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Abstract
Vol. 4, sec. 3 (pp. 2178-2204)

The Court's charge to the jury: defines possible criminal verdicts; the jury's verdict, p. 2204: not guilty

Keywords
triangle fire, verdict, charge

After Recess, Trial Resumed.

The Court now charges the jury.

THE COURT'S CHARGE

CRAIN, J.:

Gentlemen of the Jury:

The task devolved by law upon the counsel for the defendants and the task devolved by law upon the assistant district attorney in connection with this trial are now about completed. There is very little, if anything, more that either the attorney for the defendants, on the one hand, or the assistant district attorney, on the other, will be called upon to do in connection with the further prosecution of this case. Your duty has been partially performed. A considerable part of your duty remains to be performed. The task which was assigned and which was assumed by the attorney for the defendants has been well performed. The task which fell to the lot of the assistant district attorney in connection with this case has also been well performed. In the conduct of this trial on both sides there has been displayed not merely professional skill and professional courtesy, but zeal and discretion. The court has been greatly aided during the progress of the trial by the assistance given from time to time to the court in every proper way by the attorney for the defendants and by the assistant district attorney. And you will find yourselves greatly aided by

the way in which the case has been conducted on both sides in the unfolding of that which witnesses had to say by questions put to them, by the explanation of various exhibits and by the marshaling of evidence and the presentation of argument on both sides in the summation of counsel. It is not improper to say to you, because jurors sometimes lose sight of that fact, that it is never in any sense a question to be determined in the jury room which counsel has displayed the greater skill or which counsel has conducted the case from the juror's viewpoint with the greater ability. And also it may be said in somewhat the same connection that no matter how skilful counsel may be, and therefore how careful they may be in presenting to a jury the contentions which they desire to make and which they conceive to be persuasive on one side or the other, it rarely happens that any counsel finishes his summation without recalling that he omitted to say something which he might have said, or without the consciousness that perhaps through the limitation of time by which he was bound he was unable to give expression to some of the contentions which he might have desired under other circumstances to have brought to the attention of the jury. So that when you retire to deliberate, to enter upon a discussion of the evidence in this case, you are in no sense confined in your discussion to any considerations that may have been

presented to you by either the counsel for the defendants on the one side or by the assistant district attorney on the other, but the evidence in the case is before you for your consideration and for such discussion us you may consider warranted by the circumstances as they shall present themselves to you in the jury room.

I said that your task had been partially performed. It has, in this sense: That you have listened, as I have every reason to believe, with attentive and open mind to the evidence in the case. That forms no small part of your task, be cause in the main it is just in proportion as you recollect the evidence that you will be able to weigh and analyze it when you retire to deliberate. A part of your task remain to be performed; that task is figuratively spoken of as the weighing of evidence. It is to be performed by you for the reason that you are made by law the exclusive judges of the facts. It is to be performed by you because the evidence is that which is to be weighed on one side of the balance, the law as given to you by the court being placed upon the other side of the balance. The law is the measuring stick, the evidence is that which is to be measured. The law says that the doing of a certain thing under certain circumstances or the omitting to do a certain thing under certain circumstances is a crime. And then, going into particulars, it specifies what the given crime is, and the question in the

given case for the jury is, Does the evidence establish to the jury's satisfaction, and beyond a reasonable doubt, that that thing which the law says may not be lawfully done under certain circumstances has been done under those circumstances or whether that thing which the law says must be done has been omitted to be done under circumstances making the omission of the doing of it culpable and therefore criminal negligence?

What is it that is to be weighed? What is it that in to be measured? I have said that it is the evidence that is to be weighed and the evidence that is to be measured, and you will readily understand how important it is that you should know what is meant by the term "the evidence" as used in that connection. It includes the spoken word of witnesses responsive to questions put, in so far as the answers of witnesses have been allowed to stand, not being striken out either upon motion of the assistant district attorney or upon the motion of the defendants' counsel or by the court of the court's own action. The evidence also includes all exhibits which have been marked and received in evidence. The evidence also includes any concession that there may be in the case.

