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COURT OF GENERAL SESSIONS OF THE PEACE,
City and County of New York,
part II.

-----X
THE PEOPLE

vs.

EDWARD BENDER, Impleaded with
OLIVER EGER, GUSTAVE HOFFMAN
and THOMAS HAYDEN.
-----X

Before

HON. JOSEPH E. NEWBURGER, J.,

and a Jury.

Tried, March 14th, et seq, 1905.

Indicted for Grand Larceny in the Second
Degree.

Indictment filed February 14, 1905.

A p p e a r a n c e s .

ASSISTANT DISTRICT ATTORNEY KEYRAN J. O'CONNOR, for the
People;

MESSRS. PENTECOST & CAMPBELL, for the Defense.

Frank S. Beard,
Official Stenographer.

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THE PEOPLE'S TESTIMONY.

DANIEL MORIARTY, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Officer Moriarty, you are attached to the Police Department of the City of New York? A Yes, sir.

Q What precinct? A 20th.

Q Now, on the night of the 30th of January, 1905, did you arrest the defendant? A Yes, sir.

Q Where did you arrest him? A In his apartments, 424 West 37th street.

Q What is the number? A 424 West 37th street.

Q What street? A West 37th street.

Q City and County of New York? A Yes, sir.

Q Now, how did you come to go to his apartments?

A I met Gustave Hoffman on the street.

Q Yes. A In 37th street near 9th avenue, with a roll

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of carpet on his shoulder. I asked him where he got it.

Q No. Never mind. Don't tell what he said. You spoke to Hoffman? A Yes, sir.

Q Go ahead? A And I asked him where he got the roll of carpet.

Q No. Was the defendant with him? A No, sir.

Q Then don't tell what he said. Now, what did Hoffman have with him at the time? A A roll of carpet.

Q Now, after speaking with Hoffman, what did you do? A I went with Hoffman to 424 West 37th street.

Q What floor did you go to? A The fourth floor.

Q And what did you do there? A I went up there and I seen Mr. Bender, and asked him if he was getting some carpet; and he said, yes, and I said, "Where are you getting it from?" And he said "41st street and Tenth avenue."

And he said "Where is it?" And I said, "The boy has got it downstairs."

And so he went downstairs with me, and this Hoffman boy come along, and the Hoffman boy had the carpet on the dumbwaiter when we went downstairs.

Mr. Bender looked in the dumbwaiter and seen the carpet and said, "Yes, that is right."

And I went upstairs with him to the fourth floor, and he got a hold of the rope, and hoisted the carpet to the

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fourth floor.

And I said, "Is that your carpet"? And he said, "Yes," and I said, "Well, you had better put it in your apartment, then."

And, meanwhile, Hoffman came up, and I looked at the marks on the carpet, and I seen it was marked, "Strawbridge & Clothier, Philadelphia, Pa." And I said, "You had better go to the station house."

SA I took Hoffman to the station house, and left Mr. Bender up in his apartments, and I explained the case to the Sergeant and said---

Q No. Never mind that. Now, you placed Hoffman under arrest, and brought him to the station house? A Yes, sir.

Q And you had a talk there with Hoffman and the Sergeant? A Yes, sir.

Q And you left Hoffman in the station house? A No, sir; I brought him back to carry the carpet.

Q You brought him back to Bender's apartment? A Yes, sir.

Q And Bender was there? A Yes, sir.

Q Now, what took place there between yourself, Hoffman and Bender? A I told Bender to assist Hoffman to carry the carpet to the station house, and he said, "All

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right,"and put it in the dumbwaiter and hoisted it downstairs.

Mr. Bender and Hoffman carried it out of the hall.

While juggling with the carpet out on the stoop, Mr. Hoffman got away."

I run after Hoffman, and didn't get him. I come back and got Mr. Bender and the carpet and brought them to the station house.

Q Now did Bender tell you what firm he was buying this carpet from, at 41st street and 10th avenue ?

A No, sir; he didn't. He said that Hoffman had come there on Sunday, and said that he had some carpet for him, and was going to bring it to him.

Q Did he say where he was going to get it, that is, Hoffman, to bring it to him? A 41st street and 10th avenue, he said.

Q But he didn't give the name of the firm? A No, sir.

Q And, when you called his attention to the mark on the carpet, of Strawbridge & Clothier, Philadelphia, Pa., what did he say? A He didn't say anything.

