

and certain other claims as a partner.

Denial Made by Sutter

When Mr. Brown began to question him about the tapping matter he repeatedly refused to answer on the ground that the matter was privileged as being between client and counsel. The story was deftly developed, however, under the examination by Mr. Brown. Leslie, Sutter and other persons involved in the matter were also placed on the stand. Leslie denied that Sutter had been employed in connection with the case, although he admitted that he hired Shaw, Sutter's brother-in-law, to do the trailing for him at Sutter's suggestion. Sutter said he had nothing to do with the case and never received any money from Mr. Leslie for any service whatsoever.

Winter's testimony ran as follows in reply to questions by Mr. Brown:

Q—During what time were you associated with Mr. Leslie? A—During the year 1920. I began with him in the middle of the summer in 1918.

Q—And you were engaged as counsel in Allers against Allers? A—I was.

Q—Well, Mr. Winter, you didn't have any occasion to use what Sutter and Shaw told you in the law suit, did you? A—I did not.

Information Is Refused

Q—That is, they were employed in your office to work on account of your client? A—Yes, sir.

Q—Did you have more than one conversation with Sutter? A—Yes, sir.

Q—And did you also talk with Shaw; that is, the man that was with him? A—Yes, sir; I talked with him one night.

Q—Now, you may tell the talk you had with Sutter. A—I told Mr. Sutter that I would not use the information which he had given me.

Q—What information did he furnish? A—Detective reports.

Q—Was Shaw with him when he told you that? When you told him this, did you not use the detective reports that he had furnished? A—Yes, sir. He said he was his brother-in-law.

Q—Did you tell him why? A—Yes, sir. I told him because it was illegally obtained.

Q—And did you have a talk with Shaw alone during that interview? A—Yes, sir.

Q—You took him into a private office by yourself, so that you talked with him alone? A—Yes, sir, I did.

Q—What did Mr. Shaw tell you, now, first, did these men tell you of the goings and comings of the defendant? A—They did.

Q—Did he tell you? A—Well, the examination I put him through disclosed to me that his testimony was worthless.

Q—What did he tell you? How did he tell you he got this information of the goings and comings of the defendant? How did he say he got it? A—By wire-tapping.

Q—Tapping whose wires? A—Dr. Allers' wires.

Q—And where did he say he tapped it? A—In front of a room, where he had a window.

Q—In what place? A—Well, it is the first station on Staten Island. I don't know the name.

Q—St. George's? A—Yes.

Q—Because he was with reference to Dr. Allers' house? A—Across the street.

Police Connection Alleged

Q—And after that, did you see him and Sutter together? A—I took him back into the room where Mr. Sutter was.

Q—Had you had any previous conversation that you couldn't tell Mr. Sutter's testimony because he was a police official? A—I had been told that night by Mr. Leslie that I could not use him.

Q—Because he was an officer of the Police Department? A—Yes, sir.

Q—And you would have to rely on Shaw? A—Yes, sir.

Q—You told them that you could not use the information derived in that way, is that so? A—I told him I wouldn't use any of it.

Q—You wouldn't use any of it. Now, in the conversation that you had with Shaw, did he, in the first instance, adhere to the claim that he had secured the information by personal observation? A—Yes, sir; they both did.

Q—And when you got Shaw alone, he told you that it had been obtained by getting it over the wires when they were tapped? A—Yes, sir.

Q—When you got back did Sutter admit that that was the fact? A—He did.

Q—Now, did both of them come to you afterward again and talk to you after that conversation? A—Yes, sir; they did.

Q—What was it? A—Little instruments which they said were wire-tapping apparatus.

Q—They took it away? A—Yes, sir.

Q—And they explain how it was operated? A—Yes, sir.

Q—What did they say to you? A—The main wire was tapped and two

wires brought into the window, and these little instruments were clamped on to it.

Q—And did they tell you anything about the tapping that they gave to the wire tapping after it was made? Who said he did not do it? A—The little fellow, Shaw.

Q—The brother-in-law of Sutter? A—Yes, sir.

Listening In for Year

Q—Did they show you over how long a period this had been done? A—Well, I knew in a general way. About a year.

