

*Kheel Center for Labor-Management Documentation &  
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*Transcripts of Criminal Trial Against Triangle  
Owners*

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Cornell University ILR School

Year 1911

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Vol. 1, sec. 2 (pp. 81-151) Testimony by  
firefighters and police officers as to what  
they saw and did on the day of the fire.  
Adjourned to Dec. 7

DANIEL C. DONOHUE, called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

(The witness states that he lives at 420 Albemarle Road, Brooklyn).

Q. Are you connected with the fire department of the City of New York? A. Yes, sir.

Q. What is your position in the department? A. I was in charge of the Tour the night of the fire.

Q. March 25<sup>th</sup>, 1911? A. Yes, sir.

Q. Will you please state what time the first alarm was received? A. At 4:45 p.m.

Q. And what time the second alarm was received? A. 4:48 p.m.

Q. And what time the third alarm was received? A. 4:55 p.m.

Q. And what time the fourth alarm was received? A. 5:10 p.m.

Q. And those are the accurate minutes of the time of the fire? A. Yes, sir.

MR. BOSTWICK: I would like to state here that I

was in error a minute or two in my opening.

Q. Have you the record here of the receipt of alarms of this fire? A. Yes, sir.

Q. Will you read the entry? A. March 25<sup>th</sup>, 4:45 p.m., received from Box 289; at 4:45 p.m., the alarm was received and transmitted to the Department. At 4:45-1/2 we received a pneumatic signal that comes under the heading of Class 10,247, which was not sent out, that being for the same fire.

BY THE COURT:

Q. How do you mean, was not sent out? A. We don't transmit any signal that is for the same fire. 4:45-1/2 p.m., received by the National District Signal, 15,109, not sent out.

Q. What do the numbers 15,109 represent? A. That is the special building, that is a special fire alarm, private companies that have boxes, these are private boxes in the various buildings that are adjacent to the fire or at the fire, this class 15,109, was a box in the Triangle building, -- in their office, I believe. At 4:46 p.m., the adjoining box No. 292 was pulled; not sent out. At 4:46 p.m., the same, -- Box 291 pulled; not sent out. At 4:46 we received an automatic signal under the heading of Class 19,717.

Q. What do you mean by Class 19,717? A. Well, that is a special building signal coming under the heading of -- we have to designate different signals so as to classify them, other than alarms that would come from street boxes — these are special fire alarm company signals.

BY MR. BOSTWICK:

Q. At 4:46 pm., we received a report from the vicinity of the fire, from a citizen who reports to us that there was a fire at 23 Washington place. That was the first intimation that we had of where the fire was. At 4:48, three minutes after the first alarm, we received the second alarm from this box 289.

Q. That came from the same box as the first alarm? A. Yes.

Q. You can't state of your own knowledge whether that came from the commanding officer first arriving upon the scene of the fire, can you A. Yes, sir, those second alarms can only be sent in by the officer. No one has access to the box except the officer.

Q. Well, the third alarm? A. The third alarm was received at 4:55 p.m., from the same box, 289.

Q. And the fourth alarm? A. The fourth alarm was received at 5:10 pm., from station 289, the same box.

BY THE COURT:

Q. Box 289 is a public box? A. A public box.

Q. Located where? A. Corner of Washington place and university.

BY MR. BOSTWICK:

Q. When these alarms are sent in they go first to Headquarters, do they not? A. Direct.

Q. And then they are sent out from Headquarters? A. To the companies, to the Department.

Q. And that is an accurate memorandum of the — A. Abso-

lutely.

BY THE COURT:

Q. Washington place and University place is a point how far from Washington place and Greene street? A One block -- it is on the same block.

BY MR. BOSTWICK:

Q. Is it also true that the third and fourth alarms must be sent in by the commanding officer? A. Yes, sir, it is only by their direction that a greater alarm than the first alarm can be transmitted.

BY THE COURT:

Q. By which you mean, perhaps, that after the companies arrive in the vicinity, some member of the company is left stationed at the box? A. No, sir. On the arrival of the Department at the place designated, to which they are sent, they find that the first alarm companies are not sufficient to hold -- what we call "hold the fire" they send for help, and that is done by the direction of the chief who is there in charge of the fire.

Q. But the box itself is just as accessible after the arrival of the first company for the transmission by any one of an alarm? A. No, sir.

Q. (Continuing) As it was before the arrival, is it not? A. No, sir.

Q. Why not? A. Anything over a first alarm has to be transmitted from a Morse key and sender and relay that is in

the inner box, and in order to get access to that, you have to have a key, and it is only an officer that can actually have that key or get into that box.

CROSS EXAMINATION BY MR. STEUER:

Q. You spoke of two special alarms, you said one was 15,109? A. Class 15,109 we would call that.

Q. Yes, and then there was another one? A. That earns under the heading of pneumatic signal, 10,247.

Q. Those are both private signals, aren't they? A. Yes, sir.

Q. Maintained by the proprietors of the establishment? A. Yes, sir.

Q. And Harris and Blanck maintained each of these signals that you have just mentioned on each floor of their establishment, did they not? A. Yes, sir.

Q. Those are maintained at the private expense of the person who maintains the loft? A. Yes, sir.

EDWARD G. WORTH (Battalion Chief, Fire Department) called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

Q. You are a Battalion Chief attached to the Fire Department of the City of New York? A. Yes, sir.

Q. And in pursuance of your duties you responded to the alarm of fire at Washington place and Greene street on March 25<sup>th</sup>, 1911? A. Yes, sir.

Q. You received the alarm of fire at what time, do you know? A. 4:45 p.m.

Q. Were you the first chief officer due at that point? A. Yes, sir.

BY THE COURT:

Q. Where was your fire house located? A 155 and 157 Mercer street, between Houston and Prince.

BY MR. BOSTWICK:

Q. About what time do you think that you arrived at the fire? A. Probably about two minutes later.

BY THE COURT:

Q. That is to say two minutes after the alarm was received at your fire house, to the best of your recollection, you were at the fire? A. Yes, sir.

BY MR. BOSTWICK:

Q. Will you state generally the conditions and how far the fire had progressed by the time you arrived there? A. When I arrived at that fire and stepped out of the wagon, the eighth floor at that time was in entire possession of the fire — that is the floor was in entire possession of the fire, the eighth floor.

THE COURT: I suggest that you elicit from this officer what his command consisted of and whether any of his companies were there at the time he got there.

Q. Your battalion is composed of what Hook & Ladder companies? A. Hook & Ladder 20, Hook & Ladder 9.

Q. What engine companies? A. 13, 20, 33, 55.

Q. That is on the first alarm? A. The first alarm.

BY THE COURT:

Q. What portions, if any, of your command, had reached the fire before you got there? A. Of my own battalion?

Q. Yes. A. Engine Company 33 was there previous to my getting there.

Q. And their house is where? A. Great Jones street, about 150 feet west of the Bowery.

BY MR. BOSTWICK:

Q. Will you state again what engine companies first responded on the first alarm in your battalion? A. Engine Company 33 is the only company of my Battalion that responds on the first alarm. 13, I should say, also.

Q. 13 and 33? A. That's right.

Q. And Hook & Ladder — A. 20.

Q. Now, from another Battalion comes No. 18 and 72? A. 18 from the Fifth Battalion, 72 comes from the Sixth Battalion.

Q. And what other Hook & Ladder comes from another Battalion on the first alarm? A. Hook & Ladder 3, But they didn't respond on the first alarm to that fire.

Q. They were at another fire at that time, were they not? A. In Trow's Directory, 12th street and Third avenue.

Q. Now, when you got there the only company that had arrived was Engine Company 33? A. And 72 of the Sixth Battalion.

Q. Had they arrived before you? A. Yes, sir.

Q. That is what I thought. And will you state now, or continue to state how far the fire had progressed, and the general conditions when you arrived at the scene of the fire? A. when I arrived at the fire it had entire possession of the eighth floor. The indications on the west wall on the ninth floor looked to me like fire. At that time the over-hang was full of people on the Washington place side.

Q. I can't hear you. A. On the Washington place side of the fire, the over-hang between the eighth and ninth floors was filled with people.

BY THE COURT:

Q. When you say "the over-hang" what do you mean? A. Up the facade of the building is a projection that comes out about two feet —

Q. Keep your voice up? A. When I got there the projection between the eighth and the ninth floor on the face of the building, possibly two feet six inches wide, or thereabouts, that was filled with people.

Q. That is what you might perhaps call a cornice? A. That's it exactly.

BY MR. BOSTWICK:

Q. I show you People's Exhibit No. 18, and ask you whether that will show the cornice to which you refer? A. This would be about it (indicating).

THE COURT: The witness points to a certain part of the picture . Would you like him to make a mark there with

his initials?

Q. Indicated by a mark, a cross.

THE COURT: And your initials.

(The witness marks on the photograph as directed.)

Q. Now proceed. A. Engine company 72 and Engine Company 33 was then stretching a line to the stand-pipe on the Washington place entrance to the building. They proceeded up the stairs with hose, taken from their wagon to connect to the stand-pipe on the floor under the fire --

Q. You didn't go upstairs at that time? A. No, sir; my place was in front.

Q. So we will let the man who went up to the fire testify as to that portion of it. Now, just state what you observed? A. I observed one man jump —

BY THE COURT:

Q. Pardon me for interrupting you. Just tell us first where you were at the time that you were observing these things? A. Directly in the middle of the street, in front of the fire.

