NOYES-DANA LIBEL CASE.

GREAT INTEREST SHOWN IN THE PRELIMINARY PROCEEDINGS.

Discovery that Mr. Noyes Is Not a Resident of the District Where He Chose to Make His Complaint of Libel—Commissioner Shields Says that All He Has to Do Is to Determine Whether Mr. Dana Is the Person Named in the Indictment and Concludes that He Is the Man—Offers Made of Proof Which Was Excluded on that Ground—Mr. Elihu Root's Motions and Exceptions—The Legal Points of the Case Are to Be Gone Into Before Judge Brown on April 2 on Application for a Warrant of Removal.

The preliminary hearing in the case of Charles A. Dana, editor of THE SUN, before application for a warrant for his removal to Washington under the indictment for libel obtained by Frank B. Noyes in the Supreme Court of the District of Columbia, was held yesterday before United States Commissioner Shields. The most interesting development of the examination was the offer of evidence by Mr. Elihu Root, of counsel for Mr. Dana, that Frank B. Noyes, the complainant, was not a resident of Washington or of the District of Columbia when his complaint was made there, and is not now; and that he was and is a resident of Montgomery county, Md., and is a registered voter in that county. A chief plea made for Mr. Noyes has been that he was a resident of the District, and, being such, was by law debarred from proceeding against Mr. Dana in the United States courts in New York State. Under the ruling of the Commissioner, that he was not authorized to inquire into the case except as to the identity of Mr. Dana as the person named in the indictment, the evidence itself was not put on the record, but the offer of it was recorded and it was referred with other points to United States District Court Judge Brown, before whom the case will come on April 2 on the application of the United States District Attorney for a warrant of removal.

Commissioner Shields's office was well filled some time before the proceedings were begun. The presence of representatives of every newspaper in New York city and of the correspondents of many papers throughout the country showed the widespread interest in the case.

Mr. Dana, accompanied by his counsel, Mr. Elihu Root and Mr. Franklin Bartlett, arrived just before the hour. United States District Attorney Macfarlane and his assistant, Mr. Mott, came in just afterward. Mr. Macfarlane took a copy of the revised statutes from the Commissioner's bookcase and sat down at the right of the Commissioner. It was discovered later that the copy of the Constitution of the United States had been torn out of the book.

"I hope there's nothing significant in that," said Mr. Root, and there was a laugh.

At the opening of the proceedings Mr. Macfarlane asked: "What is the case?"

"The United States against Dana," said the Commissioner, who then asked Mr. Root if there was any objection to the proceedings. Mr. Root said: "We object on the ground that the indictment is not properly authenticated. We object because it is not supported by sworn evidence. We object on the ground that it is not properly certified, and we object further on the ground that it is supported only by hearsay evidence which is not sufficient evidence in a case of this kind."

The Commissioner formally overruled the objections, and Mr. Macfarlane asked:

"Will the defendant's counsel admit that the Charles A. Dana present is the Charles A. Dana named in the indictment as one of the defendants? I understand that that admission will be made, and I have dismissed a witness."

"We think it best, Mr. Macfarlane," said Mr. Root, "that you proceed in the regular way to prove your case."

Mr. Macfarlane called Louis L. Kennedy.

Q.—What is your business, Mr. Kennedy? A.—I work in the United States Marshal's office.

Q.—Do you know Mr. Charles A. Dana? A.—I know him from his admission of his name.

Q.—Did you serve a process upon him? A.—I did.

Q.—At what place? A.—In the office of THE SUN.

Q.—Is the person on whom you served the process at present in court? A.—He is. That is the gentleman there. (Indicating Mr. Dana.)

Q.—He is the person on whom you served the process? A.—Yes, sir.

The District Attorney—That is all. I will call Mr. Thomas Hitchcock.

Mr. Hitchcock took the witness chair and was sworn.

Q.—Do you know the defendant, Mr. Charles A. Dana? A.—I do.

Q.—What is his business? A.—He is the editor of THE SUN.

The District Attorney—That is all.

Mr. Root arose to cross-examine. After asking Mr. Hitchcock several questions about his own connection with THE SUN, Mr. Root asked:

"Has Mr. Dana had personal knowledge of the sale or publication and distribution of newspapers printed by THE SUN Publishing Company?"

Mr. Hitchcock—He has not.

The District Attorney—I object, your Honor. The only point on which you are permitted to examine is that of identity. I object, on the ground that this testimony is immaterial, irrelevant, and has no bearing on the question at issue, that of identity.

Commissioner Shields—The question of identity is the only one on which I can pass. I cannot go into the merits of this case at all.

Mr. Root—I propose to pursue the line of inquiry which has been commenced with this witness. What the effect of the testimony will be is a question. It may have no effect upon your mind whatever. It may have no effect upon the court in the ordinary course when it comes before the court, in case you do not see fit to discharge the defendant, but we are entitled to take it with whatever result. The District Attorney has seen fit to undertake to identify this defendant by a description of his business and connecting it with the newspaper which is referred to in the alleged copy of a pretended indictment that is brought before you. He cannot go as far as he pleases and close the door to me. I am entitled to go on with the defence, and show just how far the inferences to be drawn from the testimony which he has given you are to go; and then when the testimony is submitted to your judgment, to the judgment of the District Court or of any other court before which it comes, the judicial mind will draw the line with reference to the whole testimony upon the subject, and not just that part which the District Attorney sees fit to present.