Q—Now, did you have anything to do with drawing a contract for the Park Court Realty Company about the transfer of that property? Now, the contract of sale was between whom and whom? A—I don't remember the seller.

Q—Do you remember the purchaser? A—Yes, sir.

Q—Who? A—Inspector Dwyer.

Q—And he passed the check over the contract price? A—I think it was about \$154,000.

Q—And do you remember what was paid on it? A—At the time the contract was signed there was a check of either \$15,000 or \$17,000, as I recall it.

Q—Who passed it over? A—Inspector Dwyer.

Q—He was present? A—Yes, sir.

Q—And he passed the check over? A—Yes, sir.

Q—To the attorney of the seller? A—Yes, sir.

Q—Was there any more paid that you know of in connection with that contract? A—Well, the total was a little over \$30,000, as I recall it, within thirty days.

Q—And a mortgage given for the balance? A—Yes, sir.

Q—Did the contract provide to whom the property was to be conveyed? A—Well, Inspector Dwyer signed the contract.

Q—And did it provide for conveyance to him? A—The contract did, yes, sir.

Q—About what date was that? A—I can't tell. It was last summer some time, a year ago—last fall in 1920.

Property Conveyance Made

Q—Were you present when the conveyance was made? A—I was.

Q—And to whom was the conveyance made? A—William Leslie.

Q—The father of Warren Leslie? A—I have understood so.

Q—And did you know to whom it was later conveyed? A—Yes, sir. To the Park Court Realty Company.

Q—And that corporation was incorporated in your office? A—Yes, sir.

Q—Were you one of the incorporators? A—I learned so afterward.

Q—Did you know that you were one of the directors for the first year? A—I learned so later on. I wasn't aware of the fact until some time later.

Q—Now, the directors, as the record shows, were Warren Leslie, Byram L. Winter, and Mary Schacht. Is that correct? A—No, sir.

Q—You hadn't paid anything into the concern? A—No, sir.

Q—Do you know where was paid to these detectives for their services? A—Except what Mr. Leslie told me.

Q—What did he tell you? A—Seventy dollars a week apiece.

Q—Did they tell you whether or not the room in which it was done was rented? A—Yes, they did—one of them—yes, sir.

Q—Do you ever talk with Inspector Dwyer in relation to it? A—Yes.

Q—Was Inspector Dwyer a frequent caller at the office during this period? A—I would not say frequent; occasionally.

Q—During the entire period? A—Well, I think so. He came in and out.

Q—Did either of these men tell you to whom the telephone-tapping instrument belonged? A—They did not.

Q—When Mr. Leslie was questioned he insisted it was a private litigation and that anything "in the Allers case cannot have any possible connection with the investigation of any department in the City of New York, or any officer thereof."

Meeting With Inspector

"I am not so sure about that," came back Mr. Brown. Leslie said he was president of the Court Martial Board in the Police Reserves and that he met Sutter and Inspector Dwyer in his capacity as a reserve official. He admitted hiring Shaw on Sutter's recommendation. At this point he attacked Winter's story as vicious and without foundation and referred to Winter's suit against him now pending. He denied that Sutter had anything to do with the case or that he gave him any money.

He said, however, that both Sutter and Inspector Dwyer were frequent visitors to his office in connection with police reserve work, and that Sutter brought to his office charges preferred against reserves. He said Winter was a friend of his for twenty-five years, and after going away for twelve years, came back about two years ago, when the again became associated with his firm. Leslie said he paid Shaw liberally for his work, but couldn't remember how much.

Sutter said on the stand he was now

Court Rejects Hines Plea for New Primary

Justice McAvoy Rules That Evidence Contained in Affidavits Fails to Show Fraud Permeated Election

'Minor Errors' Admitted

Recanvass in District of Anti-Murphy Candidate Shows Only 10 Changes

Justice McAvoy in the Supreme Court yesterday denied the application of James J. Hines for an order directing that a new Democratic primary election be held to determine whether Hines, the anti-Murphy candidate, or Julius Miller, the Tammany organization candidate, shall be the Democratic nominee for President of the Borough of Manhattan. Hines ran independently against Miller, who was named by Charles F. Murphy.