Q. And when you say the street do you mean Washington place or Greene street?

A. Washington place.

Q. About how far from the Greene street corner? A. Probably fifteen feet.

Q. Towards — A. East Washington Square.

Q. Now, you may go ahead.

MR. STEUER: Now, I desire, may it please your Honor, to object to this line of testimony, on the ground that

that is incompetent, immaterial and irrelevant and not connected with the subject matter in the indictment, which is now being tried and not within the immediate issues framed by the indictment and the plea thereto.

MR. BOSTWICK: It seems to me that that is all part of the res gestae, and in all the cases that have been tried all the details ~

THE COURT: I want to go into nothing that is not necessary or really a part of the case. I will allow the witness to testify and overrule the objection.

MR. STEUER: I except.

BY MR. BOSTWICK:

Q. Proceed. A. On the arrival of Engine company 15 in front of the building, they reported to me --

BY THE COURT:

Q. No, not what they reported to you, just what you saw. Now, you are standing there on the street at a certain point, and you are looking up, as I understand it, towards the ninth floor of the building? A. Yes, sir.

Q. Now, what did you see in or about the ninth floor? A. On the end of the projection, towards Washington place east a man stood on that projection, waving both hands.

Q. That is at the ninth floor? A. On the ninth floor. I raised both hands in this fashion (indicating) to hold him from jumping. In the meantime had a line stretched by Engine 13 to the stand-pipe on the wagon, started the water at that point

and ordered that company to cover that over-hang underneath; with a stream of water, an inch and a half steam. My idea was that to cool ~—

THE COURT: I think I won't allow that.

BY MR. BOSTWICK:

Q. No, not your idea. Now, just state what was done? A. The water was driven out from that pipe at 125 pounds pressure to cool off that, to prevent the people on the projection from jumping. It swept the cornice from one end of the building to the other for about possibly two minutes, when the man towards Washington Square east jumped. When he jumped it appeared to encourage everybody else. In the meantime —

THE COURT: I may say, Mr. Steuer, that during this narration, if the witness says something which standing independently of the balance is open to objection on some score other than that you have mentioned, if you call my attention to it I will strike it out and direct the jury to disregard it, because your objection may not be broad enough to cover some things that this witness may conceivably say, objectionable on other grounds. Now, proceed.

A. (Witness continuing) In the meantime I ordered the hose —

BY MR. BOSTWICK:

Q. Not what you ordered, what was done? A. Hook & Ladder 20 took a life net from the side of the truck, went into the sidewalk with it and caught one girl. She was tipped out onto

the sidewalk --

THE COURT: I don't think we will go into those details, Mr. Bostwick. I will allow you to show by this witness, everything that he observed, tending to establish that persons who, at the time of the fire, were upon the ninth floor endeavored to escape from the building by means of windows. I will limit you to that.

MR. STEUER: And I respectfully except, not to the limitation, but to the admission of the proof.

Q. Did you see any persons leave the building by the windows?

MR. STEUER: Objected to on the ground that it is incompetent, irrelevant a»d immaterial.

THE COURT: I will limit it to the ninth floor.

MR. STEUER (Continuing) And has absolutely no bearing on the charge contained in the indictment, and has no probative force.

THE COURT: I think it has, therefore I allow it.

MR. STEUER: (Continuing) With relation to the claims contained in the indictment, and I respectfully except.

THE COURT: I consider that it has.

A. They jumped from the ninth floor.

Q. And about how many?

Same objection. Objection overruled. Exception.

A. I can't answer that question.

Q. More than one? A. Yes, sir.

Q. You can't state how many? A. I can't state how many.

Q. Do you think there were as many as ten? A. Yes, there were more.

Q. Do you think there were as many as twenty? A. Yes, sir.

Q. Thirty? A. Yes, sir.

MR. STEUER: I object to this.

THE COURT: Objection sustained.

Q. What was the next Company that arrived? A. 18, Engine.

Q. Do you know who sent in the second alarm? A. Yes, sir.

Q. Who sent in that second alarm? A. Fireman Stapleton.

Q. Under whose command? A. My command.

Q. Were you the first Battalion Chief to arrive at the fire? A. Yes, sir.

Q. Do you know what time that second alarm was sent in? A. 4:48, p.m.

Q. Who ordered the third alarm to be sent in, if you know? A. I did.

Q. What tins was that sent in? A. I can't answer.

Q. Do you know that there was a fourth alarm sent in? A. Yes, sir.

Q. How long after the life nets were put up was their use discontinued? A. About three minutes.

Q. What companies with the line went first to the Washington place stairway? A. 33 and 72.

Q. Do you know what company went to the Greene street

stairway? A. 18, Engine.

Q. Now, will you state what was the condition of the fire, so far as you could observe, from the position in the street, respectively on the eighth, ninth and tenth floors, within a very few moments after you arrived at the scene?

MR. STEUER: I object to that on the ground that it calls for a conclusion, it is not based upon knowledge.

THE COURT: Well, I will allow the witness to state, for example, whether or not he saw flames coming out of the windows on the ninth floor or tenth floor, or smoke. What he may have seen with his own eyes I will allow. I will limit him to that.

BY THE COURT:

Q. Now, what evidences, if any, did you perceive with your eye-sight, as you were on the street at the point that you have mentioned, with respect to the ninth floor? A The ninth floor at the west wall, I saw a small spurt of flame, which proved that the fire was extending up the stairways —

THE COURT: I will strike out "which proved that the fire was extending up the stairways," and instruct the jury to disregard it.

MR STEUER: I except to the striking out of that. The witness knows that a fire extended up the stairways and saw it. That is competent.

THE COURT: I have stricken it out.

MR. STEUER: I respectfully except.

THE COURT: And the jury and told to disregard it.

MR. STEUER: Exception to that.

A. (Continuing) That fire went up to the rear out to the rear windows on the eighth floor into the ninth floor as well, went up the Greene street stairway.

Q. You are only to tell us what you saw with your eyes as you stood on the street? A. I saw the fire extending to the ninth floor from the eighth

BY MR. BOSTWICK:

Q. You saw the flames come out of the window? A. The heat was there and by the smoke being driven with terrific force I knew the flame was behind it.

Q. You must tell us just what you saw? A. I am just explaining what I saw.

Q. And not be conclusions that you draw. You must tell us what you saw? A. A heavy smoke coming out of the ninth floor, ascending from the windows of the ninth floor on the west wall on the Washington place side.

Q. At this time were the flames coming out of the eighth floor? A. Yes, sir.

Q. And some smoke coming out of the ninth floor? A. Yes, sir.

Q. At this time were there any flames, or was there any smoke coming out of the tenth floor? A. No, sir.

Q. You are speaking of a time how soon after you arrived at the fire? A. Two minutes.

Q. And how long in all was it before you saw all three

floors in flame? A. About ten minutes.

Q. At what point of the building, if there was any particular point did you first see the flame? A. Entirely throughout the eighth floor.

Q. When you arrived at the scene of the fire the flames were not confined to any particular part of the eighth floor? A. Entire.

Q. How long did you remain at the fire, Chief? A. Probably fifteen or sixteen hours.

Q. At what time did you first go up to the eighth, ninth or tenth floors? A. About three quarters of an hour after the fire alarm came in and my arrival at the fire.

Q. And can you tell us what Engine Company had first gone up the Washington place stairway? A. Engine 33 and 72 together.

Q. Do you know whether Oliver Mahoney belongs to Engine Company 72? A. Yes, sir.

BY THE COURT:

Q. Before Mr. Steuer begins his cross examination I will ask you this question, Chief: from the place where you were on the street could you see the Washington place entrance to the building? A. Yes, sir.

Q. During the time that you were upon street, at a point where you say you could see the Washington place entrance of the building, and before you went upstairs into the building, did you see any persons other than firemen come out of that entrance? A. No, sir; no, your Honor, I can't say that I did.

## CROSS EXAMINATION BY MR. STEUER:

Q. Are we to understand that you watched the entrance to the building? A. I stood right in front of it and was watching everything that occurred on that front.

Q. And did you say, Chief, that from 8:47, that nobody came out of that Washington place entrance? A. Let me understand the question.

Q. From 4:47 on, then, Chief, are we to understand that you meant to say in answer to his Honor's question, that from 4:47 p.m. on, on that day of that fire, nobody except firemen came out of that building by the Washington place entrance? A. Not that I saw.

Q. Well, now, Chief, if the evidence in this case were to show indisputably that from 200 to 300 girls came out of that door, would you say that you were standing right in front of that entrance, looking into it and didn't see those people? A. As I understand it I said that I was in front of that building, I had the whole, entire facade of that building to watch, I say those people could come out of there without my knowledge; I didn't see any.

Q. Don't understand because I am cross examining you that I question what you say —  
— A. Oh, no, that is all right.

Q. Your answer to his Honor simply meant that you individually did not see these people come out? A. I did not.

Q. But you do not mean to intimate to the jury that great quantities of people did not come out. Would you mind telling

me, Chief, which side of the building you indicate when you say the west? A. Well, in relation to any question that I have answered?

Q. Yes; you did use the term "west side" at one time, Chief, and I would like to know what was in your mind at that time? A. Well, I meant by that the southwest corner of that building, and that would be towards East Washington Square. That is the west side of that building, towards East Washington Square. At the stairway, the Greens street stairway, would be the northeast corner of the building.

Q. That is exactly what I am getting at. In one of your answers you referred to the west stair, if I recall it. We have been used to referring so far in this case to the Greene street stairway and the Washington place stairway? A. Well, then, that would be the Washington place stairway.

