in the assignment; that this was done; that thereupon Bolt signed his name to the assignment and acknowledged it in due form.

This witness testified that Bolt spoke English and read the assignment. She is corroborated by the defendant and in respect to his reading and speaking English also by the witnesses O'Reilly, Schellhauer, Henry Bolt and his wife. In respect to their going into the house of Bolt at 10:30 o'clock in the morning, they are corroborated also by the last two witnesses; and also by Henry Bolt, with respect to the delivery of the assignment at about eight o'clock that evening, the latter stating that he instructed Kelly to have it recorded;

~~that Bolt~~

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that subsequently he sold the mortgage to Kelly's father for \$400, April 25th, 1887, getting the money in bills from Kelly, and out of which he paid some small bills and \$250 to Kelly & Reilly for counsel fees in contesting his father's will. Kelly further testified, describing his movements on the 12th of November, that he had gone to Brooklyn in the afternoon, returning about four or five o'clock, in which he is corroborated by the witnesses Bridget O'Brien and Maria Armstrong.

V. From the above facts it appears--

1. That the signature of Bolt to the assignment must be assumed to be genuine. Professor Carvalho so states and no witnesses for the People contradict him, and if such is the case it is a circumstance strongly corroborating the fact that the defendant must have been in Bolt's house on the morning of the 12th of November.

2. Four witnesses, the defendant, his sister, Henry Bolt and wife, swear positively that on the 12th day of November the defendant entered the house of Avolt Bolt at 10:30 o'clock in the morning with his sister.

3. Bolt being dead, there is no witness to directly contradict what the defendant and his sister swear positively took place between Bolt and the defendant, and this is an unfortunate defect in the People's case.

4. No witness contradicts the statements of the defendant and his sister and Bolt and his wife, excepting Rose Bolt, who, however, merely testifies negatively that she did not see either the defendant or his sister

enter the house that morning; but in view of the positive testimony of the witnesses to this fact and that the signature must be assumed to be genuine, and to the remarkable fact, hard to be reconciled, that Rose Bolt swears that she did not go out of the house, sleep, or go to bed for three days prior to her father's death, and did not close her eyes (although two witnesses swear both she and Annie were seen outside a number of times that day) her testimony would not have much effect, and so far as the testimony of Annie Bolt is concerned, she conceded she was not in the house between the hours of 10:30 and 11 o'clock that morning. I have not forgotten, in this connection, the testimony of Halpin, the detective, that he followed defendant around that morning from 8:40 A.M. till late in the afternoon, and that the defendant neither went to Bolt's house nor to Brooklyn; for it is sufficient to say that, upon such a grave offense as this, punishable as a felony, and where all the other evidence is so conflicting, I do not think the People warranted in assuming that the testimony of the detective would satisfy a jury sufficiently to return a conviction, in the face of the positive testimony of four other witnesses and the weakness of the People's other evidence. Besides, as regards Kelly's trip to Brooklyn that afternoon he is also corroborated by the witnesses O'Brien and Armstrong, and in other respects his story is confirmed by the witnesses Spencer C. Doty and Hoyt.

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5. That the girls Annie and Rose Bolt might not have been present when defendant and his sister called on the morning of November 12th is also made probable by the fact that they admit that on another prior occasion when the defendant was at Bolt's house on some legal business they were not allowed by their father to be in the room and did not know what was transpiring excepting that Bolt was having his will attended to.

6 Although a number of witnesses for the People testified that Bolt could neither read nor ~~write~~ speak English, yet as many for the defendant testified that he could both read and speak English or that he spoke English in a broken accent, and upon this point the testimony is utterly irreconcilable.

7. The evidence of Dr. Hupfield would not be likely to have much weight with a jury. He testified that Bolt was not in a physical condition on the 12th of November ~~to~~ hold a pen or write, in fact, that he was delirious, whereas, on his examination in the Surrogate's Court, where he appeared to uphold Bolt's will, he testified that Bolt executed his will November 11th at nine P.M., was rational to the last day of his life; (he died November 13th, 3 A.M.) and that he could not be influenced by any one, and was a determined and strong minded man.