Q What did you do with the roll of carpet when it was at the station house? A The man from the railroad company came there and identified it.

Q Well, he showed it to a man by the name of McLean,

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from the railroad company? A Yes, sir.

Q And what has become of the carpet, since? A It has been sent back to the railroad company.

Q How large was it, officer? A About 61 or 63 yards, I believe.

Q What kind of carpet was it? Do you know anything about carpets? A No, sir; I am not a very good judge of carpet. Mr. McLean valued it at a dollar a yard. He values it at a dollar a yard.

MR. PENTECOST: That is objected to, if your Honor please, and I move to strike it out.

THE COURT: Strike it out. Motion granted.

CROSS EXAMINATION BY MR. PENTECOST:

Q Now, Officer, did you find out where Hoffman lived?

A He lived at 515 West 41st street, corner of Tenth avenue.

Q Well, was he living there with his father? A No, sir; his father lived there, but he hasn't been living there.

Q And that is the place where Mr. Bender said he said the carpet was coming from? A Yes, sir; but he didn't say that it was coming from Hoffman's father.

Q But that is where Hoffman's father lives? A Yes, sir.

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Q I suppose, after you had the conversation with Hoffman and found out where he was going, you just went right ahead, to get ahead of him? A I went there along with him.

Q Along with Hoffman? A Yes, sir.

Q And did you go upstairs then? A Yes, sir.

Q Ahead of Hoffman? A No, sir; Hoffman went up ahead of me.

Q And left the carpet downstairs? A Yes, sir.

Q And you and Hoffman went together into Bender's rooms?
A Hoffman went in ahead.

Q And you followed him? A Yes, sir; about half a minute or so after.

Q About half a minute or so after?

A Yes, sir.

Q And you found Bender in the room? A Yes, sir.

Q Anybody else there? A His wife.

Q His wife was there? A Yes, sir.

Q Any children? A Yes, sir; there was some children there.

Q And, when you got in the room, what did you ask Bender? A If he was getting some carpet.

Q If he was getting some carpet? A Yes, sir.

Q And he said he was? A Yes, sir.

Q From 41st street and Tenth avenue? A Yes, sir.

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Q What did the brother say, at that time? Anything?

A The brother-in-law? No, sir.

Q The brother-in-law? A No, sir; he didn't say anything at all.

Q Then you told Bender to help Hoffman bring up the carpet in the dumbwaiter? A I told him the carpet was down there, and he went down there with me.

Q And he brought the carpet upstairs? A The carpet was on the dumbwaiter, and then me and Bender came upstairs again, and Mr. Bender pulled the carpet up.

Q Did you leave Hoffman in the room? A No, sir; Hoffman was downstairs.

Q Did you and Bender and Hoffman all go down together?
A Hoffman went down ahead, and I went down with Mr. Bender.

Q And found Hoffman at the bottom? A Yes, sir; on the dumbwaiter.

Q And then the carpet was brought up to Bender's apartment? A Yes, sir.

Q Did Hoffman go up again? A Yes, sir.

Q And then you placed him under arrest? A I did.

Q And told him and Bender to let the carpet down the dumbwaiter again? A Yes.

Q And, when you got down to the bottom of the dumbwaiter, Hoffman ran away? A No, not at the time. Outside on the

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sidewalk, by going up on the sidewalk. It was out of the basement.

Q What was Hoffman doing? Rolling the carpet along?

A No, sir; he was carrying it. He had hold of one end of it, and Mr. Bender had a hold of the other end, ~~was~~ just about to get hold of the other end of it, and I was standing by Mr. Bender, and Hoffman dropped it, and ran, and I ran after Hoffman.

Q And left Mr. Bender with the carpet? A Yes, sir.
~~failed~~

Q And, when you ~~went~~ to catch Hoffman, you came back where Mr. Bender was? A Yes, sir.

Q And then what was done with the carpet? A I carried it in the station house with Bender, and placed Bender under arrest. He helped me to carry it into the station house, and I placed him under arrest.

Q I understood you to say you took Hoffman around to the station house, and went back for the carpet? A I had taken Hoffman around previously to the station house and brought him back again.

Q Oh, that was previous to that? A Yes, sir.

Q And so that you took Hoffman around to the station house, leaving Bender at home? A Yes, sir.

Q And, when you came back with Hoffman, Bender was

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there, of course?