Q. The stairway which you had in mind when you were talking at that time was the Washington place stairway? A. Washington place stairway.

Q. Mr. Bostwick asked you whether you saw some smoke in the ninth floor, and I understood you before he said that to say that you saw a great volume of smoke; that is correct, isn't it? A. That is correct.

Q. And when you used the words "great volume" you meant there was a great quantity of smoke? A. Coming out of the windows.

Q. And you have had a great deal of experience with fires

have you not? A. Yes, sir.

Q. And that experience includes large fires, does it not? A. Yes, sir.

Q. And you know of your own knowledge, don't you, Chief, that smoke in such volume as you saw at that time could only be driven by flames? A. That's right.

Q. And that that smoke would be driven by a flame that was of large size already, and that was growing as it was going? A. Exactly.

Q. In other words, Chief, a flame of that kind gathers force from its own momentum, doesn't it, and every fraction of time, however small, it continues in its driving power to get larger and fiercer? A. Yes, sir.

Q. And the volume of smoke that it occasions and emits becomes larger, thicker and stronger and more choking and asphyxiating in its character? A. Yes, sir.

Q. It is the kind of smoke that you would term blinding, is it not, blinding smoke or choking smoke? A. It is blinding, choking smoke.

Q. It would very rapidly deprive a person of a person's senses, male or female, would it not? A. Yes, sir.

Q. It is the kind of flame or smoke that is responsible for panic at fires? A. Yes, sir.

Q. I don't know as I understood, but were you the person who was responsible for the stretching of the life-net? A. Yes.

Q. And you knew before you stretched it that it would be

insufficient for the purpose, did you not practically? A. No; I took it for granted that that net would fill the service that it was intended to fill.

Q. And it was only after you had made the experiment that it was discovered that it was impossible? A. Yes. When they came one at a time we could have helped; when they came entwined with one another, it was impossible.

Q. Wasn't it found — I don't know whether you know this or not — wasn't it found that by reason of the great distance from the floor — that is, the street level, to the height from which these individuals jumped — that the weight increases in such tremendous ratio while they are going through the air, that the net could not resist even a single individual? A. It did resist.

Q. It did resist? A. It did resist the single individual, because —

Q. Am I wrong about this? My understanding was that the single individual that was taken in the net was dead; am I wrong about that? A. When I took the first girl up out of that net, that girl was alive.

Q. And died later? A. One minute. I lifted her up when they tipped it, and I said, "now go right across the street." She walked ten feet, but it was like an automatic motion ~~ probably six feet and dropped.

Q. It did not impress you as being a motion that was impelled by a person possessed of senses? A. No, it did not.

Q. Did you attend at the place subsequent to that day? A. At a fire in that building?

Q. No, I withdrew at a fire. I mean did you attend at that building subsequent to the day of the fire? A. At another fire I did.

Q. No, I am speaking ~~~ A. Oh, no.

Q. That ended your service at this fire? A. Yes, sir. Now, one minute. Let me have that question again. I stood there for sixteen or seventeen hours.

Q. I meant after you once left there on this continued service you did not go back again? A. I did not.

Q. You visited the ninth floor, I understood you to say about three quarters of an hour after you got to the premises? A. Yes, sir.

Q. Which way did you go up, Chief? A. Greene street stairway.

Q. And did you get over to the Washington place side? A. Yes.

Q. And did you go down the Washington place side? A. Part of the way.

Q. Going out of Washington place, what had been up to the time of the fire the Washington place entrance to that floor? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Was there anything left of any door when you got there?

THE COURT: Referring to a door on the ninth floor?

MR. STEUER: Yes.

THE COURT: On the Washington place side?

A. No.

Q. It was just an open space, as I understand it. A. An open space.

Q. When you got to the fire — and I understand that you calculate that that was about 4:47 p.m. — you found, if I recall your words that the eighth floor was in the possession of the fire? A. Yes, sir.

Q. By the term “possession of the fire”, Chief, do you mean that the whole floor was one conflagration? A. Yes, sir.

THE COURT: Gentlemen of the jury, you are admonished not to converse among yourselves on any subject connected with this trial, or to form or express any opinion thereon, until the same is submitted to you. You won't talk with anybody about this case nor let anybody talk with you about the case, you won't read anything about it, and you won't visit the premises where the occurrence is said to have taken place.

(The Court now directed an adjournment to Thursday

December 7, 1911, at 10:30 a. m.)

Last Exhibit:

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People's

22.

New York, December 7, 1911.

TRIAL RESUMED.

E D W A R D G. W O R T H , resumes the stand and further testifies:

CROSS-EXAMINATION BY MR. STEUER: (Continued)

Q. When we adjourned last night you were saying that when you got to these premises, or were at the premises, that the eighth floor was in complete possession of the fire? A. Yes, sir.

Q. And then we adjourned. Now, at that moment, when you say the eighth floor was in complete possession of the fire, does that mean the whole width of the building? A. The whole width and the whole depth.

Q. When a fire is burning, is there any reason that is known to you fire fighters as to why the flames go up or down, or which way do they go? A. They burn both ways as a rule, but generally up, the tendency of fire is up.

Q. Is there any particular reason for that, as to why they generally burn up? What is it due to, do you know, or, if you don't — I don't know myself, I am just asking? A. As a rule, I have always seen fire go up three times as fast as I saw it come down.

Q. And that has been your experience for a great many years, has it, chief? A. Yes, sir.

BY THE COURT:

Q. Currents of air, I suppose, have something to do with

that? A. Entirely all, your Honor.

BY MR. STEUER:

Q. It is natural for a flame to raise by reason, as his Honor suggested, of the currents of air, rather than to go down? A. Yes sir.

Q. There is nothing to press it down, whereas there is something to take it up? A. A draft.

Q. In this instance, while the fire had possession of the eighth floor, as I understood you to say yesterday afternoon, you saw it going up the stairs? A. I didn't see it go up the stairs.

Q. Well, what did you see?

THE COURT: He inferred that it went up the stairs from a certain thing that he saw.

MR. STEUER: Oh, that was it, was it?

Q. Well, what things did you see? Just tell us those? A. A volume of smoke driven as with a heavy pressure behind, coming out the window on the Washington place side of the building, as if driven with force.

Q. Where did you see the smoke, this volume of smoke? A. On the ninth floor.

Q. And from that you inferred that the flames had gone up the stairs, is that the idea?

A. Yes, sir.

MR. BOSTWICK: I rather suggest that counsel might ask what he did infer.

MR. STEUER: No, I think on cross-examination I have

a right to put it that way, but it doesn't make any difference with this witness.

THE COURT: I think he has practically stated that he drew the inference —

MR. STEUER: That the flames went up the stairs. I think that's all —

Q. The stair that you are speaking of is the stair leading from the eighth floor to the ninth floor? A. Yes, sir.

Q. And that is on the Washington place side? A. Yes, sir.

RE-DIRECT EXAMINATION BY MR. BOSTWICK:

Q. When you first arrived, Chief, the first part of the building you saw was what?

A. The Greene street side of the building.

RE-CROSS EXAMINATION BY MR. STEUER:

Q. What space of time, if any, elapsed between your seeing the Greene street side and your seeing the Washington place side? A. Probably about thirty seconds.

BY THE COURT:

Q. And you have just said that you arrived, as nearly as you could estimate it, about two minutes after the fire alarm reached your house? A. The quarters, yes, sir.

BY MR. BOSTWICK:

Q. Was it after you arrived or before you arrived that men from the Engine Company had gone up the Washington place stairs? A. They were stretching on my arrival, toward the

Washington place entrance of the building —

Q. So that they had not yet gone upstairs when you arrived? A. No, sir; they were on the way.

BY MR. STEUER:

Q. They had not gotten to the building, though —

(Question withdrawn.)

BY MR. BOSTWICK:

Q. You didn't go up the stairs? A. No, sir; my place was in front.

BY MR. STEUER:

Q. The men who were stretching the line had not yet gotten to the entrance of the building when you got there? A. Two or three of the men were then entering the Washington place door with two inches of hose rolled up on their shoulders, and another, with a single length, was then entering the door, and two other men were connecting to the standpipe.

BY THE SEVENTH JUROR:

Q. Was there a net spread on the Greene street side as well as on the Washington place side? A. Yes, sir. Not at this particular minute, no; later on.

Q. Where was the net stretched first? A. On the Washington place side, about the center of the building.

GEORGE FIST, recalled on behalf of the People,

having been previously duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

Q. I show you what purports to be an interior view of the

ninth, floor of 23-29 Washington place, and ask you whether you took that photograph? A. Yes, sir.

Q. When did you take it? A. On Sunday morning.

Q. That is the day after the fire? A. Yes, sir.

Q. Is that a true representation of the conditions you found on the ninth floor at that time? A. Yes, sir.

MR. BOSTWICK: I offer that in evidence. (received in evidence and marked People's Exhibit 23.)

Q. I show you what purports to be a picture of the conditions on the ninth floor, and ask you if that substantially shows the condition or that floor on the Sunday when you saw it? A. Yes, sir, it does, but I didn't take this photograph.

Q. But you didn't take that photograph? A. No, sir.

MR. BOSTWICK: I offer it in evidence. There is no objection.

MR. STEUER: No objection.

(received in evidence and marked People's Exhibit 24.)

THE COURT: Any questions of this witness, Mr. Steuer?

MR. STEUER: No, sir.