8. Another difficulty presented ^{itself in the way of a} ~~is the inevitable conviction~~ in this case and that is the effect of the assumption

ca 1
that Bolt's signature is genuine. When taken in connection with the other testimony what effect would this be likely to have upon a jury? How could they resist the conclusion, which would certainly be pressed upon them, that, if the signature was genuine, then, Kelly must have been there on the 12th day of November and must have taken the acknowledgment which is sworn to by himself and his sister at Bolt's house. Again, the genuine signature, as an isolated fact, would be evidence corroborating Kelly, so that I believe it would be a dangerous thing for the People to risk a trial even upon this ^{one} point unless evidence could be obtained showing that the signature of Bolt is a forgery. But as we have seen none of the witnesses swear that it is; the complainant assumes its genuineness, and Professor Carvalho's testimony is that it is genuine.

"In State v Dufour, 63 Ind. 568, a case much like the present, it was held that an indictment predicated upon the alleged forgery and uttering of a certificate of acknowledgment of the execution of a deed conveying certain lands, with intent to defraud the owner of the lands or his heirs, assumes the validity of the conveyance itself as between grantor and grantee, and is insufficient"

But in this case if Bolt were living and ~~had~~ able to testify, even though his signature was genuine, I believe a conviction would lie under Section 510 of the Penal Code.

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9. I have come to these conclusions somewhat reluctantly, as no one can read the testimony without feeling that some of the witnesses on one side or the other have committed perjury of the rankest character. In addition, the story told by the defendant and his witnesses is remarkably "queer," so to speak, and whilst there is no doubt in my mind, from the subsequent transactions between Kelly and Henry Bolt, from the fact that Kelly never got the original bond and mortgage and from other circumstances disclosed in the mass of testimony taken, that there was some kind of a scheme on foot between Kelly and Bolt's son to deprive old Bolt of his property, I believe it would be most difficult upon the whole case to secure a conviction, or to hold one if obtained, and I therefore return the papers with the recommendation that the indictment be either not pressed for trial or dismissed, as you may think proper.

Very respectfully submitted,

Benjamin F. DePasson,
West. Dist. Atty.

N.Y. May 10, 1888.

POOR QUALITY
ORIGINAL

0185

NY General Sessions

THE PEOPLE OF THE STATE OF
NEW YORK,

against

Bernard J. Kelly

R. E. D. Pro-
ceeding in Criminal
Justice

JOHN R. FELLOWS,

DISTRICT ATTORNEY,

No. 32 CHAMBERS STREET,

NEW YORK CITY

POOR QUALITY
ORIGINAL

0186

Assignment of Mortgage.—81.

John Polhemus, Printer and Mfg Stationer, 102 Nassau St., N. Y.

Know all Men by these Presents,

That I, Aralt Bolt of the City, County and State of New York party

of the first part, in consideration of the sum of One Dollar (and other considerations) lawful money of the United States, to me in hand paid by Henry Bolt, in same place party

of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part, a certain Indenture of Mortgage, bearing date the Eleventh day of July in the year one thousand eight hundred and Eighty six made by Henry Bolt to me to secure the

sum of Five Hundred Dollars and interest

and duly recorded in the office of the Register of the City and County of New York on the 13th day of January 1886, in Liber 2090 of Mortgages, page 185, together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. **To have and to hold** the same unto the said party of the second part, his heirs and assigns for ever

subject only to the proviso in the said Indenture of Mortgage mentioned. And I do hereby make, constitute and appoint the said party of the second part my true and lawful attorney irrevocable in my name or otherwise, but at his proper cost and charges, to have, use and take

POOR QUALITY
ORIGINAL

0 187

all lawful ways and means for the recovery of the said money and interest: and in case of payment, to discharge the same as fully as Y might or could do if these presents were not made.

In Witness whereof, Y have hereunto set my hand and seal
the 12th day of November in the year one
thousand eight hundred and Eighty Six

Sealed and delivered in the presence of

Bernard J. Kelly

Lyndell Lott.

State of New York } ss:
County of New York

On this 12 day of November one thousand eight
hundred and Eighty Six before me personally came Frank Burt

to me known and known to me to be the individual described in, and who executed the within assignment,
and he thereupon duly acknowledged to me that he had executed the same.