A Yes, sir.

Q And then, when Bender helped you carry the carpet to the station house, you placed Mr. Bender under arrest?

A Yes, sir.

RE DIRECT EXAMINATION BY MR. O'CONNOR:

Q Now, do you know whether or not Hoffman and this defendant are related? A Yes, sir; brother-in-laws.

Q Now which of the McLeans was it that called at the station house? John H. McLean, the special agent, or William G. McLean, the watchman? A William G. McLean, I seen there at the station house.

W I L L I A M G. M c L E A N, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Mr. McLean, you are an officer of the New York Central Railroad? A I am a sort of foreman over the watchmen, Mr. District Attorney.

Q And at what yard? A 30th street and 11th avenue.

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Q Now, on the night of the 30th of January, 1905, did you see Officer Moriarty? A No, sir; I didn't.

Q When did you see him? A Well, I think it was the next day, in Court.

Q You think it was the next day in Court? A Yes, sir.

Q Now, on the night of the 30th, did you make a round with your watchmen of the yard at 30th street and 11th avenue?

A I did.

Q And did you go among the cars and around the cars?

A I did.

Q Did you find any car there that was in any way broken? A The seal broken on a car, yes.

Q Well, what car was it? A 497.

Q Car No. 497? A Yes, sir.

Q What road? A New York, Pennsylvania and Northern Railroad.

Q And what portion of the car was broken? A The seal of the door was broken.

Q Now, explain to the jury what is meant by a seal?

A It is a piece of lead, a little round piece of lead, with a piece of wire running through it, and there is two holes, at each end of that seal, and the wire is placed in the

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holes, and a piece of iron is placed on it, and that seals up the car.

Q That is, it passes through the bolt or lock on the car and keeps it together? A Yes, sir.

Q And did you go into the car? A Yes, sir.

Q What was in the car? A Carpets.

Q And to whom was it consigned? A Strawbridge & Clothier.

Q And did you miss anything there? A Two bales of carpet was missing, when they were checked out, when the goods were checked out.

Q And when did you afterwards see those two bales, if anywhere? A In the 37th street police station.

Q And this car was in the care and custody of the New York Central and Hudson River Railroad? A Yes, sir.

Q And its contents also? A Yes, sir.

CROSS EXAMINATION BY MR. PENTECOST:

Q Were you ever in that car before? A No, sir.

Q Do you know anything about where the carpets were shipped from? A From Amsterdam New York, if I am not mistaken.

Q That is, the record showed that? A Yes, sir.

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Q But you don't know anything personally about that?

A No, sir.

Q And you never saw the carpet before you saw it in the police station? A No, sir.

RE DIRECT EXAMINATION BY MR. O'CONNOR:

Q And, when you saw it in the station house, did you see any marks on the carpet? A Strawbridge & Clothier.

Q And where was it consigned to? A Philadelphia, Pa.

Q And that was on the carpet, also? A Yes, sir.

RE CROSS EXAMINATION BY MR. PENTECOST:

Q Do you know anything about that firm? A I don't know anything about them, at all.

MR. O'CONNOR: The People rest.

MR. PENTECOST: Well, if your Honor please, I am not disposed to stand on technicalities in this case at all, but it is, nevertheless, my duty to do

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so; and I don't think that a larceny has been made out.

THE COURT: Well, I do not, either. There is no evidence here that the rightful owner has been deprived of property.

MR. O'CONNOR: If your Honor will understand, the testimony was this: These goods were in the care and custody of the New York Central, and that they were the rightful owners of the property at the time.

THE COURT: There is no such testimony. You must produce the man that shipped the goods, and the man that put them on the car. We have done that often, in cases here.

MR. O'CONNOR: I don't think we could do that in this case; I don't think they could get the man that shipped the goods, the same man, who could swear positively that he did put those bales of carpet on that car.

THE COURT: Well, then, how are you going to prove it, that it was in that car, that particular carpet?

MR. O'CONNOR: You cannot. I have had several of their cases before, and I have shown them what

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proof was necessary. But now he says, if your Honor please, that he can get a man down from Amsterdam, N. Y.

THE COURT: Very well, then. We will hold this case over until tomorrow morning. And you should get the man that sealed the car, also. Of course, if the other side is technical, you must have this proof. You must have the man that packed the goods up in the original package, in the mills, and the man the man that put them on the car, on the train, and then the man that sealed the car. That is all you need, according to my recollection of the proof. Now, you had better see your witnesses and arrange for your proof. I have no right to advise you, of course.