The District Attorney—This is merely an attempt to connect on mere ordinary proof the identity of a defendant with a person mentioned in the indictment, not to try before this Commissioner whether he is liable to the charge set out in the indictment, whether he is guilty of it or not; and this attempt to introduce in the evidence of this mere formal proof of identity something that should be admitted on the record in a wholly different violation of the course of procedure in these proceedings. These are subjects matter of Mr. Dana's defence, if he is ever put on trial in the District of Columbia; but it opens the whole case to be tried if you allow it to be put in evidence.

The Commissioner—I still sustain the objection on the ground that it is outside the question of identity. I cannot go into the merits of the case at all.

Mr. Root—But to continue the argument, let me call your attention to the fact that Mr. Macfarlane has undertaken to prove one of the averments of the indictment.

The Commissioner—Mr. Macfarlane has attempted to prove that identity as against Mr. Dana as editor of THE SUN.

Mr. Root—I propose to show he is not the editor of THE SUN's shown in the indictment.

The Commissioner—You are endeavoring to show what his business and what his avocations are. That is a question you will bring up in the action if it is ever tried. I sustain the objection.

Mr. Root—To that I except.

Q.—On the 22d of February, 1895, did Mr. Charles A. Dana have anything to do with the business management of THE SUN?

The District Attorney—Objected to on the same ground already stated to the previous question, as going right into the trial of this case.

Commissioner Shields—When is the offence alleged to have been committed?

Mr. Root—On the 22d of February.

Commissioner Shields—It is an affirmative defence of this action which he has ample opportunity to prove on the trial. He is now asked whether Mr. Dana was the editor of THE SUN Feb. 22, 1895, as I understand the question.

The District Attorney—I do not think he has any right to open the question on the indictment. This is a mere attempt to question the charges in the indictment and to put in proof upon it here.

Mr. Root—The learned District Attorney is very much afraid that casually it will appear in this proceeding in accordance with the truth that Mr. Dana is not guilty of any offence which is stated in this indictment; but that would not be so great a hardship as that it should appear that there is no truth whatever in these charges—that it should appear incidentally. The mere fact that it is quite probable that that will appear the moment any evidence is given upon this subject—that the charges are entirely baseless—would not be such an injury that we need change the established rules which govern the cross-examination of witnesses in order to avoid it. He has asked this witness what Mr. Dana's business is, and called forth a statement of the business. I am entitled to cross-examine him particularly as to that business, to show its length and breadth and thickness, and show every incident of it; and it doesn't make any difference what the effect of the testimony would be; it is my right as a cross-examiner.

Commissioner Shields—What is the question?

The District Attorney—Mr. Commissioner, the question in respect to Mr. Dana's identity, both that he is Charles A. Dana and that he is editor of THE SUN, is simply on the question of identifying him with the person named in that indictment. The idea that he can open here to show what that business is, with a view to proving that the charges in this indictment are not true—

Commissioner Shields—I have ruled on it. The question is whether he was editor of THE SUN on a specific date. I sustain the objection.

Mr. Root—Exception taken.

Q.—Mr. Hitchcock, what did you include in your statement of the business of Mr. Dana?

The District Attorney—I object to that on same grounds already stated. It is merely an indirect way of going into the merits.

Commissioner Shields—You mean that as an answer to the first question?

Mr. Root—In answer to the question put by the District Attorney.

Commissioner Shields—He says he is editor of THE SUN.

Mr. Root—I want to know what he includes in that. Mr. Commissioner, you cannot help—

Commissioner Shields—I will admit that question, but I am not going into the merits of this case at all.

The District Attorney—That answer is taken under my objection.

Mr. Root—I am entitled to cross-examine upon his question.

Commissioner Shields—Answer that question.

A.—The supervision of the literary matter of THE SUN.

Q.—Does the business of the person whom you have designated as Charles A. Dana extend to anything but the supervision of the literary matter which goes into THE SUN?

The District Attorney—I object to that question, Mr. Commissioner.

Commissioner Shields—I will allow it. Go on and state.

A.—It does not.

Q.—Did it on the 22d of February, 1895?

The District Attorney—Same objection.

Commissioner Shields—Same ruling.

A.—No.

Q.—Had it for eighteen months prior to the 22d of February, 1895? A.—It had not.

The District Attorney—Same objections to all these questions.

Q.—Was the person whom you have designated as Charles A. Dana identical with any person who was on the 22d of February, 1895, or who had been for eighteen months prior to that time engaged in the sale or circulation or sending out of any of the copies of THE SUN?

The District Attorney—I object to that, Mr. Commissioner, as going into the merits.