OLIVER MAHONEY, called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

Q. Where do you live? A. 139 Oakland street, Brooklyn.

Q. You were connected with Engine Company No. 72? A. Yes, sir.

Q. You are now with Engine Company 5? A. Yes, sir.

Q. And you were with No. 72 on the 25th day of March, 1911? A. Yes, sir.

Q. Do you know what time the first alarm came in for a fire at Washington place and Greene street? A. Four-forty-five P.M.

Q. Which was the first company to get to the fire? A. 72 Engine.

Q. Will you state just what conditions you found when you got there?

BY THE COURT:

Q. Where was your fire house? A. On 12th street, 22 East 12th street.

Q. How long did it take you to get there to the place of the fire? A. About one minute and a half.

BY MR. BOSTWICK:

Q. So that you arrived at the fire about 4:46-1/2 P.M.? A. About that time.

Q. When you got there did you see any flames? A. Yes, sir.

Q. Where did you see them? A. On the eighth floor, all the windows on the eighth floor, on the Washington place side.

Q. Now, did you see any people coming out of the building? A. Yes, sir.

Q. What did you and your men attempt to do? A. Stretch a

line and tried to get in the building,

Q. Just tell us what you mean by stretching a line? A. I ordered two men to stretch a line to the standpipe.

Q. Do you mean to say that these men took any hose with them? A. Well, they took hose — we took hose with us up the stairs.

Q. Well, that is just what we want you to tell us, if you will? A. Yes, sir.

Q. Who were the men who took the hose on their shoulders, if they put it there? A. Bernard McKenny, John McNulty, Thomas Foley; them three were with me.

Q. I want you to speak so that every jurymen can hear you. Was there any difficulty in getting upstairs? A. Yes, sir.

Q. Tell us what that was? A. The people was running out the door, panic-stricken people, I presume.

Q. Who were the people? A. Well, I presume they were the employes.

Q. Were they men, women or children? A. both, mixed.

Q. And where were they coming from? A. Well, I couldn't get in the door in the first place, they had the hall all thronged at the time. The hallway inside the doorway was crowded with those people, men and women — girls, or whatever they might be, but I couldn't get in at first.

Q. And did you start to go up the stairs? A. No, sir. As I got in the elevator opened up and another crowd of people came from the elevator; they blocked the way a little while

again.

Q. Were there people in the elevator? A. Yes, sir.

Q. Did they come out of the elevator? A. Yes, sir.

Q. And go out into the street? A. Yes, sir.

Q. Imagine that corner over there to be the Washington place corner (indicating southeast corner of courtroom), where the elevator and stairs were situated; imagine this side (pointing to east wall of courtroom) of the room to be the Washington place side of the building; imagine that (indicating north wall of the courtroom) to be the Greene street side of the building, at your back; that would make this (indicating west wall of the courtroom) the north wall of the building, would it not? A. (No answer.)

Q. Greene street runs that way, north and south (indicating)? A. Yes.

Q. And that is south, because that is Washington place, and this would be the north side of the building, wouldn't it (indicating)? A. Yes, sir.

Q. And on the north side of the building was the University, was it not — the school building, near the Park? A. No — yes, it ran around the corner, that building runs right around the corner.

Q. It extends the whole block, doesn't it? A. Yes.

Q. So on the north side of the building in which the fire was, was a part of the University building? A. I think it was. I am not acquainted with that building.

Q. Now, the north side of the building would be that loft building on Greene street? A.

No answer.)

Q. Do you know what building is next door? A. No, I do not.

Q. Do you know what building is to the west? A. I am not positive about that building.

Q. Well, in that corner, however (indicating southeast corner of courtroom), that is where the Washington place elevator and Washington place stairway is? A. Yes, sir.

Q. And over here is Greene street (indicating)? A. Yes, sir.

Q. The stairs you are talking about are the Washington place stairs, are they not?

A. Yes, sir.

Q. And you say that the elevator came down? A. Yes, sir.

Q. And the people got out? A. Yes, sir.

Q. What happened after that? A. I got up the stairs.

Q. How far up the stairs did you go? A. I went as far as the eighth floor.

BY THE COURT:

Q. When you say as far as the eighth floor, do you mean the level of the eighth floor?

A. Yes, sir; right to the landing.

BY MR. BOSTWICK:

Q. Now, did you get your connection with the standpipe on any floor? A. Yes, sir.

Q. What floor? A. Seventh floor.

Q. Do you know who took the head of the line? A. Yes, sir,

Q. Who? A. Bernard McKenney and John McNulty, both together.

Q. When you got to the eighth floor, what was the condition that you found? A. All one mass of flame and nothing else there but one mass of flame.

Q. At the time that you got to the eighth floor, you had water, did you not? A. No, sir.

Q. When did you get the water? A. When I located the proper place where I was to work, I come down the stairs again, about two flights, and my men were coming up with the hose ~

**BY THE COURT:**

Q. At the time that you reached the eighth floor, what did you observe to be the condition of the stairs leading from the eighth floor to the ninth floor, on the Washington Place side? A. I don't know, sir.

Q. Did your eye rest on them at all? A. No, sir.

Q. Did you see them? A. I knew the stairs were there, but I didn't see them.

Q. In other words, you were not at a point where you could have seen those stairs, is that what you mean? A. Yes, sir, I didn't, because I was too interested in what I seen in the eighth floor.

Q. In other words, while you were at a point from which you could have seen the stairs running from the eighth floor to the ninth floor, by reason of the character of your occupa-

tion you didn't in point of fact observe them, is that so? A. That's true, yes, sir.

BY MR. BOSTWICK:

Q. Did you work your way into the eighth floor? A. Yes, sir.

Q. Then where did you go after that? A. I didn't work on any other floor at all. I stayed there until I was ordered off the floor.

Q. When you went up the stairs, did you find any bodies or persons on those stairs other than those that were coming out? A. No, sir.

Q. Did you see any body or bodies on the eighth floor? A. No, sir.

Q. And you didn't go to the top floor? A. No, sir.

Q. And you didn't go to the ninth floor? A. No, sir.

Q. Was there any of the door of the eighth floor left when you got to that place?

A. No, sir.

Q. It had all been burned away? A. Yes, sir.

BY THE COURT:

Q. And now you are referring to that door, are you referring more to that doorway between the loft on the eighth floor and the space occupied by the stairs on the Washington place side of the building? A. Yes, sir.

BY MR. BOSTWICK:

Q. You are referring to the Washington place side of the building, are you not? A.

Yes, sir,

Q. And you are speaking of the entrance to the loft on the eighth floor? A. Yes, sir.

Q. And there was no door there? A. No door there. Q. All burned away? A. Yes, sir.

**CROSS-EXAMINATION BY MR. STEUER:**

Q. When you got to the building, Officer, you saw the Washington place side of the building first? A. Yes, sir.

Q. And at that time the flames or the fire had complete possession of the eighth floor? A. Yes, sir.

Q. When you went upstairs first, it was without hose and without water? A. Yes, sir.

Q. And when you reached the eighth floor at that time, that is, before you started to go back, the condition was that the flames had possession of the eighth floor and that there was nothing left of any doorway? A. That's right.

Q. It was open space at that time between the hallway and the eighth floor proper? A. Yes, sir.

Q. And the flames were shooting out into the hallway at that time, were they not? A. No, not at that time.

Q. How soon after that was it when the flames reached the hallway? A. The flames did not reach that hallway through that door during my time there.

**BY THE COURT:**

Q. And you left there when? A. About quarter of seven.

Q. And at that time had the fire on the eighth floor been extinguished? A. Pretty much.

BY MR. STEUER:

Q. You had gotten it well under control before quarter of seven? A. Oh, yes.

Once we got our water on it, it had no chance to come up.

Q. That handrail of the stairs was burned away, wasn't it, from the eighth to the ninth floor? A. Well, that I don't know anything about. I wasn't on the ninth floor at all.

Q. Well, the fire went up, did it not? A. It went up, yes.

Q. It didn't go down through the stairs, did it? A. No, sir.

Q. Well, now, if the handrail — if it is conceded, Officer, that the handrail of the stairs leading from the eighth to the ninth stories was burned away, can you tell us where the fire came from?

MR. BOSTWICK: Just a minute, I object.

(Objection sustained; exception.)

Q. Was the fire very violent on the eighth floor? A. Yes, sir.

Q. Was there smoke in the hallway? A. Well, there was a little around there, a little smoke at that time.

Q. When you say "a little smoke", do you mean a little smoke for a fireman, or — A. Well, not enough to bother me either to see or stand in.

Q. And you are experienced in fires? A. Yes, sir.

Q. It would bother the ordinary individual? A. Well, it

may.

Q. And when you were on the stairs you could readily see the flames, could you not? A.

Oh, yes.

Q. You could readily see them if you were on the ninth flight of steps? A. I don't know anything about the ninth floor at all.

Q. Was there the reflection, Officer, of flames on the wall of the staircase? A. Oh, yes.

Q. The blind wall? A. Yes.

Q. Anybody there would know that there were flames there? A. Yes, sir.

Q. And that they were big flames? A. Yes.

RE-DIRECT EXAMINATION BY MR. BOSTWICK:

Q. I show you People's Exhibit No. 15, which purports to be the doorway leading to the Washington place stairway on the eighth floor, and ask you if the jamb of the door was substantially in that condition at that time, as nearly as you remember? A. I don't know that I could say about that.

RE-CROSS EXAMINATION BY MR. STEUER:

Q. When you got there the first time, there was not anything left of the hardware on that door that you could see, was there? A. No, sir.