MR. O'CONNOR: Your Honor is right as to the proof. I have had occasion to advise him several times, as to their necessary proof.

THE COURT:

Now, gentlemen of the jury, before permitting you to separate, it is my duty to caution you.

Do not discuss any subject connected with the trial of this case, among yourselves, or with anyone else, or form or express any opinion thereon, until

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the case is finally submitted to you.

I will excuse you until tomorrow morning at half past ten o'clock.

(The trial was then adjourned until Wednesday morning, March 15, 1905, at 10:30).

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TRIAL RESUMED.

New York, March 15th, 1905.

THE COURT: In this case of Edward Bender, I have been informed by the District Attorney that the witnesses from out of town, who were telegraphed for, yesterday, will not be here until two o'clock. Therefore, gentlemen of the jury, I shall let this case stand over until that hour, until a quarter past two, at least.

But, before permitting you to separate, it is my duty to caution you. Do not discuss among yourselves any subject connected with the trial of this case, or form or express any opinion thereon, until the case is finally submitted to you.

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AFTER RECESS.

EDWARD J. MARONEY, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Mr Maroney, where do you live? A Amsterdam, New York.

Q And where are you employed? A At the New York Central Freight House, at Amsterdam.

Q Amsterdam, New York? A Yes, sir.

Q Now did you have charge of freight car No. 497 of that road? A No, sir; of the New York, Pennsylvania & Norfolk Railroad.

Q And when did you have charge of that car? A The 21st of January.

Q 1905? A Yes, sir.

Q Did you have charge of what was put on board of the car? A Yes, sir.

Q And did you make a memorandum of what was put on the car, at the time? A Yes, sir.

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Q Was it a freight car? A Yes, sir.

Q Have you got the memorandum with you? A Yes, sir.

Q Did you make it yourself? A Yes, sir.

Q And can you testify from memory, without producing the memorandum, or refreshing your memory from it, as to what went into the car, as to what was put on board of the car? A Almost exactly, yes, sir.

Q Well, tell us? A There was four or five cases of knit goods, two or three consigned to Philadelphia, and a couple consigned to New York City here; and there was a lot of tins, crates of tins for the National Biscuit Company of New York; and then there was carpet and rugs in the car.

Q Do you know to whom the carpet and rugs were consigned? A Well, to different parties. The largest lot in the car that I remember distinctly was a 43 lot, Strawbridge & Clothier, of Philadelphia, care of the Reading Railroad.

Q And can you tell how many pieces or rolls of carpet were consigned to Strawbridge & Clothier? A From Sandford & Sons, in New York, there was 13 long rugs, and 30 rolls of carpet.

Q And you yourself saw them put on board of the car?
A Yes, sir; saw every one of them.

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Q And it was carpet? A Yes, sir.

Q 30 rolls of carpet? A Yes, sir.

Q And 13 long rugs? A Yes, sir.

CROSS EXAMINATION: None.

BY THE COURT:

Q Well, what became of the car? What did you do with the car? A When I finished the car, I told the car sealer to seal it.

Q Did you see any one seal it? A No, sir. I go right around to other business, then.

Q You don't attend to the sealing? A No, sir.

MATTHEW BURKE, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Where is your home, Mr Burke? A Amsterdam, New York.

Q And what is your business? A Sealer.

Q By whom are you employed? A The New York Central.

Q The New York Central & Hudson River Railroad Company?

A Yes, sir.

Q How long have you been employed by them? A About

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four years, I should judge.

Q Four years? A Yes, sir.

Q Now, on the 21st day of January, did you see Mr Maroney the man who was on the witness stand here? A Yes, sir.

Q Were you present at the time that car was being loaded? A Yes, sir.

Q Do you know what the number of the car was?

A Yes, sir.

Q What was the number of it? A 497.

Q Of what road? A N. Y. P. & N.

Q And what does that stand for? Do you know? A No; I don't know.

Q Well, after Mr Maroney left there, what did you do?

A Well, when he was through with the car, I tagged it, and sealed it.

Q Well, what do you mean by tagging it? A I addressed it to 33rd Street, New York.

Q And what do you mean by sealing it? A Well, I sealed it.