Commissioner Shields—Objection sustained as going into the merits, in my judgment.

Mr. Root—Exception. We claim that the District Attorney has undertaken to put in evidence in this case—evidence upon the merits of this indictment—and I am entitled to cross-examine and rebut it, too.

Commissioner Shields—The only question I go into is the question of indictment, and not the merits on the indictment; simply the question of identity. I do not know anything about the indictment, and cannot go into the merits of it.

Mr. Root—That may be true, but you are bound to permit us to give proof on that subject.

Commissioner Shields—On identity, certainly. If you want to show that Mr. Dana is not the editor of THE SUN you are entitled to show it.

Mr. Root—Your Honor need not use it for any purpose except the decision of the points which you consider are submitted to you; but you cannot permit to come into this case, where you have had evidence of probable cause, additional evidence which at the same time tends to show proof of identity and tends to support the averment of the indictment, which are ruled upon to make probable cause, and exclude cross-examination upon that very subject matter. It does not make any difference where it strikes, you cannot say you consider the evidence on the cross-examination as bearing on the merits, but you have got to let it in, because it is cross-examination on the matter put in by the prosecution as proof of identity. The cross-examination bears on the question of identity, and I am not called upon to prove anything now. I am on the cross-examination of the witness, a cross-examination of the very subject matter that the prosecution elicited from him, and it may result in destroying the evidence of the prosecution. What the effect of it may be is not for you to determine now. When it is in you may say, "I consider this as bearing upon the merits," but you have got to let it in, because it is cross-examination upon the facts elicited from this witness as bearing upon the question of identity.

The District Attorney—This defendant is described as Charles A. Dana, the editor of THE SUN. Now, the only question asked him is, is he Charles A. Dana and the man who was arrested who was Charles A. Dana, and is he editor of THE SUN? It is admitted to me in answer to my question, and that is the whole question. Now, what does he seek to do? He seeks to show that business of Charles A. Dana, the editor of THE SUN, was, and that the charges in this indictment are not true. That we cannot do unless he gets the permission of the District Judge to go behind the indictment and put in evidence; and I object to the introduction of any further evidence on this subject.

Mr. Root—I am cross-examining on the very subject matter of the direct examination of what the business of the person designated as Charles A. Dana is; and it may end in destroying the whole testimony offered.

The District Attorney—There are a dozen Charles A. Danas in the directory, or half a dozen, and the testimony is to identify him. Now your witness admits in response to your question that he is the editor of THE SUN.

Mr. Root—He admits it as your witness.

The District Attorney—He admits it on cross-examination.

Mr. Root—I have not asked him.

Commissioner Shields—What is the question? [Question read by stenographer.]

Mr. Root—I am destroying this witness' testimony by process of reduction.

Commissioner Shields—I sustain the objection.

Mr. Root—Exception taken.

Q.—Mr. Hitchcock, did the person whom you have described as Charles A. Dana ever reside, or has the person whom you have designated as Charles A. Dana at any time during the past two years resided in the District of Columbia?

The District Attorney—Objected to. That is going into the merits.

Commissioner Shields—I will let him answer the question. I will allow the question.

A.—I think not.

Q.—This Charles A. Dana to whom you refer has not been a resident of the District of Columbia at any time during the past two years? A.—He has not.

Q.—Or for the last ten years? A.—He has not.

Q.—If there is any Charles A. Dana who has resided in the District of Columbia at any time during the last ten years, then it is not this Charles A. Dana to whom you refer?

The District Attorney—Same objection to that question.

A.—It is not.

Mr. Root—The indictment describes Charles A. Dana as "late of the District of Columbia." It appears to be a different man. This Charles A. Dana is unique. There is no other man like him in the world.

Q.—Mr. Hitchcock, to pursue that item of identification a little further, have you seen the Charles A. Dana to whom you referred in your direct examination frequently during the past year? A.—I have.

Q.—Did you during the month of February, 1895? A.—I did.

Q.—Where did you see him? A.—In the office of THE SUN; in the editorial rooms of THE SUN.

Q.—Where is that? A.—170 Nassau street, New York.

Q.—170 Nassau street in the city of New York? A.—Yes.

Q.—Did you see him daily during the month of February? A.—Every day except Sundays.

Q.—Did you see him on the 22d of February? A.—I did.

Q.—Where was he then? A.—In the editorial rooms of THE SUN.

Q.—Did you see him on the 21st of February? A.—I think I did; yes, sir.

Q.—Did you see him in the same place? A.—In the same place.

Q.—During what hours did you see him on the 22d of February? A.—From about 2 o'clock to 4.

Q.—In the afternoon of the 22d of February? A.—Yes, sir.

Q.—During what hours did you see him on the 21st of February? A.—From 11 until 4.

Q.—Eleven in the forenoon until four in the afternoon? A.—Yes, sir.

Q.—Do you know whether the Charles A. Dana to whom you referred in your direct examination is a resident and citizen of New York? A.—Of this city?

Q.—Yes. A.—Yes, he is a resident of New York State.