Bernard J. Kelly
Notary Public
New York

Recorded in the Office of the Register of the City and County
of New York, in Liber 2121 of Mortgages, page 91
on the 26 day of Nov A.D. 1886, at 1 O'clock
26 Min. P M.

Witness my hand and Official Seal,

John B. Kelly
Register.

POOR QUALITY
ORIGINAL

0188

Proprio
"C. Kelly" "A"

1-20

Trust (Galt)

26

J.

Henry Galt

Assignment of Mortgage.

Dated November 12 1888

RECEIVED
NOV 15 1888

Received and return to

BERNARD J. KELLY,
SOLICITOR AT LAW,

17 UNION SQUARE, - N. Y.

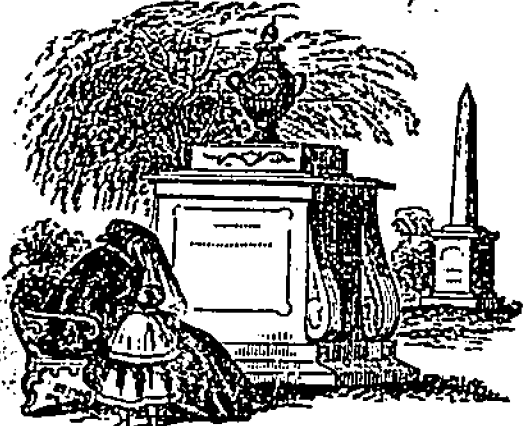
POOR QUALITY
ORIGINAL

0 189

STATION R.

New York April 26th 1887

Mr Henry Bolt



TO ADAM MOEBUS, Dr.

General Furnishing Undertaker,

698 COURTLAND AVENUE, COR. 154th STREET.

Hearses and Coaches to let at all hours.

Jan 28	Emb White Casket Trimmed	30	00		
	Silver Plated Name Plate	3	00		
	Six Mounted Bar Handles	4	00		
	Four Bp for Casket	3	00		
	Childs Name	10	50		
	Wagon Coaches	25	50		
	Opening Grave	5	00		
	Securing Permit and Mandamus	2	00		
	Carrying Body	3	00		
				\$86	00

Rec^d Payment

Adam Moebus

**POOR QUALITY
ORIGINAL**

0190

Defendants Exhibit "B"

POOR QUALITY
ORIGINAL

0 19 1

NEW YORK, Nov 12 1886

Mrs. Helen L. Kelly.

To LIVERPOOL AND LONDON AND GLOBE INSURANCE CO., Dr.
NO. 45 WILLIAM STREET.

DATE.	No. of Policy.	RISK.	Amount of Premium.
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Nov 12	2859137	14th. Jan in \$212 @ 6.73 3/4 1000 - @ 62 1/2 = net \$ 6 25	
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Liverpool & London & Globe Ins. Co.

PAID

* NOV 12 1886 *

Collector.

**POOR QUALITY
ORIGINAL**

0 192

Legendado's Exhibit "B"

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.

Police Court, Fifth District.

aged 51 years and ^{Paulus Sachse} a Tailor by occupation
of No. 748 Courtlandt Avenue Street, being duly sworn, deposes and

says, that on the 12th day of November 1886

at the City of New York, in the County of New York, one Bernard J.

Kelly ~~did~~ as deponent is informed and
verily believes, ~~was~~ a Notary Public in and
for the County of New York, and State of New
York, that as such Notary Public, said
Kelly is an officer authorized to take
the proof or acknowledgement of an
instrument which may by law be
recorded

That on said 12th day of November 1886
said Bernard J. Kelly, ^{as such Notary Public} as deponent is
informed and verily believes, did wilfully
certify falsely ^{that} the execution of a certain
Assignment of Mortgage, purporting
to be made by Awalt Bolt - to Henry
Bolt, on said 12th day of November 1886,
was acknowledged before him, said Kelly
as such Notary Public, in said City, County
and State of New York, on said date aforesaid
in violation of Section 570 of the Penal
Code of the State of New York -

Therefore deponent prays that said
Bernard J. Kelly may be dealt with
as the law directs -

Sworn to before me } Paulus Sachse
this 7th day of July 1887 }
A. J. White

Police Justice

POOR QUALITY
ORIGINAL

0 194

Police Court, _____ District.