Hines received more than 20,000 votes, and in the examination of the ballots cast throughout the borough his counsel, Vincent S. Lippe, declared that there had been so much fraud discovered that a new primary election would be the only equitable solution of the fight.

Justice McAvoy said that the decision of the court must be governed by proof that the primary election had been so permeated by fraud, as alleged by Hines, as to render it impossible for the court to determine the true result. Such proof, held the Justice, had not been presented. The affidavits telling of alleged frauds, he said, were in no such number as would justify the court to determine the true result. "There is wholly lacking that demon-

stration of pervading fraud in the whole result," said Justice McAvoy, "from which would spring the right invoked."

During the argument before the court Lippe, representing Mr. Hines, said that the brief recanvass of votes cast in the primary election indicated that Hines had received the nomination for Borough President by a majority of 5,000, while the official count gave Miller a majority of 8,511. He cited several instances of alleged frauds.

George W. Olvany, counsel for Miller, argued against the holding of a new election. One argument made by him was that such a new election would cost the city \$75,000. Justice McAvoy remarked that the cost would not be considered if it was found, as alleged, that the election had been so permeated by fraud.

Olvany said there may have been some minor errors in tabulating the vote, but denied there was any deliberate fraud.

Slight Change in Eleventh

Lippe said last night that the recanvass of the primary vote in the 11th District, which the Hines people never objected to, had justified the earlier statement by Hines and others to the effect that the election there was conducted according to law and that every one got his just deserts.

"Out of 4,046 votes cast there were only ten variations from the original canvass disclosed by the recanvass," said Mr. Lippe. "The tally sheets balanced with the police returns and in all respects there was a strict compliance with the election law. What slight variations there were are accountable for by construction of the law, and they are too few in the aggregate to be of any account."

There was no systematic and deliberate fraud disclosed by the recanvass, Olvany, representing Tammany Hall, will make much of the disclosure that there were double crosses on a few of the ballots, thus voiding them. None of the ballots so marked were counted for Hines. They were segregated as void ballots. The recount of the 11th District, of which Mr. Hines is leader, was made solely for "grandstand" effect for the count to determine the true result. Such proof, held the Justice, had not been presented. The affidavits telling of alleged frauds, he said, were in no such number as would justify the court to determine the true result. "There is wholly lacking that demon-

49 Terra Cotta Makers Indicted By U. S. as Trust

Every Manufacturer in the Country but One Accused by Federal Grand Jury of Sherman Act Violation

Accused of Price-Fixing

Plot to Bar Competition and Boost From \$40 a Ton to \$800 Is Charged

The special Federal Grand Jury investigating the alleged scandals in the building trades revealed by the Lockwood committee yesterday returned two indictments under the Sherman anti-trust law, which, according to Special Assistant United States District Attorney David L. Podell, involve every terra cotta manufacturer in the country but one.

The first indictment names twenty-two corporations and twenty-seven individuals connected with them, and covers the entire country. The second involves seven corporations, and eleven individuals doing business in the Eastern section of the United States, all of whom are also named in the first indictment.

All these corporations are members of the National Terra Cotta Society, whose headquarters are at 1 Madison Avenue. Mr. Podell explained yesterday that the reason for returning two indictments was that one charge was found against members of the Eastern division of the society, who also belong to the Eastern Terra Cotta Association, which it had been impossible to establish against the manufacturers in the West.

To Plead Within Two Weeks

Both cases will be tried in the Federal Court here and, although no time has yet been set for pleading, the government prosecutors said that this would take place within two weeks. United States District Attorney Hayward himself took an active part in the proceedings before the grand jury, along with David L. Podell and Benjamin S. Kirsh, two of his special assistants in the building trades investigation.

Announcement was made yesterday that Raymond L. Wise, formerly assistant counsel for the Lockwood committee, has been retained to assist in the building trades litigation. He resigned as assistant counsel to the Meyer committee to enter this work.

In discussing the effects of the alleged conspiracy in restraint of trade yesterday, Colonel Hayward, declared that since the indictments, has shown that since the society was formed the price of terra cotta has risen from about \$40 a ton to \$300 and \$400 a ton, and in the case of so-called architectural terra cotta to \$800 a ton.