Q.—Can you tell how long a time prior to the 22d of February, 1895, you had seen the Charles A. Dana to whom you referred in your direct testimony there except Sundays? A.—More than twenty-five years.

By Commissioner Shields—Daily for more than twenty-five years? A.—Yes; except when he was abroad.

By Mr. Root—Except when he was out of the country? A.—Yes, sir; or when I was abroad.

Q.—Can you tell how far back from the 22d of February, 1895, you go before you reach either of those causes of separation from Mr. Dana? A.—You mean his absence?

Q.—His going abroad, or your going abroad? A.—Well, the last time I was abroad was in 1890, and the last time he was abroad, I think, was last year, 1894.

Q.—In what time? A.—During the summer, I think, spring or summer.

Q.—Ever since the summer of 1894 you have seen Mr. Dana daily except Sunday? A.—Yes.

Q.—And where have you seen him? A.—At the editorial rooms of THE SUN.

Q.—In the city of New York? A.—Yes.

Mr. Root—That is all.

Commissioner Shields—That is all, Mr. Hitchcock.

The District Attorney—That is the case of the Government so far.

Commissioner Shields—The Government rests.

Mr. Root—Mr. Paul Dana, take the stand.

Mr. Paul Dana was called and sworn as a witness for the defendant.

Mr. Root—Never mind, Mr. Dana. Mr. Hitchcock, take the stand. I call Mr. Hitchcock on the part of the defendant.

Mr. Hitchcock took the witness stand again and Mr. Root asked:

Q.—Where do you reside? A.—In the city of New York.

Q.—You are acquainted with Mr. Charles A. Dana, the defendant in this proceeding? A.—I am.

Q.—Do you know his business? A.—I do.

Q.—Please to state what his business is.

The District Attorney—I object to any evidence, Mr. Commissioner, that does not tend to rebut the identity of this person arrested here with the Charles A. Dana named in this indictment.

Commissioner Shields—Go on. I will allow the question.

A.—Editing THE NEW YORK SUN.

Commissioner Shields—I shall confine it to the question of identity. Go ahead.

Q.—Do you know in what Mr. Dana was engaged on the 22d of February, 1895?

Commissioner Shields—In what business, do you mean?

Mr. Root—Yes. In what business was he engaged on the 22d of February, 1895? A.—At the time I saw him he was busy at his desk looking over copy.

The District Attorney—I object to that—going into the detail of what he was doing. He has stated Mr. Dana's business was editor of THE SUN. That identifies him and corroborates his former testimony of the identity of the person named in that behalf. [Objection overruled.]

Q.—Mr. Hitchcock, on the 21st or 22d of February did Mr. Dana take any part in the sale or circulation of any of THE SUN's newspapers?

The District Attorney—I object to that question on the grounds already stated.

Commissioner Shields—It is already answered. I will allow the question.

A.—He did not.

Commissioner Shields—What bearing it has on the question of identity I cannot say now.

Q.—At any time during the eighteen months prior to the 23d of February, 1895, did Mr. Dana take any part in the sale or circulation of any of THE SUN'S newspapers? [Same objection.] A.—He did not.

Q.—On the 21st or 22d of February, 1895, did Mr. Dana send any newspapers, any New York SUN'S newspapers, to the city of Washington for sale or circulation?

The District Attorney—Objected to.

Commissioner Shields—I sustained the objection before, and I sustain it again.

Mr. Root—Exception. I understand you to rule that you will not permit any testimony on the question of probable cause.

Commissioner Shields—As I understand it, Mr. Root, the only question I can take testimony on is on the question of identity. All the Commissioner will do in any case is to hold for the action of the Grand Jury, and that has been anticipated by this indictment.

Mr. Root—I will put the question in another form, so as to make the point clear.

Q.—Mr. Hitchcock, do you know whether Mr. Dana sent any of the issue of THE SUN of 22d of February, 1895, to the city of Washington for sale or circulation?

The District Attorney—Same objection.

Commissioner Shields—Well, it is practically the same question in another form.

Mr. Root—I think it more specific.

Commissioner Shields—I do not see how that bears on the question of identity, Mr. Root.

Mr. Root—I ask the question as bearing upon the question of jurisdiction.

Commissioner Shields—I sustain the objection.

Mr. Root—And the probable cause. Now, without taking up the time by asking a great number of questions, I offer to prove that the defendant in this proceeding has committed no offence within the District of Columbia, so that there is no jurisdiction there—no jurisdiction of the Court for the District of Columbia, in which the alleged indictment offered before you can be found.

Commissioner Shields—That question will probably come up before the Court, as I understand it, unless the District Attorney wants to be heard on it.

The District Attorney—He can make application for the instruction of the District Judge, and if he says he will hear that evidence we will take it. The District Judge has the discretion to say whether he will allow evidence that perhaps goes into the merits of the case or not; but before the Commissioner it is not customary to take it in the first instance. The District Judge has discretion in that matter, and may order the testimony to be taken.