THE PEOPLE, & C.
ON THE COMPLAINT OF

Paulus Sachse
James J. Kelly

Dated _____ 1889

Magistrate.

Officer.

Witness.

Disposition.

By July 15 2.30 P.M.

AFFIDAVIT.

CONTRACT FOR PROPERTY.

G. W. Turney, Stationer and Law Blank Publisher, 77 Chatham St., N. Y.

Article of Agreement,

MADE and entered into the Fourteenth day of August in the year one thousand eight hundred and Eighty-six

Between, Aralt Bolt, of the City, County and State of New York, widower, and Ellen Kelly of the same place

~~part of the first part, and~~

part 7 of the second part, in manner following: The said part 7 of the first part, in consideration of the sum of Thirty dollars, to him in hand duly paid, the receipt whereof is hereby acknowledged hereby agrees to sell unto the said part 7 of the second part all that certain lot, piece

or parcel of land, situate lying and being in the City of New York, ~~the premises~~ bounded and described as follows, viz: - The ~~lot~~ South-east lot (25 feet in front and rear and being one hundred feet in depth) of the premises described as follows (in deed from Carl Gebauer, ~~and his wife~~ to party of first part dated Dec. 14, 1865 and recorded in Westchester County Registers office in Liber 582 page 380 Dec 20, 1865) viz lot designated by the Number 71 as the same is laid down on the Map of the Village of Melrose made by Andrew Findlay Surveyor, dated West Farms, March 4, 1850, and now on file in the office of the Register of said County, bounded Northwardly by Findlay Street (now 160th St) 50 feet, Westwardly by lot 72 on said map 100 feet, Southwardly by lot 78 on said map 50 feet and Eastwardly by lot 70 on said map 100 feet being the same premises conveyed to the said Carl Gebauer by Joseph Struckfoot and wife by deed dated Sept 15, 1864 and recorded in Liber 546 page 251 Sept 16, 1864 - This agreement is made for the conveyance of lot known by the Street Number 618 East 160th St

POOR QUALITY
ORIGINAL

0196

Defendant: A. Kibilo - "A"

for the sum of *Nine Hundred and Twenty Five* (*925*) dollars,
which the said *part y* of the second part hereby agree *I* to pay to the said *part y* of the first part,
as follows:

Thirty Dollars on the
signing and delivery of this
contract, the full balance
(\$895) on the delivery of a full
covenant warranty deed which
will be at the office of Bernard J. Kelly
212 East 73rd Street ~~Chicago~~ September 20, 1886
at 6. pm - The party of the first part
further agrees to furnish party of the second
part with any abstract of title, deeds and
other papers in his possession relating
to above lot -

And the said *part y* of the first part, on receiving such payment at the time and in the manner
above mentioned, shall at *his* own proper costs and expense, execute acknowledge and deliver to
the said *part y* of the second part, or to *her* assigns, a proper deed for the conveying and assuring
to *her* them the fee simple of the said premises, free from all encumbrances

which deed shall contain a general warranty and the usual full covenants.

And it is understood that the stipulations aforesaid are to apply to and bind the heirs, executors,
administrators and assigns of the respective parties.

In Witness whereof, the parties to these presents have hereunto set their hands and seals the
day and year first above written.

Sealed and delivered in the presence of

Mary C. Kelly *Emat Loh.*

POOR QUALITY
ORIGINAL

0 197

*District Attorney's Office,
City & County of
New York.*

*Mr Dox Passon
Asst Dist Atty.*

DISTRICT ATTORNEY'S OFFICE,
New York, *April 26th* 1888

Mr Dox Passon -

*Please examine
carefully this case to see if
should be put before a
jury & report in writing
as soon as possible.*

*Yours truly
J R Bellows.
Dist Atty.*

POOR QUALITY
ORIGINAL

0198

District Attorney's Office.

PEOPLE

vs.