Supply Never Met Demand

"We find that with the possible exception of rare and isolated cases not a single manufacturer has increased his kiln capacity," he declared. "They took pains to see that the supply never equaled the demand."

Terra cotta, he added, is second only to steel in importance to the builder, and the evidence in the hands of the government prosecutors shows that the industry in this country is in the hands of some twenty-three men.

A statement was issued from Col-

onel Hayward's office yesterday after setting forth the general nature of the charges in the indictments.

"The first indictment charges four different violations of the Sherman law," the statement reads. "The first of these relates to the elimination of competition through a division of territory. Prior to the organization of the association all terra cotta manufacturers competed freely throughout the country. The society divided the country in such manner that the majority of the terra cotta manufacturers of the country refused to enter and compete in the New York market and have refrained from making any sales or shipments in the New York market by common agreement."

Price-Fixing Charged

"The second count more directly charges price-fixing through the medium of the open price plan. The details of the business of each concern are set forth, disseminated among all other concerns."

"The third count charges that an elimination of all competition on the subject of so-called additions, so that the one manufacturer remaining in the original territory could dictate his own price to the builder or owner of the building who desired to make any extensions or to erect any adjacent structures."

The fourth count of the indictment charges monopoly of the terra cotta industry of the United States. The indictment alleges that the association controlled more than 95 per cent of the terra cotta industry in the United States and by reason of the evil practices in price fixing, division of territory and elimination of competition has maintained the monopoly of the industry.

The second indictment, which involves only the Eastern group of manufacturers, contains all the counts set forth in the indictment against the national group and adds a further count charging the Eastern group with elimination of competition and price-fixing through the medium of an association of manufacturers.

The indictment alleges that by common agreement each of the Eastern manufacturers was allotted a specific percentage of the business, and that they all agreed not to exceed their respective quotas.

"In the monopoly count against the Eastern group it is charged that they completely eliminated all other manufacturers in the Eastern States and by reason of their unfair and illegal practices through the price fixing, elimination of competition and by various other methods they violated the monopoly section of the Sherman law."

Those Named in Indictments

The corporations and individuals named in the indictments covering the eastern part of the country are:

Atlanta Terra Cotta Company, of East-point, Ga., of which H. B. Wey is vice-president.

Atlantic Terra Cotta Company, of Torrington, Conn., of which William H. Powell is president, and F. G. Lyatt is vice-president.

Continental Terra Cotta Company, of Philadelphia, of which Thomas F. Armstrong is president.

Federal Terra Cotta Company, of West-bridge, N. J., of which Dr. Forest Grant is president and Harry Lee King is assistant.

New Jersey Terra Cotta Company, of Perth Amboy, of which E. V. Ekerson is president and general manager and Karl Mathisen Jr. is secretary.

New York Architectural Terra Cotta Company, of Long Island City, of which Richard P. Dalton is president and Walter G. Orr is vice-president and treasurer.

South Amboy Terra Cotta Company, of South Amboy, N. J., of which Peter C. Olsen is secretary.

Those named in the nationwide indictment, in addition to all those against whom charges are brought in the eastern part of the country, are:

American Terra Cotta and Ceramic Company, of Chicago, of which W. D. Galt is president.

N. Clark & Sons, of Alameda, Calif., of which G. D. Clark is secretary.

Company of Seattle, of whose terra cotta department S. G. Gifford is manager.

Denver Terra Cotta Company, of Denver, of which C. P. Fackett is vice-president.

Gladding, McBean & Co., of Lincoln, Calif., of which Athol McBean is secretary.

Indianapolis Terra Cotta Company, of Indianapolis, of which George Lacy is manager.

Los Angeles Pressed Brick Company, of Los Angeles, of which Howard Frost is president and H. B. Potter is secretary.

Midland Terra Cotta Company, of Cleve-land, of which H. Mendius is president.

Northern Clay Company, of Auburn, Wash., of which J. S. MacMichael is president.

Northwestern Terra Cotta Company, of Chicago, of which Harry J. Lucas is vice-president.