Mr. Root—I am not rebelling against the decision, but am raising the question to save our rights hereafter, and I thought I would shorten it. I understand the District Attorney objects to such evidence.

The District Attorney—I do not object to the offer. I was only answering the question of the Court.

Mr. Root—For the purpose of getting a ruling I will proceed.

Commissioner Shields—You do not object to his offer?

The District Attorney—If he makes any offer we will take it.

Commissioner Shields—He offers to prove a certain state of facts, as I understand his offer. If you have no objection, I certainly have none, and the witness can go ahead.

The District Attorney—I think he has a right to make an offer here of what fact he will prove. I do not object to that.

Commissioner Shields—Go on.

The District Attorney—I shall object to the offer being made in the form of mere legal conclusions. He can state some facts he is going to prove on the record.

Mr. Root—As I made the offer and there is no objection, I proceed with the testimony.

The District Attorney—I object to the proof. The question is whether I take the customary objection to the offer going on record. That I do not object to; but I do object to the testimony you offered to prove.

Mr. Root—We will take a ruling on that offer. [Offer referred to read by the stenographer.]

The District Attorney—I object to that of course; it is going into the merits of the case.

Commissioner Shields—That would be going into the merits of the indictment, as I understand it.

Mr. Root—As I understand it the District Attorney does not object to the language of the offer, but he objects to the proof under the offer.

The District Attorney—There is a technical objection being made as to the offer. I think you are entitled to put an offer on the record of what you offer to prove.

Mr. Root—I offer to prove that there is no probable cause to believe that the offences that purport to be set out in this indictment, or any of the offences that purport to be set out in this indictment, was committed.

The District Attorney—I object to such proof being made.

Commissioner Shields—On the same proposition I have not the power to go into it.

The District Attorney—Will you put in an exception to the former ruling? That is all.

Commissioner Shields—Is that all, Mr. Root?

Mr. Root—That is all; that is all. The District Attorney is not required to prove anything, and we are not permitted to prove anything. Mr. Commissioner, I have just received information to the effect that Mr. Noyes—Mr. Frank B. Noyes, who is named in this pretended indictment as the person libelled—is himself not a resident of the city of Washington or the District of Columbia, but is a registered voter and citizen in the Thirteenth election district of Montgomery county, Maryland; so that he has simply selected the place where he would like to have this matter tried, and has selected a place which is not the residence of either himself or of the defendant. Now, we have shown that the defendant lives here and does not live at Washington; that he was never in Washington at any of the times referred to in the indictment, and we now offer to show that the person charged with having been libelled was not a citizen of Washington. In order to do that I shall either have to take that as an offer and have a ruling upon it, or ask for an adjournment to produce the evidence.

The District Attorney—I object to the proof on the ground that it is wholly immaterial whether Noyes was a resident of the city of Washington or not, and on the ground that it was averred in the indictment that he was a resident of the city of Washington; and furthermore that that is not a question to be gone into here.

Commissioner Shields—I do not think, Mr. Root, it is a question that I can go into here. If I could go into it I would with pleasure.

Mr. Root—I will make an offer of proof. If that can be ruled upon it will be just as well as it would be for us to take an adjournment and bring the witness here and have the question excluded. It can be ruled upon as if I put the witness on the stand and asked the question. I offer to prove that Frank B. Noyes, the person mentioned in this pretended indictment as having been libelled, is not and was not on the 22d of February, 1895, a citizen of the District of Columbia, but is and was a citizen of Maryland, and a resident of Montgomery county of that State, and a registered voter of the Thirteenth election district of Montgomery county, Md. That, I understand, is objected to by the District Attorney.

Commissioner Shields—I sustain the objection.

Mr. Root—You sustain the objection and I except.

Commissioner Shields—Is there anything further?

Mr. Root—No further evidence.

Commissioner Shields—Do you want to be heard any further, Mr. Root?

Mr. Root—Yes; I want to make a motion or two. Mr. Commissioner, I move that you discharge the defendant upon the ground that no probable cause has been shown.

Commissioner Shields—No probable cause of what?

Mr. Root—No probable cause for believing or suspecting that he has been guilty of any crime or offence against the laws of the United States.

Commissioner Shields—Motion denied.

Mr. Root—Exception. I move that you discharge the defendant.

Commissioner Shields—That is a question for the court.

Mr. Root—Upon the ground that the warrant issued against him was not issued upon probable cause.

Commissioner Shields—Motion denied.

Mr. Root—Exception. I move you discharge the defendant upon the ground that the warrant issued against him was not supported by oath or affirmation.

Commissioner Shields—Motion denied.

Mr. Root—Exception. I move that you discharge the defendant upon the ground that the matter alleged as probable cause against him in this proceeding is not supported by oath or affirmation.

Commissioner Shields—Motion denied.

Mr. Root—Exception. I move that you discharge the defendant upon the ground that it does not appear in the proof before you that any offence has been committed by the defendant within the jurisdiction of the Supreme Court of the District of Columbia.

Commissioner Shields—Motion denied.