I have now mentioned everything which comes into the scale as the subject matter of your consideration when you retire to deliberate, and you will see that that which I have named excludes certain things. It excludes

anything said by any witness that was stricken out under any of the circumstances mentioned. It excludes any exhibit which has been merely marked for identification but not received in evidence. It excludes any colloquy or conversation that there may have been during the progress of this trial between the attorney for the defendants on the one hand and the assistant district attorney on the other, or between the attorney for the defendants on the one hand and the judge presiding at this trial, or between the assistant district attorney on the one hand and the judge presiding at this trial. It excludes everything which may have been said by either side by way of argument addressed to the court. It excludes everything which may have been said by the court in ruling upon any question of law incident to the reception or rejection of evidence, or which may have been said by the court in passing upon any motion during the pendency of the trial. And you are now told pointedly and explicitly that the decision of question of law during the pendency of this trial by the court, including the decision of motions, imports no opinion by the court as to what your verdict should be.

If you have followed me to this point you will see that I have told you that you are the exclusive judges of the facts, and that that circumstance devolves upon you

the duty figuratively spoken of as the "weighing of evidence" I have told you what is included and what is excluded when the word “evidence” is used by me in that connection, and I have told you that the evidence is to be weighed and measured by those provisions of law which will be brought to your attention in this charge. That as you are supreme in the domain of fact, so the judge presiding at the trial is intrusted with the responsibility of stating the law, and jurors are obligated to take the law as stated by the court. Over against the evidence in this case you can put no other weights than those represented by the law as I will tell you the law to be. Over against the evidence in this case you can use no other measuring stick than the measuring stick contained in and evidenced by legal definitions brought to your attention in this charge.

I might now pass from a consideration of your duty to a statement of the law, but before I do that there are one or two things which I may say, not as directory or mandatory but as suggestions, which you may either follow or not follow as you see fit, because you are the ones to determine exclusively the considerations which will influence you in determining what credence you will give and the considerations which will influence you in the weighing of evidence in this case.

You may not consider it improper to endeavor to recall what in point of fact the witnesses have said, not taking an isolated answer to an isolated question as necessarily expressing the real meaning of the witness, but preferably taking everything a witness has said upon a given subject as expressive of the meaning of that witness. You may not improperly ask yourself, What is the witness' relation to the controversy --interested or disinterested, biased or unbiased? What is the witness' seeming intelligence? What were the witnesses' opportunities for observation, and what were the witnesses' capacity for observation? Is the story told by the witness probable or improbable? Is it consistent with itself? If inconsistent, is it inconsistent in a minor matter only, or is it inconsistent in a material matter? Is it in contradiction to the evidence of some other witness? And, if so, is it in conflict with thee evidence of only one other witness, or with the testimony of concurring witnesses?

You will be loath to ascribe the commission of perjury to any witness. Wherever you can reasonably reconcile testimony given upon a basis of an intent on the part of the person testifying to testify to that which is true and not false, you will de so; but if you reach the conclusion that any witness has committed deliberate

perjury respecting a material matter, then, and in that event, you are at liberty to wholly disregard the testimony of such witness.

To avoid repetition -- because that which I now bring to your attention is as applicable to the charge contained in the indictment which charges these defendants with the crime of manslaughter in its first degree as to the charge contained in the indictment which charges these defendants with the crime of manslaughter in its second degree -- I will say to you that the burden of proof is upon the prosecution, and that burden requires that before a defendant can be found guilty a jury must be satisfied from the evidence beyond a reasonable doubt of the defendant's guilt. That is not the rule in civil cases. In civil cases as a rule a verdict is justified by what is known as a mere "preponderance of evidence," although it may be a preponderance which falls far short of removing reasonable doubts in the minds of jurors respecting the propriety of the verdict rendered. But in criminal cases the prosecution must go further than that, and a juror must be satisfied, before a verdict of guilty can be lawfully rendered by the evidence, that the defendants are guilty as charged beyond all reasonable doubt.

Under our system of jurisprudence a defendant is not required to affirmatively establish the fact of his

innocence, if it be a fact. A defendant in a criminal case is presumed to be innocent until the contrary be proved. As already stated, in case of a reasonable doubt as to whether his guilt is satisfactorily shown, he is entitled to an acquittal.