Q. And you never saw anything of the hardware on that door, did you? A. No, sir; no door at all.

Q. And we are speaking of the door on the Washington place

side, entering into the eighth loft of the building? A. Yes, sir.

Q. That is where you say that it was one mass of flames? A. Yes, sir.

THE FOREMAN OF THE JURY: I would like to see a diagram of the ninth floor, if I could.

THE COURT: Just sit down, Mr. Juror. If there is no objection, I would suggest that these various exhibits which have been received in evidence be shown to the jury.

MR. STEUER: The cross-examination on the diagrams was not gone into at all, your Honor. It really doesn't make any difference, though.

THE COURT: The foreman has requested to see one of them, and if there is no objection —

MR. STEUER: Oh, yes, go right ahead; I have no objection.

THE COURT: Hand it to the jury, without any explanations.

(Diagram handed to the jury.)

H O W A R D C. R U C H , called as a witness on behalf of the People, being first duly sworn, testifies as follows:

THE COURT: I think the diagram could be seen to better advantage by the jury, perhaps, if it were held in an upright position, possibly, before them.

MR. BOSTWICK: I have had prepared, if your Honor

please, and expect to have within an hour or so, several copies of a small-size, so that it could more conveniently be handled.

MR. STEUER: The Fourth Juror would like to know where the entrance on Washington place is.

THE COURT: You will probably find printed explanations on that diagram, and just study it, Mr. Juror. Just look at it without comment.

(Mr. Bostwick now hands People's Exhibit 5, Diagram of ground floor, to the jury.

THE COURT: Now we will proceed with the examination of the witness.

DIRECT EXAMINATION BY MR. BOSTWICK:

Q. Captain Ruch, you are and were on March 25th, 1911, connected with the Fire Department of the City of New York? A. Yes, sir.

Q. In what capacity? A. Captain of Engine Company 18.

Q. What time did you get the first alarm for the fire in Washington place and Greene street? A. 4:45 P.M.

Q. And about what time would you say that No. 18 rolled to that fire? A. We responded immediately, and arrived there in three minutes.

Q. Where is your fire house? A. 132 West 10th street; 80 feet west of Greenwich avenue.

Q. Will you kindly tell us what you saw and what you did and what happened upon your arrival at the fire? A. Upon our

arrival at the fire we connected our hose to a hydrant on the corner of Waverly place and Greene street, we stretched the hose or laid out the hose from that hydrant about 200 feet south on Greene street to a Siamese connection at the building line on the sidewalk; the Siamese connection led to a four-inch standpipe of the building on fire; we made the connection with the standpipe, when I looked around and saw or heard an awful shriek in the air and I looked up —

MR. STEUER: I object to that.

THE COURT: Objection sustained; strike it out. I may say now, because it will save time, that where objection is taken I intend to confine the evidence very strictly to that which I conceive to have by possibility probative value upon what I conceive to be the discuss in the case. Those issues, as I understand them, are, whether or not these defendants, by reason of criminal negligence, are guilty of the crime of manslaughter in either of its degrees in connection with the alleged death of one Schwartz. And, in that connection in part, whether or not these defendants are guilty of the crime of manslaughter by reason of the omission of any statutory duties, the omission of which by any provision of law would constitute on their part a misdemeanor. Any testimony that bears upon the conditions as they existed at the time of the outbreak of the fire and immediately before, in the loft in which the deceased is said to have been, or

in the loft immediately under that, I will receive in evidence. Any general description of outside conditions, except as it may bear upon that proposition, I shall exclude.

MR. BOSTWICK: The People absolutely concur in that view, if your Honor please.

MR. STEUER: And so do the defendants. That is the defendants' conception of the law applicable to this case.

BY MR. BOSTWICK:

Q. Now, Captain, did you see any people on the ninth floor? A. Yes, sir.

Q. Or in the windows of the ninth floor? A. Yes, sir.

MR. STEUER: Objected to as incompetent, irrelevant and immaterial.

(Objection overruled; exception.)

MR. STEUER: May I have the District Attorney indicate what windows those are?

Q. Will you state at what windows, as near as you can, at the suggestion of the counsel for the defense, you saw people? On which side of the building, first? A. On the ninth floor, on the easterly side of the building, which would be on Greene street, the west side of Greene street.

Q. Did you see any of the persons jump from any of the windows on the ninth floor? A. Yes, sir.

MR. STEUER: I object to that as immaterial.

THE COURT: I will allow it.

MR. STEUER: I except.

Q. Had any life nets been stretched either on the Greene street side or on the Washington place side?

MR. STEUER: I object to that as immaterial.

THE COURT: Objection sustained. We won't go into that.

Q. Now, at what point did you enter the building? A. The Greene street entrance, main doorway.

Q. I ask you to carry in mind that we are considering that (indicating northwest corner of courtroom) the Greene street entrance, that door; we will consider this (pointing to north wall of courtroom) going southerly along Greene street till you come to the corner of Greene street and Washington place, and then at this side (indicating east wall of courtroom) is Washington place, with the windows, looking south; and over in that corner (indicating southeast corner of courtroom) is the Washington place entrance. The Washington place entrance is over there, and the Greene street entrance is over there (indicating as before in this question). Can you fix that in your mind? A. Yes, sir; Greene street entrance, Washington place entrance.

Q. And that is the corner of Greene street and Washington place (indicating northeast corner of courtroom)? A. Yes, sir.

Q. Showing you People's Exhibit 18, this is the corner of the building, and corresponds with this corner (indicating north-

east corner of the courtroom), do you see ? A. Yes, sir.

Q. There is the Greene street entrance corresponding with that door? A. Yes, sir.

Q. And here is the Washington place entrance corresponding with that over there (indicating southeast corner of the courtroom)?

THE COURT: For the purpose of the record it had better appear that the District Attorney indicates certain doors and corners of the courtroom.

Q. You entered the building from the Greene street entrance (pointing to northwest corner of courtroom)? A. Yes, sir; Greene street entrance.

Q. And you worked your way up to what floor? A. To the sixth story.

Q. And what did you do at the sixth story? A. I disconnected the house hose from the valve on the standpipe, and connected the Fire Department hose in its place.

Q. And then where did you go? A. We unrolled the Fire Department hose up two flights to the eighth story, adjusted the nozzle and I opened the valve on the standpipe of the eighth story to start the water, and at the same time shouted, "Start your water, 18" from the high pressure hydrant.

Q. And then where did you go? A. The water came and we laid down on our stomachs or on our knees to try and make an entrance in on the eighth floor from the stair landing of the Greene street stairway. The fire was so intense that it was

impossible to stand up, and we laid down to work our way in as the pressure on the line would permit us, and we extinguished the fire.

Q. How long did you work on the eighth floor? A. For a period of about ten minutes.

Q. And where did you go? A. We made the ninth floor landing, one flight above.

Q. Went up the stairway? A. Yes, sir.

Q. What were the conditions on the eighth and the ninth floors as you found them at that time? A. The conditions on the eighth and ninth, floor ~

Q. Eighth floor first? A. The eighth floor was a mass of traveling fire along the floors, which appeared to be —

THE COURT: Stop right there after “along the floors”.

Q. And the ninth floor? A. And the ninth floor appeared to be the same, only in a more uneven condition.

BY THE COURT:

Q. What do you mean by in a more uneven condition? A. There appeared to be some kind of machinery stretched along in rows, and there seemed to be the sort of remnants of a board partition next the doorway as we entered that had been burned away up, I should think, about eighteen inches from the floor -- six feet, possibly five, from the main doorway into the floor proper towards the south.

1h

BY MR. BOSTWICK:

Q. The stairs was made of stone and metal, were they not? A. Slate and iron, yes, sir.

Q. And was there any fire in the stairway? A. The iron was very hot on the surface and the slate treads were more or less cracked.

Q. There was no fire? A. No, sir, not on the stairs.

Q. Could you see how the fire had gone from the eighth floor to the ninth floor? A. I discovered that before I went in the building.

Q. And how was that? A. The fire appeared to come out of the eighth story windows and was drawn in with a suction into the ninth, and come out of the upper sashes of the ninth, and was drawn into the tenth, where it disappeared; and I discovered afterward it went up through the ventilators in the roof.

Q. When you say the roof, do you mean the ceiling? A. Yes, sir. There was an enormous ventilator oil the top floor, or an open light affair for ventilation.

BY THE COURT:

Q. And the top floor was the tenth floor? A. Yes, sir.

BY MR. BOSTWICK:

Q. I show you the diagram of the tenth floor and ask you if you see on there the ventilator of which you speak? A. This one (indicating).

BY THE COURT:

Q. Referring to the one nearest Greene street? You are

2h

pointing now to the ventilator, Officer, which is nearest Greene street? A. Yes, sir.

BY MR. BOSTWICK:

Q. Keeping our locations always in mind, there is the Greene street entrance where you came in? A. Yes, sir.

Q. There is the Washington place (indicating on diagram of tenth floor)? A. Yes, sir.

Q. And you refer to the skylight nearest to Greene street? A. Yes, sir.

Q. Now, Captain, I show you People's Exhibit 2, the diagram of the ninth floor, did you finally get an entrance into the ninth floor? A. Yes, sir.

Q. Into the loft? A. We extinguished sufficient fire to permit it, then we got in.

BY THE COURT:

Q. And that was about what hour? A. Approximately five o'clock.

Q. When you entered the loft of the ninth floor did you enter the loft by the Greene street side, or did you enter the loft by the Washington place side? A. I entered the loft by the Greene street side stairway.