Mr. Root—Exception. I move that you discharge the defendant upon the ground that it appears that there was no offence committed by him in the jurisdiction of the District of Columbia.

Commissioner Shields—Motion denied. Is that all, Brother Root?

Mr. Root—I think that is all.

Mr. Macfarlane—Mr. Commissioner, I will ask to have the usual warrant signed remanding the defendant to the custody of the Marshal to await the action of the District Judge on the application for a warrant for removal.

Commissioner Shields—I will make the ordinary commitment here upon the warrant as to the mere question of identity; and all these different motions and questions that Mr. Root raises upon the question of indictment will probably come before the District Judge on the occasion of the application for the warrant of removal. That has been the practice before. All I make is a commitment on the warrant of removal. That goes before the District Judge on one or two points: one is that the man be removed to the District of Columbia, or that he be compelled to appear there at a future trial; and upon that application I will grant the application of the District Attorney to make the order of commitment, but you can arrange between yourselves where the defendant will go. I can make the commitment and adjourn to Monday or some future day. I now commit the defendant to wait the warrant of removal. We will draw the warrant and give you plenty of time.

Mr. Root—In the mean time I ask that the defendant be discharged on his own recognizance.

The District Attorney—I do not object to that. Of course you undertake to produce Mr. Dana any time he is required in the proceedings.

Mr. Root—Certainly.

The proceedings before Commissioner Shields were then adjourned and the counsel proceeded to the court room of District Judge Brown, where the following proceedings took place:

The District Attorney—There is an application to remove Mr. Dana to Washington. The hearing before the Commissioner has terminated and counsel desires an adjournment to present the Commissioner's record and to argue the application, and we come here to find out what would suit your convenience. Mr. Root will tell you the time he prefers.

Mr. Root—I think we are agreed that the investigation necessary to present the subject properly to the court covers a very wide field, and, of course, it is a serious question. It certainly ought not to be less than the time of holding an ordinary case. I should think two weeks from to-day, if it would suit your Honor's convenience.

The Court—Take two weeks from to-morrow. That is our ordinary argument day, if that would suit you. I shall be in Brooklyn day after to-morrow, and cannot well take any time afterward.

The District Attorney—I shall ask the counsel to be ready then. I think it ought to be disposed of at that time.

Mr. Root—We agree to be ready if the District Attorney promises not to ask for an adjournment after hearing my argument.

The District Attorney—I can answer when I hear your argument.

The Court—You can have an hour earlier than that in the morning. Our ordinary motions open at 11 o'clock, and you can have 10 o'clock before the court if you wish. Will you have it 11?

The District Attorney—Eleven o'clock will suit me better.

Mr. Root—May I say one other thing. It has long been customary in this district to require the District Attorney in some form to state the statute on which he relies for the indictment. I'm not so positive as to quash the indictment if it is not stated in the indictment; but I think it is fair to state that the alleged indictment concludes, "against the form of the statute."

The District Attorney—It concludes, "against the peace and Government of the United States, according to the statutory form of the District of Columbia." Of course, the law of the District of Columbia is the common law, and, undoubtedly, any prosecution for libel in the District of Columbia proceeds on the common law. I would be perfectly willing to state that. Do you want me to state that now?

Mr. Root—What I want is that the District Attorney shall advise us what statute is referred to in the closing of an indictment which is contra formam.

The District Attorney—I cannot undertake to tell counsel what special statute is referred to by the pleader who drew that indictment, but I can tell him that the prosecution must proceed under the common law of the District of Columbia, which was the common law of Maryland when the District of Columbia was ceded to the United States by that State, and which, by the act of Feb. 7, 1891, was made the law of the District of Columbia. Probably the pleader refers to that general organic act of the District of Columbia, but I cannot undertake to give more specific information. There have been one or two attempts in Congress to modify the strictness of the common law rule. There are various actions where the jurisdiction of the court in prosecutions for libel is referred to by the body of the criminal law in the District of Columbia to-day, which is of course the common law.

The Court—Do you refer to any statute defining what shall be deemed a libel, as defining the common law.

The District Attorney—I do not know of any statute which defines it. I will communicate with the pleader in Washington and ascertain.

Mr. Root—I do not wish to press the District Attorney on that information at this moment, but I think it is nothing but fair to advise us a reasonable time before the argument.

The Court—The indictment is founded on the special statute on which to indict.

The District Attorney—Those words are probably superfluous, and may have grown up from the original act of 1891.

Mr. Root—It is interesting to know whether they rely upon any statute fixing a punishment, or whether it goes back to the time when they put them in the pillory and clipped off people's ears for libel.

Mr. Macfarlane—It is a misdemeanor, and the prisoner is fined or imprisoned.

The Court—That is defined by act of Congress, or by common law?

The District Attorney—No, I think not. I think it is not defined by act of Congress. I do not mean to speak with assurance. I will communicate with the District Attorney there.

The Court—Is there any act of Congress on record which controls?

The District Attorney—Enumerating special procedure? None that I know of.