It has been said, and truly and properly said, that it is a dangerous thing for a court to attempt to define what is a reasonable doubt, and the danger lies in the circumstance that a definition is nothing but the substitution of other words for words used, and there are no two words of plainer meaning or in more common use than the two words "reasonable” and "doubt." Those words mean when used in the law precisely what they mean when correctly used in every day life. Not every doubt answers to the description of a reasonable doubt. Reasonable doubt is a doubt that is founded in reason, sustained by reason -- a doubt for the existence of which a juror entertains a reason, a doubt back of which there is a “because,” so that a juror says he doubts the guilt of a defendant for such and such a reason. It is not a whim, it is not a caprice, it is not the action of unreasonable sympathy. It has been the subject of comparatively recent definition by the Court of Appeals, and that definition is couched in language very similar to that I have given you in the same connection. In fact, what I have said is in part my

recollection of that which in the case to which I am about to call your attention the Court of Appeals said: "Proof beyond a reasonable doubt," say the Court of Appeals, "has been well defined to be that which amounts to a moral certainty as distinguished from an absolute certainty. A doubt is a state of mind in which a conclusion cannot be reached upon the question before it. If it is not due to mental inability to co-ordinate the facts in evidence it must arise from the absence of some material fact or because such a fact has not been sufficiently established by the evidence, and therefore the foundations for a belief are insufficient. A reasonable doubt is not a mere whim, guess or surmise, nor is it a mere subterfuge to which resort may be had in order to avoid doing a disagreeable thing, but it is such a doubt as reasonable men may entertain after a careful and honest review and consideration of the evidence. It must be founded in reason and must survive the test of reasoning or the mental process of a reasonable examination."

We are now brought to that point where it becomes my duty to tell you that which the law has to say respecting what it is that constitutes the crime of manslaughter in its first degree, after which I shall tell you that which the law has to say regarding what it is that constitutes the crime of manslaughter in its second degree. I will

not give you the whole of either definition, because to give you the whole would be to give you portions of law inapplicable in the light of the evidence in this case and which would confuse you rather than aid you, and my purpose is to aid you as far as may be in my power in your effort to reach a verdict which shall represent what you believe to be established by the evidence in this case.

First, then, it is proper to say that the defendants are charged in the indictment on which they are on trial before you with the crime of manslaughter in its first degree, and also with the crime of manslaughter in its second degree, and the charge relates to the circumstances under which it is charged and alleged that one Margaret Schwartz met her death. The indictment is an accusation in writing, it is nothing but an accusation, and to that accusation the defendants have said by their plea that they are not guilty.

“No person," says the law, "can be convicted of manslaughter unless the death of the person alleged to have been killed and the fact of killing by the defendant as alleged are each established as independent facts, the former by direct proof and the latter beyond a reasonable doubt."

Homicide is the killing of one human being by the act, procurement or omission of another. Manslaughter

in both of its degrees is one of the kinds of homicide defined in the Penal Law. Homicide, which constitutes neither murder in its first degree nor murder in its second degree, and which does not fall under the law's definition of excusable homicide, nor yet under the law's definition of justifiable homicide, is manslaughter in the first degree, when committed without a design to effect death by a person encased in committing or attempting to commit a misdemeanor affecting the person or property either of the1 person killed or of another.

It is of the charge contained in the indictment and of the substance of the contention as made by the prosecution in this case that these defendants are guilty of the crime of manslaughter in its first degree because the People contend and charge in the indictment that these defendants answer to the description of persons who were engaged in committing or attempting to commit a misdemeanor affecting the person or property either of the person killed, that is to say, Margaret Schwartz, or of another. And the People's contention in that regard arises from the claim that these defendants at the time of the death of Margaret Schwartz were engaged in violating, or in not observing a provision contained in section 80 of the Labor Law, which forms part of article 6 of that law, entitled "Factories .” The provision in question reads: “All doors

leading in or to any such factory shall be so constructed as to open outwardly where practicable, and shall not be locked, bolted or fastened during working hours." Now I have read to you the whole sentence, beginning with the word "all, " but the contention of the People is founded upon the assertion that these defendants were engaged in the commission of a misdemeanor in that, while section 80 of the Labor Law was in part applicable to them, they omitted to have unlocked or unfastened during working hours a door leading in or to a factory of which they were the proprietors, located in the County of New York. That clause of that law, and more particularly that part of that clause of that law relating to the obligation to have doors open, has been the subject of judicial construction, and as so construed it has been held, and you will regard it as being stated as the law of this case, that that subdivision of that section means that every such door shall be unlocked, unbolted and unfastened during working hours, and that that section is violated if any door answering to the description of a door leading in or to any such factory is locked, bolted or fastened during working hours. The working hours include not merely the period of time during which persons are actually employed at their machines, cutting tables, examining tables or desks, but also include a reasonable period of time for the exit of such persons from

the place in which they are employed after the cessation of their work.