Q I know, but will you explain what you mean by a seal?
BY THE COURT:

Q How did you seal it? A Well, I couldn't exactly explain, except that I had the wire and seal.

Q Well, that is what the jury want to know? A Well,

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it is a wire that goes into the seal, and I put the New York stamp on that.

Q Well, the seal consists of lead and wire? A Yes, sir.

Q And that is applied after the car is closed?

A Yes, sir.

Q And locked? A Yes, sir. I lock the car with that.

Q You lock the car with that? A Yes, sir.

CROSS EXAMINATION BY MR. PENTECOST.

Q What other cars did you seal on the 21st day of January? A Oh, there was a great many. I couldn't place them, I couldn't think of them just now.

Q Well, tell me the number of some car that you sealed, some other car? A No, I couldn't.

Q Is this the only car that you remember? A No, sir; there was a great many cars that I sealed; so many that I couldn't think of them.

Q Well, but you say you distinctly remember-- A Yes; I swear to that.

Q Wait a minute. You say you distinctly remember sealing car No. 497, on that day? A Yes, sir.

Q Now what other car did you seal, on that day? A Oh,

there was a great many.

Q Do you know the number of any other car that you sealed, on that day? A No, sir; I couldn't think of them; there are so many of them.

BY THE COURT:

Q Well, how so you come to remember that number?

A Well, I took particular notice that it was half loaded with cans, for the National Biscuit Company. That made me think of it, in particular.

BY MR. PENTECOST:

Q And it was because of that, because there were tins in that particular car, on that 21st of January, that, in thatway, you remember the number of the car? A Yes, sir, certainly.

Q Will you explain how it happens that, because there were tins in that car, that, therefore, you remember the number of the car? A Well, I wrote the number of the car on the card.

Q What card? A That same car. I remembered it, and tagged it.

Q What card? A The car you are alluding to.

Q Well, we are not alluding to any card? A Well, the car that I swore I sealed, then.

Q Did you write or attach any card on any other car,

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on that day? A Yes; where they were going.

Q On what day was this? What day of the week? A It was Saturday, as far as I remember.

Q Have you any recollection about it, at all? A No. Well, as much as I can remember it fell on Saturday.

Q Have you had any conversation about this particular car with anybody, today? A No; no more than I had to come here; that is all.

Q And, when the District Attorney asked you if you had sealed car No. 497 of the N. Y. P. & N. Railroad, you remembered all about it; did you? A Yes; I remembered all about it.

Q That particular car? A Yes, sir.

Q And no other car? A Why, yes. I told you I sealed different cars. I sealed cars for St. John's Park, Englewood, Schenectady--

Q Do you remember any other work that you did on that day? A No. I told you I was a sealer. All that I do is to seal and mark the cars.

Q And you remember that particular car, remember sealing that particular car on that day, and that is all you can remember that you did, on that day? A I told you I sealed different cars, that day.

Q Now, where was Mr Maroney, when you sealed the car?

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A He don't have to stand over me, while I seal the car. He is doing his work. He can't do that.

Q I am very much obliged to you for that information, but I merely asked you where he was? A I can't tell you that. He was in the freight house somewhere.

Q You noticed some tins in that car? A Yes, sir.

Q You distinctly remember that? A Yes, sir.

Q What else did you notice? A There was carpets in it. There was knit goods in it.

Q Yes. You remember that, too? A Well, yes. I have seen the truckmen trucking them in.

Q In that particular car? A In that particular car.

Q Now, what other goods did the truckmen truck into any other car, on that day, the 21st of January? A It might be the same material, going to another place.

Q I am not asking you what might have been. (Question repeated.) A It might be brooms, it might be carpet. There is a great many things go, you know.

Q No. I am only asking you what you did see, not what might be? A Well, I told you I saw them trucking carpet and brooms.

Q On the 21st of January? A Yes, sir.

Q Now, what car did any truckmen take brooms into, on that day? A It might be St. John's Park, it might be

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Englewood; it might be different cars.

Q Thank you very much. Did you see any truckmen--
are you sure that you didn't see any truckmen cart brooms,
on the 22nd of January? A We don't work on Sunday.

Q Are you sure that it was Sunday, the 22nd of January?
A I told you that I thought the 21st fell on a Saturday,
and surely the 22nd must be on Sunday.

THE COURT: He is correct about that. The 21st
was On Saturday.