The Court—I made that inquiry because I supposed there was, from a former case that was heard before Judge Blatchford.

The District Attorney—That has been changed. They passed the act in 1891 in respect to the jurisdiction of the police court, and excepted from its consideration trials for libel and conspiracy, so that that is now in the Supreme Court, which has jurisdiction of all crimes and offences committed in the District of Columbia. This jurisdiction is specially established by the statute, and the jurisdiction of the police court is especially established by statute.

The Court—Then there is a general jurisdiction?

The District Attorney—A general jurisdiction.

Mr. Root—Will your Honor arrange to give us considerable time, as there will probably be two counsel to be heard.

The Court—If you want considerable time I must either begin earlier or later in the day, as it would be unfair to keep members of the bar waiting for ordinary trials or motions if you want two or three hours for argument.

Mr. Macfarlane—Will your Honor fix it for 2 o'clock?

The Court—You may have it at 2 o'clock two weeks from to-morrow.

BISHOP FALLOWS'S BEER.

Affidavit by the Manufacture that It Contains Nothing Harmful.

In a letter to THE SUN that was printed on March 14 Mr. G. Wilfred Pearce, in speaking of the "temperance saloons" started by Bishop Samuel Fallows of the Reformed Episcopal Church in Chicago, said:

"Now, a word about Bishop Fallows's beer. I have learned from a Chicago physician of high standing that the liquid contains poisons put in by the chemist to make it taste and foam like real lager. Of this there is no doubt whatever, and it seems to be the duty of Bishop Fallows to make an investigation right away and abandon the dangerous beverage."

Bishop Fallows sent the following affidavit to THE SUN yesterday:

CHICAGO, March 16, 1895.

J. C. Borchardt, being duly sworn, depose and says: I hereby certify that I am the manufacturer of the new alcoholic beverage sold at the Home Salon, Chicago, the temperance saloon inaugurated by Bishop Fallows, and that the said beverage (Bishop Fallows's Beer), in addition to pure malt and hops, contains absolutely no harmful ingredient whatever.

J. C. BORCHARDT, Manufacturing Chemist.

Subscribed and sworn to before me this 16th day of March, 1895. GEO. W. NEWCOMB, Notary Public in and for Cook county, Illinois.

Two of these temperance saloons have already been opened in Chicago. They are fitted up precisely like first-class saloons, with a bar and small tables where refreshments are served. These saloons, however, do not sell any alcoholic liquors, either malt or distilled. Bishop Fallows says that a chemist who has been experimenting for him has discovered a method of making a beverage from hops and grain which looks like beer, foams like beer, and tastes like beer, but does not contain alcohol. This is the staple drink served at these saloons, together with mineral waters, lemonade, sarsaparilla, tea, coffee, and chocolate.

JIMMY WALSH'S GOAT.

It Figures as a Police Court Exhibit in Brooklyn.

The famous Crow Hill goat, of which Jimmy Walsh of 982 Degraw street, Brooklyn, is the proud possessor, and which James Mullins was accused of having purloined, was in full and picturesque exhibition in Police Justice Steers's Court yesterday morning. As a compliment to St. Patrick's day the whiskers of the goat were painted a brilliant green, and as a striking contrast his stubby tail was streaked with the hated orange color.

The prisoner explained to the satisfaction of the Judge that he did not steal the goat, and he was released. Mr. Walsh escorted the goat from the court room in triumph, and after removing the obnoxious color from his tail and ornamenting it with green ribbons, sent it down town to participate in the Hibernian parade.

"If I could find the man," patriotic Mr. Walsh said, "who painted that goat's tail orange, I would not bring him into court, but it is likely he would need the services of the undertaker."

Extension of the United Press Service.

CHICAGO, March 18.—The leased wire service of the United Press was to-day extended to Springfield, Mo., for the use of the *Republican*, the leading newspaper of that city.

THE LAKEWOOD TRAGEDY.

AN ARREST THAT PROMISES TO UNRAVEL THE MYSTERY.

Claude Dewitt of Jamestown Charged with the Murder of Mrs. Sherman and Her Daughter—His Boots Fit the Tracks Made at the Scene of the Tragedy, and He Had in His Possession the Peculiar Instrument, a Bark Peeler's Spud, with Which It Is Believed the Deed Was Done

JAMESTOWN, N. Y., March 18.—Claude Dewitt of this city is under arrest, charged with the murder of Mrs. Winslow Sherman and Mrs. Cynthia Davis on Dec. 15 last near Lakewood. The circumstances which led to his arrest are told by A. C. Pickard, who has taken much interest in the case, and who got his clue this morning by accident. On Saturday night Dewitt became intoxicated and was abusive to his wife, who complained to the police, and he was arrested on a charge of drunkenness. When taken into custody he had in his possession what is known as a bark peeler's spud, a peculiarly shaped instrument about twenty-seven inches long, including a wooden handle about half of that length. At the time of the tragedy the detectives were at a loss to account for the peculiar shape of the wounds found upon the heads of the victims, no instrument being known to them which would do the work.