Section 1275 of the Penal Law provides that any person who violates or does not comply with the provision. of article 6 of the Labor Law relating to factories is guilty of a misdemeanor. It is because section 1275 does so provide, and it is because the People contend that the part of section 80 of the Labor Law which is found in article 6 of that law requires that the proprietors of a factory shall keep unlocked or unbolted or unfastened during the period described as working hours doors of the character in such part of such section mentioned, and because the People contend that these defendants omitted to do that and were engaged in the omission to do that at the time when Margaret Schwartz met her death, that the People contend that, coupled with the alleged circumstance that the death of Margaret Schwartz is, as they contend, traceable to the alleged locked condition of such a door, that the indictment, in so far as it charges these defendants with the crime of manslaughter in its first degree, is founded.

I believe that I am correct in saying that it is not a matter of dispute in this case that on the 25th day of March, 1911, the defendants, as copartners in business under the name of the Triangle Waist Company, were engaged

in the manufacture and sale of shirtwaists on premises located in the County of New York at the corner of Greene street and Washington place. I believe that I am correct in saying that it is not a matter of dispute that in connection with that business the defendants occupied on that day as lessees, that is to say, tenants in possession, certain portions of such a building, namely, the eighth, ninth and the tenth floors. I believe that it is not a matter of dispute in this case that on the 25th day of March, 1911, there was a fire which had its origin in some portion of the eighth floor of those premises, and that at the time of the origin of the fire there was a person in the employ of these defendants by the name of Margaret Schwartz, and that that person is the person named in the indictment. That Margaret Schwartz died upon a portion of the premises so occupied by these defendants, and that she died from asphyxiation, which was produced by the smoke incident to the fire.

What was it that caused the death of Margaret Schwartz? Did she meet with her death — and I am now speaking simply in its relation to the count in the indictment charging these defendants with the crime of manslaughter in the first degree -- because these defendants had locked and kept locked the door on the ninth floor leading from their ninth floor to the Washington place

stairway? What was the condition of that door at the time that the fire started and at the time when Margaret Schwartz met her death? What was its condition between those periods of time?

When I put questions of this kind it is merely to invite your attention to the provisions of the law applicable to the crime as changed in the indictment of man-slaughter in its first degree.

Was that door locked during that period?

If these defendants were on trial, charged not with a felony but with a misdemeanor, and were particularly the alleged misdemeanor of an omission to keep that door unlocked, I might be disposed to charge you that it was not an element to be established by evidence in the case affirmatively that they possessed at the time actual knowledge that the door was locked, if it was locked. But because they are not charged with a misdemeanor, but are charged with a felony, and because of the force and sig-nificance which I attach to the words "engaged in," I charge you now that it is the law of this case that you must be satisfied from the evidence, among other things, before you can find these defendants guilty of the crime of manslaughter in its first decree, not merely that the door was locked, if it was locked, but that it was locked during the period mentioned under circumstances bringing knowledge

of that fact to these defendants. But it is not sufficient that the evidence should establish that the door was locked, if it was locked, during such a period; nor yet that the defendants knew that it was locked during such period, if it was locked, but you must also be satisfied, from the evidence beyond a reasonable doubt that there was the relation of cause and effect between this locked door on the one hand, if it was locked, and the death of Margaret Schwartz on the other hand.

Was the door locked? If so, was it locked under circumstances importing knowledge on the part of these defendants that it was locked? If so, and Margaret Schwartz died because she was unable to pass through, would she have lived if the door had not been locked and she had obtained access to the Washington place stairs and had either remained in the stair-well, or gone down to the street, or to another floor?

When you retire to deliberate you will first consider the question of these defendants' guilt of the crime of manslaughter in its first degree. If upon the evidence you believe them to be innocent of that crime or if upon the evidence you entertain a reasonable doubt respecting their guilt of that crime, you will consider the question of these defendants' guilt of the crime of manslaughter in the second degree. In that connection your

attention is invited to a portion of the law's definition of the crime of manslaughter in its second degree. It is the law that such homicide, that is to say, homicide that is neither excusable homicide, nor justifiable homicide, nor manslaughter in the first degree, nor murder in either its first or second degrees, is manslaughter in the second degree when committed without a design to effect death, by any act or culpable negligence of any person which, according to the provisions of this article -- and the article referred to is the article of the Penal Law defining homicide -- does not constitute the crime of murder in the first or second degrees, nor manslaughter in the first degree.