Q. What did you find when you got on the ninth floor?

MR. STEUER: As to what? I object to that as indefinite.

MR. BOSTWICK: I withdraw the question.

Q. Did you find any bodies on the ninth floor? A. Yes, sir.

3h

MR. STEUER: I object to that as incompetent, relevant and immaterial.

Objection overruled. Exception.

Q. Will you state in what part of the loft bodies were found, and, so far as you can, tell us the number?

THE COURT: Pardon me a moment. Let us find out first how far, if at all, this officer penetrated into the ninth loft.

BY THE COURT:

Q. Now, you take and look at that diagram which is before you, People's Exhibit 2, and indicate, if you will, how far, if at all, being on the ninth floor level, you penetrated into that loft? A. We worked our way with a stream of water.

Q. Not "we", but just you? A. I worked say way with a stream of water from the Greene street entrance door on the ninth floor to the Washington place window, what corresponded approximately with the door, worked it south.

Q. In other words, you went straight across the loft from the entrance door at Greene street to the window about opposite opening out onto Washington place, is that so? A. Yes.

Q. Keeping at all times about the same distance from the Greene street side? A. No, sir. We did get to the Greene street windows on our way back.

Q. What I mean is, when you first went from the entrance door on the Greene street side to the Washington place side of the building, as you first worked your way through, as you

have expressed it? A. Yes, sir.

Q. During that time you were at all times about the same distance from the Greene street side? A. About, yes, sir, and working in.

Q. And then you worked your way, as I understand, back from the Washington place end to the Greene street entrance end, along a line somewhat nearer to the Greene street wall? A. Yes, sir.

Q. Is that the extent to which you at any time penetrated that ninth floor, yes or no? A. I beg your pardon?

Q. Have you now told us the only parts of the ninth loft into which you personally went? A. At that particularly time, yes, sir; but at a later period I went further, when the fire had been virtually extinguished.

Q. And the later period to which you refer was about how long afterwards? A. One hour.

Q. And at that time into what parts of the ninth loft did you go? A. Towards the exact centre of the room, and towards the Washington place windows, further over towards the Washington place doorway.

Q. How close, at any time, while you were in the ninth loft, according to your best recollection, did you get to the doorway leading from the loft to the Washington place entrance? A. I can designate on the map?

Q. Yes. A. About the sixth window west from Greene street on Washington place (pointing on diagram).

Q. And you reached that point, as I understand you, about an hour after you had first entered the ninth loft? A. In the interval we had went further, and we worked on back again.

Q. I know, but you reached the point which you have called about the sixth window from the Greene street side on Washington place, about one hour after you had entered the ninth loft? A. About one hour, yes, sir.

Q. Now have you indicated all the parts of the ninth loft into which you penetrated at any time on the afternoon of the fire? A. In the performance of my duty I was compelled to tramp more or less about this loft, from the sixth window east to the Washington place side, for the purpose of extinguishing remaining fire in the window trim with buckets.

Q. Now, taking a section of that loft, west of the sixth window, that is to say, the section of the loft that is furthest away from Greene street -- and when I say the sixth window I am referring now to the window which you indicated a moment or so ago —— did you at any time during the course of your duties on that afternoon penetrate into any part of that loft? A. To the westward?

Q. Yes. A. No, sir.

BY MR. BOSTWICK:

Q. Now, while you were on the ninth floor at any time immediately after the fire did you see any bodies on the ninth floor? A. Yes, sir.

Q. Will you state where they were?

6h

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

Objection overruled. Exception.

MR. STEUER: And I object to the last question on the same grounds.

Same ruling. Exception.

A. The first bodies that I saw was to the south of the remains of the partition, about an inch or two inches.

Q. Will you look on that diagram of the ninth floor, People's Exhibit 2, and indicate the partition that you refer to.

(Witness points on diagram.)

THE COURT: The witness indicates with his finger the partition shown upon the diagram immediately adjoining the entrance door to the ninth floor from the Greene street side. Is that right?

THE WITNESS: Yes, sir.

THE COURT: Being the partition running parallel with Washington place. It is at right angles with Greene street and parallel with Washington place. Is that correct, Mr. Steuer, as a description?

MR. STEUER: Well, your Honor —

THE COURT: We will designate it by something that is conceded here on the exhibit. Being the partition immediately to the right of the words "wood partition door", and immediately to the left of the words "clothes closet". Is that right, Mr. Steuer?

7h

THE WITNESS: The partition apparently was a continuous stretch.

THE COURT: Now we will proceed.

BY MR. BOSTWICK:

Q. Now, in what other portions of the floor did you find bodies?

Same objection; same ruling; exception.

Q. Or see bodies? A Under the windows on the Greene street side, and they were scattered about the floor in the vicinity of the windows.

Q. Now, in all how many bodies would you say were on the Greene street side of the building?

Objected to as immaterial. Objection overruled. Exception.

A. Twenty-eight and thirty.

THE COURT: I think, Mr. Steuer, the objection you have taken covers this line; I will so regard it unless something different develops and then you may take another objection.

Q. Did you see any bodies in the middle of the room? A. One or two.

Q. And with the exception of the bodies on the Greene street side --

MR. BOSTWICK: I withdraw that question.

Q. How many would you say were at the partition which you have indicated on the diagram? A. I should judge in one pile or group there was over twenty.

Q. Do I understand that the rest were strewn along the side by the windows? A. Yes, sir.

THE COURT: Referring now to the Greene street side?

Q. To the Greene street side of the building? A. Yes.

Q. And about one or two in the middle of the — A. There might have been five or six here or there.

Q. A few in the centre? A. Yes, sir, towards the centre.

BY THE COURT:

Q. When you say “towards the centre,” you mean towards the centre of the loft? A. Of the ninth story, yes, sir.

BY MR. BOSTWICK:

Q. Did you see any bodies on the Washington place side? Or didn't you go over on that side? A. I went over on that side to the sixth window.

BY THE COURT:

Q. Did you see any bodies along the Washington place side, starting from Greene street, as far as the sixth window on that side? A. One or two windows towards the corner of the building, the Washington place and Greene street corner, I noticed particularly.

Q. You say you noticed particularly. What do you mean? A. When I got over there to extinguish this fire in this trim and windows that I spoke of I stepped on something that was soft, in my hurry and anxiety to finish up my work, and I looked down and my attention was called to a body by that means.

Q. Very well; you did see a body there? You saw one body there? A. When I looked at the one I stepped on I saw three or four that I had not noticed previous.

Q. And as I understand you, they were on the Washington side of the building, about three windows from the Greene street corner? A. Yes, sir.

BY MR. BOSTWICK:

Q. Where had the fire been hottest on the ninth floor, on the Greene street side or the Washington place side?

MR. STEUER: I object to that?

MR. BOSTWICK: I withdraw the question.

THE COURT: Pardon me for just one moment.

BY THE COURT:

Q. How close, Captain, according to your best recollection was that body which you saw upon the ninth floor, which was nearest to the entrance to the ninth loft on the Washington place side? Suppose you were to draw a direct line from that body which you saw, which was lying close to the Washington place entrance, how great would that distance be? A. From the Washington place entrance to the body?

Q. Yes, to the body that you saw lying nearest to it? A. I should judge between sixty and seventy feet from the Washington place entrance.

Q. Was that the body of a man or woman? A. I was unable to determine.

BY MR. BOSTWICK:

Q. Was the trim all burned away on the Greene side leading to the stairway?

MR. STEUER: I object to that as immaterial.

THE COURT: Objection sustained.

MR. STEUER: I think I misunderstood you. Did you mean the stairway trim?

MR. BOSTWICK: No, I mean where the door had been.

MR. STEUER: I have no objection to that. I do not think that is material.

MR. BOSTWICK: I think it is very vital.

MR. STEUER: I have no objection to that. I misunderstood the question, if that is the question.

THE COURT: In view of the concurrence of counsel I will allow it.

MR. STEUER: What side of the building were you talking about?

MR. BOSTWICK: Greene street side.

MR. STEUER: That is objected to.

THE COURT: You objected to it, it was sustained, and the objection was withdrawn and I will allow the witness to answer.

MR. STEUER: It was my error, but I misunderstood the location, and I ask your Honor that I should not be harshly dealt with for having made an error. I completely confess it, and perhaps I did seem to take an attitude that was not proper, and for that I apologize, but I respectfully urge the objection.

MR. BOSTWICK: I would like to make clear the question that I have put, in one word. I asked the captain on which side the fire was hottest. That was objected to, and properly so, because I had not laid foundation for it. I withdrew that question. I feel that I am entitled to

show the conditions, showing on which floor the fire was hottest, by a witness who saw the condition immediately after the fire and at the time of the fire.