Mr. Pickard's attention was drawn to this particular instrument, and it immediately occurred to him that it was the one thing which gave a clue to the murder. He sent for Dewitt's wife, who, upon being questioned, said she knew of the instrument, and that it was always kept in a small barrel in the woodshed along with a variety of old irons. She was positive that it had always been in this receptacle, though an investigation proved that it could not be put where she said it had been kept. Dewitt was questioned, and he said that the implement was always kept in a large box in the loft along with the kindling wood. These conflicting stories led to a closer investigation.

At the Coroner's investigation Miss Fullerton, James Smith, and A. B. Moore swore that on the day of the murder they had seen a man answering to Dewitt's appearance in the vicinity of the Sherman house, wearing a pair of blue overalls with a bib front, such as are worn by men in furniture and other wood-working establishments, and a brown derby hat. Bearing these points in mind, Mr. Pickard inquired of Dewitt where his old blue overalls were, and was informed that they were at the house, as well as his old brown derby hat. Mr. Pickard, with an officer, went to the house and inquired of Mrs. Dewitt for the clothes, and she took them out of an old bag and gave them up. Dewitt also said that his satchel was at a small hotel near the boat landing. This was sent for, and tied to the outside of the valise was a pair of rubber boots, which, on being measured, exactly corresponded with the tracks which were found at the door of the Sherman residence, leading to the murder. These tracks, it was generally remarked, were made by a boot having three very large round-topped nails in the back part of the heel, and the boots which were found with the satchel had these peculiar nails in the heels.

This matter being considered, the satchel was further searched, and revealed an ugly looking knife with a four-inch blade, the handle, apparently of steel, being wound with a cloth to allow of a firm hold. In addition to this, there was a razor and several trinkets. Pieces of the secretary, which was torn open by the murderers, were preserved, and it was found that the knob on the end of the handle of the bark peeler's spud exactly fitted into them. Experiments on a soft pine board produced duplicates of the indentations which were found in the secretary, and which no other instrument which had been tried would do.

When one Depew was arrested in Salamanca upon the information given by a woman of the town, who mistrusted that he knew something of the crime, Dewitt went to the lockup in Salamanca and asked to have an interview with Depew, saying that he was an officer from Jamestown looking after the murderer. This action led to suspicion of Dewitt, but the foreman in the factory where he is employed said that he was at work on that afternoon. Since that time there have been rumors that there might be doubt of the fact of Dewitt being at his factory on the afternoon in question, and yesterday Mrs. Dewitt admitted that her husband went to Salamanca on Dec. 15, though she quickly corrected herself and placed the date on or about Christmas.

With these facts developed Mr. Pickard went before Police Justice Yates, who had the prisoner before him on the charge of intoxication, and swore out a warrant charging him with the crime of murder, the warrant being served upon Dewitt at the city lock-up this evening. Last fall Dewitt assaulted a companion of the name of Lydell, leaving him in a bay-way, where he was found unconscious some time later. The matter was settled at the time.

On Dec. 15 last Mrs. Winslow Sherman and her daughter, Mrs. Cynthia Davis, were murdered on a farm near Lakewood, six miles from Jamestown, while the husband and son of Mrs. Sherman were attending a funeral. The victims were horribly mutilated, and the case attracted wide attention, owing to the mystery, the brutality, and the attempt to photograph the eyes of Mrs. Sherman, to see whether the picture of the murderer remained on the retina.

JACK TARS AS FIRE FIGHTERS.

They Do Good Work in Saving Port-of-Spain from Destruction.

The Quebec Steamship Company's steamer Orinoco, Capt. Fraser, arrived at this port yesterday morning. On her homeward trip she touched at Port-of-Spain, Trinidad, on the morning of March 5, the day after the fire which came near entirely demolishing the town. Smoke was still rising from the ruins in huge black volumes, while the shouts and orders from the firemen floated over the bay to the Orinoco. All on board went on shore to see the burned district. One of these, A. L. Bernett of Boston, said yesterday:

"Every one we met seemed to be half mad. They were running around the streets, some dressed only in the garments they had retired in the night before. The fire was right in the centre of the town, and destroyed blocks. The flames would probably run up into the millions. The fire started in a store from the careless handling of matches, and once started it spread with such rapidity that the local firemen could not cope with it at all.

"The United States men-of-war New York, Raleigh, and Cincinnati, and the British gunboat Buzzard were in port, and their crews watched its progress from the decks of their vessels. When the officers saw that the entire town would probably be burned if they didn't lend a hand, men and fire-extinguishing apparatus were sent ashore. The blue jackets and marines fought long and hard, and succeeded at last in putting out the fire. The inhabitants were most grateful to the sailors, and showed a lively appreciation of the men-of-warsmen's work. As far as I could learn no life was lost."

A $25,000 TROLLEY SUIT.

Rymon Wants that in Addition to What His Crippled Boy Sues For.

On Feb. 28, 1894, Abraham Rymon, the 8-year-old son of Barnet Rymon, while on his way from