St. Louis Terra Cotta Company, of St. Louis, of which R. F. Grady is vice-president.

Tropico Pottery, Inc., of Glendale, Cal., of which F. B. Ortman is vice-president.

Washington Brick, Lime and Sewer Pipe Company, of Clayton, Wash., of which V. E. Piollet is vice-president.

Western Terra Cotta Company, of Kansas City, of which William Zimmerman is president.

Winkler Terra Cotta Company, of St. Louis, of which J. G. Hewitt is vice-president.

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Paul D. Cravath, of New York, was elected vice-president, and Edwin F. Gay, president of New York Evening Post, Inc., was named secretary and treasurer.

The directors include George W. Wickham, chairman; Frank L. Polk, Otto H. Kahn, D. F. Houston, W. B. Warburg, Norman H. Davis, W. D. Shepherd, A. C. Condit, Stephen B. Duggan, John H. Finlay and Isaac Bowman.

A meeting will be held the last week in October to discuss the question in relation to China and the Far East.

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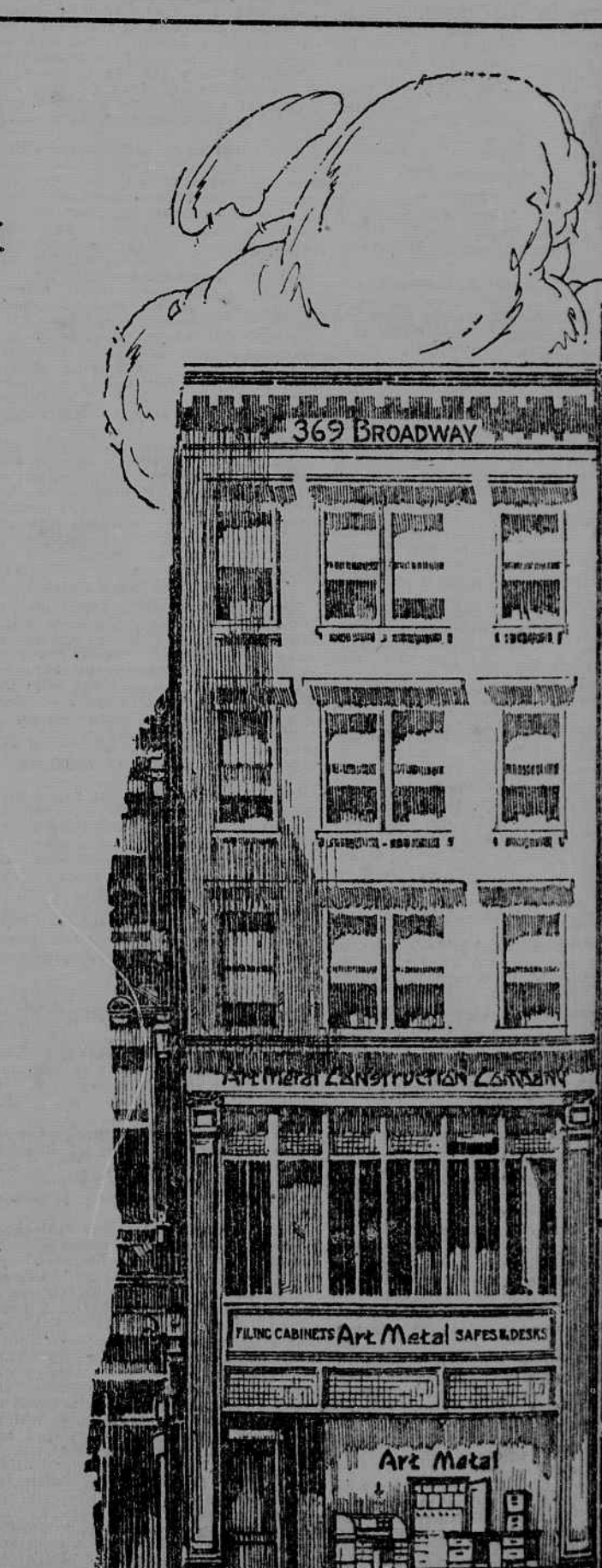
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