BY MR. PENTECOST:

Q Then are you sure that you did not see truckmen cart-
ing brooms on the 20th of January? A Am I sure?

Q Yes. A Oh, every day that I am working, I see them
truck brooms, or carry them, rather. They don't truck them,
but they take them in their hands, and put them in the car.

Q Do you see tins in cars, every day? A No, sir; not
every day.

Q Did you ever see them in a car, on any other day
but the 21st of January? A Yes, sir.

Q Well, on what other day? A Well, I can't tell you
that; I can't go back into that, you know.

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J O H N J. M I L L E R T O N, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Mr Millerton, where do you live, sir? A 434 Eleventh Avenue.

Q In the County of New-York? A Yes, sir.

Q What is your business? A Checker.

Q By whom are you employed? A By the New York Central.

Q Now, on the 30th of January, was it, did you check goods from a particular car there? A Yes, sir.

Q Do you know what freight car you checked them from, or did you check from several? A I checked from several cars.

Q And did you check the goods that came out of car 497?

A Yes, sir.

MR. PENTECOST: Now, these questions are very leading, if your Honor please. I don't want to seem to bother too much, but I must interfere now.

BY MR. O'CONNOR:

Q Well, will you tell us what you did, on that day?

I will withdraw that question. A Oh, I can't tell you, but I could tell you about that car, but I can't tell you about all I did, that day.

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Q Has your memory been refreshed since, by your attention being called to this matter? A Yes, sir; to this car.

Q Do you remember what you checked out of car 497?
A Well, I checked out various shipments, and several shipments to Philadelphia.

Q How many rolls of carpet did you check out of the car?
A 50 or 60 rolls of carpet, different marks.

Q Can you tell to whom these different rolls of carpet were consigned? A Yes, sir. There was one lot I remember, that went to Strawbridge & Clothier, of Philadelphia.

Q Do you remember how many rolls came out of there for them? A It was a bill of 30 rolls of carpet, and 13 poles.

Q And how many did you check out of the car? A 13 poles and 28 rolls. I was 2 rolls short.

CROSS EXAMINATION BY MR. PENTECOST:

Q Well, this happened what day? What day did all this happen? A Our records shows. I don't know by my memory.

Q You can't recollect this, can you? A No, sir, I can't recollect, because I check so many cars.

Q Well, so far as what you did, on the day in question, you have no recollection of it whatever? A It is not

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necessary to have a recollection. But our record shows.

Q No. One moment. I asked you if you have any recollection of it whatever? A. (No answer.)

THE COURT: He does not understand the question, apparently.

BY MR. PENTECOST:

Q Well do you recall, at all, except from something that was shown to you, yesterday? A (No answer.)

BY THE COURT:

Q What the counsel means by that is whether you recollect anything about the carpets, or the number of carpets except what you were told? A Well, I remember what I checked, that there were two rolls short.

Q You remember that? A Yes, sir; I remember that well.

Q But you don't remember the day? A I can't remember just exactly the day, but it is on record, you know.

Q Yes, we know it is on record. But you don't remember the day? A No, sir; I know it was afternoon, and that is all I know.

BY MR. PENTECOST:

Q Well all that you are testifying to is that you remember that it was some time ago that you checked some goods out of a car, and they were two rolls short?

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A Yes, sir.

Q How did you find that out? A Well, I was there to do my duty, and I was in the car to check them, and I overhauled the whole car.

BY THE COURT:

Q Well, what you mean by that is, you receive with each car a bill of lading of the goods in the car? A Yes, sir.

Q And you took that bill of lading? A Yes, sir.

Q And checked off the goods in the car? A Yes, sir.

Q And that is how you found that there were two rolls short? A Yes, sir.

BY MR. PENTECOST:

Q But you do not remember on what particular day this happened? A No, sir, I don't.

SAMUEL M. JONES, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Where do you live, Mr Jones? A I live at Yonkers.

Q And what is your business? A I am delivery clerk at the New York Central Railroad, at 33rd Street, but I was

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acting foreman the day this car was checked out.

Q Do you remember what day the car was checked out?

A No, I don't.

Q Did you make a memorandum of it, at the time?

A Yes, sir; we have a memorandum.

Q A record? A Yes, sir.

Q Have you looked at that record, since you were subpoenaed here? A No, I didn't.