MR. STEUER: I submit to your Honor that the question is entirely incompetent and I submit too that it is very prejudicial, because the captain, to my mind, gives expert testimony upon that subject, and I dare say he is qualified, and I feel he is qualified to give expert testimony upon the subject. But, your Honor, it is not what the captain thought, and it is not what was present to the captain's mind at all, that is pertinent upon that subject. It might be very pertinent if he could testify to what was the opinion of the deceased, Margaret Schwartz, upon that subject; that, I submit would be pertinent, but what any one else under the circumstances would conclude, I submit to your Honor has no probative force on what was present to the mind of Margaret Schwartz. It might be inferred that because it was obvious to the captain it was equally obvious to her, but I think that we all understand, your Honor, that things that would be understood by the captain with relation to fire and smoke would not at all appeal in the same way to the lay individual, having had no experience. And, then again, we must bear in mind -- I won't make this argument again if your Honor will only permit me to convey to you the thought that is in my mind at this time -- that the

captain went there to fight the fire with the trained mind and head and the implements for that purpose and very regardless of what risk it had to the individual —

THE COURT: I entertain but one doubt respecting the propriety of the reception of this evidence and that doubt arises from the circumstance that at the time when this witness observed the condition it was a time subsequent to the time when the casualty is said to have occurred. If this witness had been on the spot at the time I should have regarded testimony from him as otherwise than speculative. He observed a condition a brief period afterwards, but certain forces had been at work, and I question the probative value of it. Doubting the probative value, it is excluded.

MR. BOSTWICK: I wish your Honor would hear me. The Court of Appeals in the Pauley (?) case, in passing upon this almost identical question ---

THE COURT: I will withhold my ruling and be very pleased to hear you.

MR. BOSTWICK: They said no one could tell what was in the mind of the deceased and the best way that they could find it out was by an actual description.

THE COURT: That objection taken by Mr. Steuer is without weight with me, that is not the point at all. The objection taken by Mr. Steuer, in so far as it is predicated upon an argument that this testimony is not re-

ceivable, because it does not indicate what may have been in the mind of the deceased, is without weight with me. The reason why I am disposed to exclude the testimony is because it is not apparent that the conditions as they were observed by this officer when he first came were conditions existant at any time during the life of the deceased, and, therefore, conditions observable by her.

MR. BOSTWICK: But if this officer can swear that in any one part of the building the whole of the woodwork was burned away, and that in another part of the building it was not, the fair deduction is that the fire was greater in one part of the building than in another,

THE COURT: I will allow him to state what woodwork was found burned and where he found it burned, and the extent.

BY MR. BOSTWICK:

Q. I show you People's Exhibit No. 11, which purports to be a photograph of the entrance to the stairway and elevators, Greene street side, ninth floor, and I ask you whether the woodwork was burned away, as appears in that photograph, immediately after the fire? A. Yes, sir.

Q. I show you what purports to be a picture of the doorway and landing of the ninth floor, showing stairway, and ask you whether the woodwork was still there although charred, as indicated by that picture? A. Greene street entrance?

Q. No, Washington place? A. I don't know anything about

Washington place.

Q. Now, Captain, did you at any time subsequent to the fire make an examination or go up the Washington place stairs? A. No, sir, at no time.

Q. And the Greene street stairs you went up? A. Many times.

Q. As you go up the Greene street stairs is there a window on each landing? A. There are windows on that stairway, but I can't say on every landing, but they open onto a light shafts or the rear of the building proper.

Q. Now, would the fact that there were windows on that stairway have any bearing on the question of the movement of the flames or the fire? A. There was a large quantity of fire —  
Objected to. Objection sustained.

Q. When you went up the Greene street stairs you found no bodies on the stairs on the Greene street side? A. No, sir.

Q. And when you first got there in which direction was the fire traveling?

Objected to. Objection overruled. Exception.

A. It was traveling on the floor with great rapidity in all directions, more especially east and west.

Q. Well, you say east and west; it couldn't go both east and west, could it? Was it going from the east to the west? A. It was going from the west to the east, the flame, from the westward of the building to the easterly exposure of the building, which was on the west side of Greene street. The fire was going towards the windows at that time.

BY THE COURT:

Q. When you say "towards the windows", you refer to what windows? A. The windows on the Greene street side.

Q. Did you find any oil tanks on any one of these three floors?

Objected to as immaterial; Objection overruled; Exception.

A. Yes, sir.

Q. On which floors? A. The ninth floor.

Q. What do you mean by an oil tank? A. It was a sheet iron cylinder apparently, used to hold oil.

THE COURT: Strike out "apparently used to hold oil". A. (Witness continuing) It contained a combustible fluid.

MR. STEUER: I move to strike that out.

THE COURT: Strike that out, and the jury will disregard it.

Q. You found in a certain place on the ninth floor a certain tank, is that so, yes or no? A. Yes, sir.

Q. That tank was made of what material? A. Sheet iron.

MR. STEUER: I respectfully object to these questions and except.

Q. It was located where? A. Setting on the floor at the northern wall, about ten feet west of the Greene street doorway.

Q. Therefore it was between, if I am right, the doorway on the Greene street side and the fire-escape? A. Yes, sir.

Q. That tank was about how many feet long? A. The tank was about three feet high, and about fifteen inches across.

Q. When you say, "across", you mean the width? A. Yes.

Q. At the time when you first noticed it was there any substance in it, yes or no?

A. Yes, sir.

Q. Do you know what that substance was, yes or no? A. No.

THE COURT: Now, that I will allow to remain in, subject to being connected; if not connected I will strike it out and tell the jury to disregard it.

BY MR. BOSTWICK:

Q. Do you know what the nature of that substance was? A. No, sir.

Q. Do you know whether it was material that would burn? A. It was boiling.

MR. STEUER: How would he know that? I object to it as speculative.

THE COURT: Objection sustained.

BY THE COURT:

Q. Was it a solid or a liquid? A. It was a liquid.

BY MR. BOSTWICK:

Q. And was it boiling? A. Yes, sir.

Q. Was there any odor from it?

MR. STEUER: I object to that.

A. No, sir.

THE COURT: I will allow that. He says "No."

MR. STEUER: Exception.

Q. You can't tell what was inside of that tank? A. No, sir.

BY THE COURT:

Q. In other words, so far as you know, it may have been water? A. Yes, sir.

BY MR. BOSTWICK:

Q. Could you see any of the material that had not been burned? Was there any such material? Was there any material that had not been entirely destroyed by fire?

MR. STEUER: I object to that as immaterial.

THE COURT: I think it is indefinite. Referring to what?

Q. On the ninth floor did you find any material or see any material that had not been completely destroyed by fire?

MR. STEUER: I object to that as immaterial.

THE COURT: I will allow him to answer.

MR. STEUER: I respectfully except.

A. There was considerable char — burned material on the floor, apparently had been the contents, but there was quite some wood of the construction of the interior

Q. No, what I want to know is was there any material there such as was used by these defendants in the manufacturing business? A. Not left.

Q. Was there any amount of debris on the ninth floor? A. Yes, sir.

Q. And how did it lay?

MR. STEUER: I object to that as immaterial.

THE COURT: I will allow it. The question has in mind, I take it, debris other than portions of the structure itself.

MR. STEUER: I except.

A. It laid in rows, resembled somewhat furrows -- in rows, every two or three feet.

Q. I ask you to look again at the ninth floor. I will show you People's Exhibit No. 23, which is a picture of the interior of the ninth floor, and ask you whether those furrows ran as appears upon that picture? A. Yes, sir.

Q. Could you from merely looking at any of the debris tell what the material had been before the fire?

Objected to. Objection overruled. Exception. A. Yes, sir.

Q. And what was its character?

Objected to. Objection overruled. Exception.

A. It appeared to be the remains of burned material, either linen or other muslin fabric, light fabric.

Q. And this you say, ran across the building in furrows? A. In rows or furrows.

Q. Did those furrows run east and west or north and south? A. They ran north and south.

CROSS EXAMINATION BY MR. STEUER:

Q. Do you wish to be understood by this jury that there was debris of this light fabric that ran in furrows north and

south, or ran in any direction, east and west? Do you mean to say there was enough left by that fire of that light material, after that fire, so that you could see pieces of material left? A. Yes, sir.

Q. So the fire ran along the floor, didn't it, Officer? A. Admitted.

Q. So that you could have picked up a piece of material, couldn't you, from that debris? A. Not material, sir -- the remains of the material.

Q. What do you mean by "remains of the material", Officer? A. When anything is burned there is left an ash or a char.

Q. Then you mean to say there were ashes there, is that it? A. Yes, sir.

Q. You mean to say, Officer, that anybody in the world could have picked up one of those things and told where the r it was silk or not? A. No, not everybody in the world.

Q. Could you? A. I couldn't identify the exact nature, whether it was silk or linen.

BY THE COURT:

Q. Could you tell whether it was a fabric or wood? A. Yes, sir, decidedly.

BY MR. STEUER:

Q. Could you tell, Officer, whether it had prior to the fire been in a whole piece or not?

A. No, sir.

Q. You couldn't distinguish how it had been prior to the fire, could you? A. No, sir.

Q. Looking at the debris, I suppose that you could draw the inference that there had been quantities of merchandise in that loft, and that the merchandise consisted of light fabrics? When I say "light" I mean light in weight, not in color? A. Yes, sir.

Q. Your attention when you got to this building was attracted to the Greene street side? A. That was my position to go to work.

Q. And you looked up towards the building and then saw, as I understand your testimony, girls jumping on the Greene street from the ninth floor? A. Not at that time.

Q. Well, then, let us get it right. Captain. Did you see when you got there anything from the outside of the building? A. Yes, sir.

Q. Now, what, Captain, was it you saw at that time? A. The window trim and windows burning.

Q. Were the flames bursting out? A. Yes, sir.

Q. And what floor was that, Captain, that you noticed that on? A. The eighth floor.

Q. Now, at that time could you, from your experience, judge whether the fire was raging on that eighth floor? A. It certainly was.

Q. And how long after that, Captain, was it that you saw any body at all at any window?  
A. After my arrival?

Q. Yes. A. About two minutes.

Q. Where was it that you saw the persons whom you did

see? A. They were screaming in the windows on the ninth floor.