Culpable negligence as so used means criminal negligence, and criminal negligence has been stated to be the unintentional failure to perform a duty implied by law whereby damage naturally and proximately results to another. Criminal negligence here means not such negligence as would entitle one to damages, but the negligence which is a violation of the law decreed by the State for the protection of the peace and the quiet of the State and of the life of all the individuals of the State. Criminal negligence may in general be defined as a dereliction of duty under circumstances showing an actual intent to injure, or such a conscious and intentional breach of duty

as to warrant an implication that the injuries were intended. Culpable negligence is the omission to do something which a reasonable and prudent man would do, or the doing of something which such a man would not do under the circumstances surrounding each particular case. It is the want of such care as a man of ordinary prudence would use under similar circumstances. In order to constitute the crime of manslaughter in the second degree a jury must find that the defendant by some act or culpable negligence procured the killing of the deceased. The jury must not only find that the evidence establishes before they convict the presence of mere ordinary negligence on the part of the defendant, but they must find it in such extreme degree as the use of the term "culpable negligence" imports in the section of the Code referred to. If the evidence leaves the jury in doubt as to whether such a degree of negligence exists as the statute itself contemplates, it must find its presence not proven and acquit the defendants.

Whether negligence exists is of course primarily determinable by a consideration of what the duty devolved upon the person charged with negligence was at the time. An occupant of a factory not peculiarly exposed to the danger of fire by the character of the work carried on within it is not bound to anticipate a merely remote or possible danger and to take measures to prevent its occur-

rence. That was the rule of common law, and is the rule to-day, except as modified or changed by statute. Such an owner or occupant was not bound by the common law to take any extra and unusual precautions for the purpose of protecting the operatives again at the danger arising from fire which such owner or occupant was not reasonably bound to anticipate.

What, if anything, does the evidence disclose in this case respecting the character of the business conducted by these defendants upon the premises in question on the 25th day of March, 1911, viewed from the standpoint of danger to be apprehended from fire? Was their factory a factory peculiarly exposed to the danger of fire by the character of the work carried on within it? That is a question which so far as it may be material to answer it at all in this case may be answered by you in the light of all the evidence in the case, so that when you come to the consideration of the question as to whether or not these defendants were culpably negligent, should you come to the consideration of that question under the circumstances heretofore stated to you, you may not improperly approach it from the standpoint of the degree of care required to be exercised by them as depending upon those general principles of law to which your attention has been called and as depending upon what you may find to be the character of the business as at that time carried on by

them from the standpoint of danger to be apprehended by fire. Where a statute, that is to say, a law, is framed to prevent injuries, or to lessen the likelihood of a person meeting with death from certain causes, is violated, and the death is due to the violation of the statute in the sense of being a direct result of the violation, the breach of the statute may be considered in determining the question of the presence or absence of negligence. So that when you cone to consider, should you come to consider the question, as to whether or not these defendants were culpably negligent as that term has been defined to you in this charge, you may consider in that connection the question as to whether or not these defendants were engaged at the time in the violation of that provision of the Labor Law to which your attention has heretofore been directed in connection with the charge against these defendants as contained in those counts in the indictment charging them with manslaughter in its first degree. I feel that I have not made that perfectly plain to you, and at the risk of repetition I state it over again. If under the circumstances mentioned you come to the consideration of the question as to whether or not these defendants were culpably negligent and whether Margaret Schwartz met her death because of culpable negligence on the part of these defendants, you may in that connection consider the

question as to whether or not they did violate the provision of the Labor Law respecting doors heretofore brought to your attention, and whether, it they so violated that provision, their violation of that provision was the direct and immediate cause of the death of Margaret Schwartz.