Bernard J. Kelly

Robbery 1st deg

Indictment

filed in the
closet with
the Police Court
dismissal

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK

against

Bernard J. Kelly

The Grand Jury of the City and County of New York, by this indictment, accuse

Bernard J. Kelly
of the CRIME of Forgery in the first degree

committed as follows:

The said Bernard J. Kelly

late of the First Ward of the City of New York, in the County of New York afore-
said, on the twelfth day of November in the year of our Lord
one thousand eight hundred and eighty-six, at the Ward, City and County aforesaid,

being a Notary Public in and for the City
and County of New York, duly appointed and
qualified and then and there acting as such,
and as such Notary Public being then and
there an officer authorized to take the
proof and acknowledgement of diverse
instruments which by law might be re-
corded, and particularly being then and
there authorized to take the acknowle-
gement of the instrument and writing herein-
after described and set forth, with force and
arms, did feloniously and wilfully certify
falsely that the execution of the said in-
strument, the same being an instrument
and writing purporting to be a contract of

assignment of a mortgage, between Av-
alt Bolt, party of the first part and Henry
Bolt, party of the second part, and wherein,
and whereby the said Avalt Bolt for a
certain consideration, granted, bargained,
sold, assigned, transferred and set over a
certain Indenture of Mortgage bearing
date the eleventh day of September in the
year aforesaid made by the said Bernard
J. Kelly to the said Avalt Bolt, and duly
recorded in the office of the Register of said
city and county, on the thirteenth day of
September in the year aforesaid, which
said instrument is of the tenor following,
to wit:

"Know all Men by these Presents,
That I, Avalt Bolt, of the City, County
and State, party of the first part, in
consideration of the sum of One Dollar
(and other considerations) lawful money
of the United States to me in hand paid
by Henry Bolt of the same place,
party of the second part, at or before the
executing and delivery of these presents,
the receipt whereof is hereby acknowledged,
hath granted, bargained, sold, assigned,
transferred and set over, and by these
presents doth grant, bargain, sell, assign,
transfer and set over unto the said party
of the second part, a certain Indenture of

Mortgage, bearing date the eleventh day of September in the year one thousand eight hundred and Eighty-six made by Bernard J. Kelly to me, to secure the sum of Five Hundred Dollars and interest and duly recorded in the office of the Register of the City and County of New York on the 13th day of September, 1886, in Liber 2090 of Mortgages, page 185, together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. To have and to hold the same unto the said party of the second part, his heirs and assigns forever, subject only to the provisos in the said Indenture of Mortgage mentioned. And I do hereby make, constitute and appoint the said party of the second part my true and lawful attorney irrevocable in my name or otherwise, but at his proper cost and charges, to have, use and take all lawful ways and means, for the recovery of the said money and interest; and in case of payment to discharge the same as fully as I might or could do if these presents were not made.

In Witness Whereof, I have set my hand and seal the 12th day of November in the year one thousand eight

hundred and Eighty Six.

Sealed and delivered in

the presence of

Bernard J. Kelly Avall Bolt."

was on the day and in the year aforesaid,
acknowledged by the said Avall Bolt
before him, the said Bernard J. Kelly
as such Notary Public, and did then and
there append and annex to the said instrum-
ent, and sign in his own proper handwriting,
a certain instrument purporting to be
a due and proper certificate of acknow-
ledgement of the said first mentioned in-
strument as follows, to wit:

"State of New York } ss:
County of New York }

On this 12th day of November, one
thousand, eight hundred and eighty six, before
me personally came Avall Bolt, to me
known and known to me to be the individ-
ual described in, and who executed the within
assignment, and he thereupon duly acknow-
ledged to me that he has executed the same

Bernard J. Kelly
Notary Public
New York Co."

Whereas in truth and in fact, the
execution of the said instrument so as
aforesaid purporting to be such contract
of assignment of the said Mortgage was

not on the day and in the year aforesaid,
at the City and County aforesaid, or at any
time or in any place acknowledged by the
said Avolt Bolt before the said Bernard
J. Kelly as such Notary Public, and the
said Avolt Bolt did not on the said day
personally come before him, the said
Bernard J. Kelly, and did not thereupon
duly acknowledge to him that he, the
said Avolt Bolt had executed the same,
as he, the said Bernard J. Kelly then and
there well knew, against the form of the
Statute in such case made and pro-
vided and against the peace of the
People of the State of New York and
their dignity.

Randolph B. Martine,
District Attorney.