Q. Now, up to that time, Captain, you had not made any entrance into the building at all, had you? A. No, sir, I proceeded to make my fire connection.

Q. Yes, so I understood you to testify. Then after having made your fire connections you proceeded into the building? A. No.

Q. Well, what did you do? A. I heard the shriek, and saw the people start to jump and I ran to the apparatus and ordered the life net to the street.

Q. That you did before you went into the building? A. before I went into the building, yes, sir.

Q. Now, having done whatever you did in that regard, you finally got your apparatus so that you were prepared to go into the building? A. Yes, sir, that was my next duty.

Q. And you worked your way up to the sixth floor, I understood it? A. Yes, sir.

Q. And when you got to the sixth floor I understood you to say that you disconnected the house hose and put the fire department hose in its place? A. On the valve of the stand-pipe on the sixth floor landing.

Q. Yes, that is what I understood you to say. Now, had the hose of the building then been connected to the valve of the stand-pipe on the sixth floor at that time? A. Prior to my removing it, yes, sir.

Q. What did that indicate to your mind, Captain, if any-

thing, that some one had been trying to make use of that hose in connection with this fire so as to aid in its extinguishment? A. No, sir.

Q. Oh, that was a permanent connection, was it, Captain? Or are the connections kept that way in loft buildings? A. The hose was in the rack with the nozzle, and the swivle, or female end, was screwed to the valve attached to the stand-pipe.

Q. And you unscrewed it and substituted the fire department boss for that hose? A Yes, sir,

Q. Then I understood you to say that you went to the eighth floor? A. Yes, sir.

Q. You couldn't stand on that floor, could you? A. You couldn't stand up.

Q. And so you men fought the fire lying down, is that it, on your stomachs? A. Yes, sir.

Q. And your purpose was to get to the ninth floor, wasn't it? A. We had to extinguish the floor on the eighth floor before we would dare go to the ninth floor for fear we would be cut off.

Q. Just what do you mean by that, Captain, "For fear you would be cut off"-- so that you could not get back down? A. If we had not extinguished it on the eighth floor the fire would possibly come out and cut us off between the eighth and ninth floors and we would never get back.

Q. And then you couldn't get out alive? A. No, sir.

Q. So you worked on the eighth landing until you made

sure that you wouldn't be cut off, and then as rapidly after that as you could you proceeded to the ninth floor? A. To the ninth floor, yes, sir.

Q. I would like you to understand that in asking you these questions there isn't any suggestion of any kind that everybody had not done his full duty? A. Admitted, yes, sir.

Q. You understand that? A. Yes, sir.

Q. I want you to understand that, because I am not asking questions for the purpose of reflecting on anybody in the least degree that was at that fire? A. Yes, sir.

Q. So that, as soon as you men thought that it was feasible and possible for you to go to the ninth floor, you made to use your own language, you then "made the ninth landing"? A. We made the ninth landing.

Q. Up to that time you considered it unsafe to go to the ninth landing for the reason that you have given to the jury that the fire would come out and cut you off? A. If we had not extinguished it practically first.

Q. Now, you spoke of the fire traveling very fast, or, to use your words, "with great rapidity from west to east". At that time you were describing the condition on the ninth floor, were you not, Captain? A. Yes, sir.

Q. And that was the true condition on the ninth floor, that the fire was traveling very rapidly, and traveling front west to east? A. Yes, sir.

Q. Was there a great deal of smoke in the ninth loft? A.

No, not at that time.

Q. At what time? A. At the time that you spoke of in the previous question.

Q. Well, was there at any time? A. Yes, sir.

Q. When fire is traveling from one story to the story above, what reaches the story above first, the smoke or the flame? A. Smoke.

Q. From anything that you saw on the ninth floor are you able to say to the jury as to whether or not the debris was the debris of finished garments? A. No, sir.

Q. When I say garments I really mean waists-- they call them garments, but I mean ladies' waists? A. I couldn't identify their original nature, no, sir.

BY THE COURT:

Q. That is to say, you could not draw a distinction as between the finished garment, the unfinished garment or the piece of material before it had been touched at all? A. No, sir.

RE-DIRECT EXAMINATION BY MR. BOSTWICK:

Q. If I showed you some of the material taken from the ninth floor after the fire would you be able to recognize it as the kind of material that you saw there when you made your examination? A. Yes, sir.

Q. I will ask you to wait then for about twenty minutes ~~

THE COURT: I do not think that there is any dispute that this witness has testified that he saw certain material there and that it was in the nature of merchandise, but he

is unable to say whether it was in the form of a finished garment, an unfinished garment or a piece before it was cut.

MR. STEUER: No dispute about that.

MR. BOSTWICK: I think it would be very valuable if the Captain could identify some material taken from that ninth floor after the fire and I think it would be enlightening to the jury, so if you will wait, Captain

THE COURT: Witness withdrawn.

MR. STEUER: Do I understand that the People claim that there was on the ninth floor any finished material?

MR. BOSTWICK: Rags.

JOHN BOYLE, called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

Q. Boyle, you were on March 25<sup>th</sup>, 1911, a member of the uniformed Fire Department of the City of New York? A. Yes, sir.

Q. And were connected with the Hook and Ladder No. 8? A. Yes, sir.

Q. You went to the fire at the corner of Washington place and Greene street? A. Yes, sir.

Q. After you had done various work about the fire, did you finally go to the ninth floor? A. Tenth floor.

Q. You went to the tenth floor? A. Yes, sir.

Q. Did you find any bodies on the tenth floor? A. No, sir.

Q. Then where did you go after you went to the tenth floor?

on the ninth.

Q. Had you been on the roof? A. No, sir.

Q. Did you find any bodies on the ninth floor? A. Yes, sir.

Q. I want you to imagine that that is the Washington place door over there (indicating southeast corner of the court room)? A. Yes, sir.

Q. Imagine these are the windows along Washington place (indicating on east wall of the court room)? A. Yes, sir.

Q. Now you come to the corner of the building? A. Yes, sir.

Q. And imagine that that is Greene street along there (indicating north wall of the court room)? A. Yes, sir.

Q. And that is the Greene street door (indicating northwest corner of the court room)? A. Yes, sir.

Q. So that that is the corner of the building (pointing to northeast corner of the court room)? I will show that corner by showing you People's Exhibit No. 18. This is the corner of that building, that corner of the room (indicating northeast corner of the court room); there is the Greene street door (indicating the northwest corner of the court room)? A. Yes.

Q. And there is the Washington place entrance (indicating southeast corner of the court room)? A. Yes, sir.

Q. Now, have you got those fixed in your mind? A. Yes, sir.

Q. When you entered the ninth floor did you come in the Greene street door or did you come in the Washington place door, do you remember? A. Well, I was not very well acquainted with the place at the time. I think we come in and done the work

on the Greene street side.

Q. You did most of the work on the Greene street side?

A. Yes, sir — all the bodies there.

Q. About how many bodies did you find over on the Greene street side?

Objected to as immaterial. Objection overruled.

Exception.

A. Well, I worked there until around nine o'clock, and I helped to lower either eleven or twelve bodies.

Q. That is on the Greene street side --

BY THE COURT:

Q. About what time was it when you first reached the ninth loft? A. Well, I couldn't tell you exactly, Judge. It was dark.

Q. About what time was it when you got to the ninth loft, as nearly as you can recollect? A. It must have been about seven or half past.

Q. At the time when you got to the ninth loft, were there already other firemen in that loft? A. Yes, sir.

THE COURT: I think it is doubtful whether this evidence is competent, because for all that appears other firemen may have moved the bodies from the position in which they originally were before this man arrived at the floor. You have to negative that by showing that those who got there first left them unchanged in position until this man got there. Is there any point made about that, Mr. Steuer?

MR. STEUER: There is, your Honor.

BY MR. BOSTWICK:

Q. Do you know what fireman was on the ninth floor before you got there? A. No, sir, I do not.

BY THE COURT:

Q. They were members of what company? A. There was Hook and Ladder 3 working on the corner, and we started from the other end and walked all the way up until we met first the first bodies, and as soon as we did we gave orders to start lowering them to the street. Then we cleared away the machinery that was next to the wall, I think, three of them, three shaftings -- there was nothing else there ~ moved them back and pulled down the radiators to give us room to work.

BY MR. BOSTWICK:

Q. Could you see from the way the bodies were when they were found whether they had been touched since the fire?

Objected to as incompetent. Objection sustained.

MR. BOSTWICK: Cannot the witness answer yes or no to that?

THE WITNESS: Yes, sir.

THE COURT: I think I will sustain the objection.

MR. STEUER: I move to strike out the answer.

THE COURT: Yes. That suggestion that I have made, may have taken you somewhat by surprise, Mr. Bostwick, but you will have an opportunity during the recess to talk with the other officers and find the man who got there first and let him tell us what he saw and what was done. Take them up in the order in which they arrived, and then we will avoid on that score all possible questions.

MR. BOSTWICK: I must say that it is beyond my comprehension entirely why we cannot prove these facts.

THE COURT: I regret that. You can prove the facts, but not by this man.

MR. BOSTWICK: I mean simply because it is possible somebody else may have been there before. I cannot understand that that takes away from the probative force of the evidence, or its admissibility, but goes to its weight before the jury. But I cannot understand that.

THE COURT: Well, we will proceed on the assumption—

MR. BOSTWICK: I withdraw the witness.