In this case, as I recollect the evidence, certain witnesses purport to state things which they say were said or remarked which they say were made by persons at the time of the fire who were in the lofts and more particularly on the ninth floor. The broad and general rule excludes statements of that kind in the sense that usually they are not receivable in evidence and may not lawfully be considered by a jury in reaching a verdict. That rule of law is the rule of law which excludes what is known as hearsay, but there are certain circumstances under which such statements are receivable, and ordinarily there is nothing but a question of law for the court when such alleged statements are offered in evidence as to whether or not the circumstances existed making them receivable. Ordinarily, if the court reaches the conclusion that those circumstances are shown to have existed and thereupon receive a such statements in evidence, or alleged statements in evidence, nothing remains for the Jury in connection with the alleged statements but to determine whether in point of fact they were made, and if made, what

if any, weight they shall give to them. But it sometimes happens, as it has happened in this case, that the evidence is partially conflicting as to the circumstances under which such things were said, if they were said, and as to the inferences which may be drawn with respect to the circumstances existing at the time when such things were said, if they were said, and for these reasons there is a preliminary question of fact which is submitted to you for your determination under certain instructions; or, in other words, you are about to be told when and under what circumstances you may consider such statements if you believe them to have been made, in evidence, and under what circumstances you will exclude them from your consideration entirely.

Were such exclamations made? That is the primary question and it is a question of fact. If they were made they may be considered by you as forming a part of the evidence in this case, provided you find first as a matter of fact that they were contemporaneous -- and that means at the same time -- with the main transaction. Secondly, if you find as a matter of fact that they formed a natural part of such transaction, and, thirdly, if you find as a matter of fact that they also formed a material part of such transaction. Under such circumstances they are receivable in evidence by you because of the brevity of the interval, if any, between them and the principal

transaction, and because their connection with the principal transaction is such, as to form a legitimate part of it and to receive credit, and support as one of the circumstances forming and illustrating the main fact, namely, the fact which is the subject of your inquiry.

Again, you may receive and consider them in evidence it you find as a matter of fact, first, that they were the impulsive or instinctive outcome of the act. Although not strictly contemporaneous, they are receivable under the circumstances I have mentioned, because of the supposed improbability that the spontaneous utterance of the instant would be false. If under the circumstance mentioned you should receive and consider such alleged statements as in evidence, you would give them such weight, if any, as you may consider them to be entitled to.

Finally, gentlemen, and I have been constrained to talk longer in charging you than I had anticipated, I may say that you will appreciate the propriety of making every reasonable effort to reach a verdict in this case. With that end in view you will doubtless agree with me that every juror should give full expression to his views. And having expressed them should listen with respectful attention to the views of his fellow jurors. There is an orderly way of proceeding, and the court hopes that you will proceed in that way. It is the duty of each juror to discuss and consider the oopinions of others. While that

is his duty, he must decide the case upon his own opinion of the evidence and upon his own judgment. If in the jury room a discussion should arise as to what in point of fact the evidence was respecting any matter, you may ask the officer having you in charge to bring you again to where you now sit, so that in the presence of these defendants and in the presence of their attorney, and in the pretence of the assistant district attorney and of the court, there may be read to you for greater certainty from the stenographer's minutes that portion of the testimony as to which the dispute has arisen.

MR. STEUER: I was going to request your honor, if possible, to make a little more explicit the intent of the court's ruling upon the motions of the defendant made at the close of the People's case and at the end of the entire case.

THE COURT: Gentlemen, I can only say this, that that matter is not to be the subject of thought by any one of you, and much less the subject of comment. So far as you are concerned it imports nothing; it imports nothing so far as the court is concerned respecting any opinion as to what your verdict ought to be. Now, gentlemen, you may retire.

(The jury now retires to deliberate upon a verdict.)

MR. STEUER: I want to except to that portion of the court's charge in which it instructed with relation to the provisions of section 80 of the Labor Law and defining the meaning of the word "all" as therein contained and using the word "every" with relation to it, as meaning that the requirement is that every door should be unlocked, unbolted or unfastened.

And, also, I except to that portion of the court's charge in which it says that working hours include not merely the hours during which they are employed, but also includes a reasonable time for exit during a cessation from their work.

And I except to that portion of the court's charge in which the court defines culpable negligence.

And I except to that portion of the court's charge in which it states that culpable negligence may result from a breach of any statute, and, in connection with this case, particularly that portion of section 80 of the Labor Law theretofore by the court referred to in its charge.

And I except to that portion of the court's charge in which it instructs the jury with relation to the so-called voluntary exclamations.

Those are the only exceptions.

27.

(The jury, which retired to deliberate at about 2:55 P.M., returned to the courtroom at 4:45 P. M., and rendered a verdict of not guilty.)