Q Did you go to that car? A Yes, sir; I ordered it in there, to be checked.

Q What was the number of the car that you ordered in there, to be checked? A 497.

Q And were you present when it was being checked out?

A Yes, sir.

Q Do you know what was checked out of the car? A No, sir. I only know that it was reported to me that it was two short.

CROSS EXAMINATION BY MR. PENTECOST:

Q Where are you stationed? I didn't hear you say?

A For the New York Central Railroad, at 33rd Street.

Q And you say that, at some time, there was a report made to you that some goods were two short, in a car?

A Yes, sir.

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Q That is all you know about it? A Yes, sir.

MR. O'CONNOR: Does the defendant concede that the property is worth over \$25?

MR. PENTECOST: No, sir. The defendant does not concede anything.

MR. O'CONNOR: Then I will call a carpet man, who knows the value. He is not here yet.

THE COURT: No; I do not care to try this case piecemeal any further.

MR. O'CONNOR: No, sir; nor I. But I requested them to have a carpet man here, who knows the value of the carpet.

THE COURT: But you have not the carpet here, and he will not have seen the carpet.

MR. O'CONNOR: No, sir. The carpet has been sent back to Strawbridge & Clothier, by the order of the Magistrate.

THE COURT: Then you will have to go to the jury on petty larceny. I am not going to adjourn this case any longer.

MR. PENTECOST: Well, but, if your Honor please, I respectfully state that, in my opinion, no larceny has been proved.

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THE COURT: Well, that is another question; but, as to the question of value, the People may go to the jury on the question of petty larceny. Does the defense concede that the New York Central & Hudson River Railroad is a corporation?

MR. PENTECOST: Oh, yes, sir.

THE COURT: And the Court will take from the jury the count charging grand larceny in the second degree, and will submit the count charging petty larceny.

MR. PENTECOST: Why, if your Honor please, I move that the Court take from the consideration of the jury the entire case, because no larceny has been proved.

THE COURT: Motion denied.

MR. PENTECOST: Why, if your Honor please, what proof is there of larceny?

THE COURT: The possession of stolen property, recently after the stealing.

MR. PENTECOST: But what stolen property?

THE COURT: I will not argue that with you, Mr Pentecost. That is a question for you to argue with the jury.

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MR. PENTECOST: But has it been proven that that particular piece of carpet, or property, was ever in any car, at all?

THE COURT: I will not argue with you that, now, Mr Pentecost. I say that there is sufficient to go to the jury.

MR. PENTECOST: Very well, sir. Then I will have to take an exception, of course.

THE COURT: Oh, certainly, you are entitled to that.

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THE DEFENSE.

EDWARD BENDER, the defendant, being duly sworn,
testified as follows:

MR. PENTECOST: Will your Honor allow me to just
get my motion on the record fully?

THE COURT: Certainly.

MR. PENTECOST: The defendant's counsel moves
to take this case away from the consideration of the
jury, on the ground that the particular package of
goods alleged to have been taken from the possession
of the defendant has not been shown to have ever
been in the possession of the New York Central
Railroad Company, or any agent thereof; and has not
been connected in any way with certain goods alleged
to have been shipped from Amsterdam, New York, on
the 21st day of January, and that, therefore, no
larceny of these particular goods has been shown in
this case.

THE COURT: Motion denied.

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MR. PENTECOST: Exception.

DIRECT EXAMINATION BY MR. PENTECOST:

Q Where do you live, Mr Bender? A 424 West 37th Street.

Q What is your business? A Waiter.

Q Where were you employed, at the time of your arrest?

A Park View Hotel, Sixth Avenue and 42nd Street.

Q How long had you been employed there? A Three years and a half.

Q Were you working up to the time of your arrest?

A Yes, sir.

Q You heard the policeman state that a certain roll of carpet was found in your room, on the night of your arrest; did you? A No; the boy brought the carpet up before.

Q Did you hear the policeman state that, when he testified here, that a certain piece of carpet was taken into your room, that night? A Yes, sir.

Q Is that so? A Yes, sir.

Q That a certain piece of carpet was taken into your room? A Yes, sir.

Q Now where did that carpet come from, if you know?

A I don't know.

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Q You don't know? A No.

Q Well, who brought it there, if you know? A My brother-in-law.

Q What was his name? A Gussie Hoffman.

Q The policeman testified that he asked you-- my recollection is-- previous to the carpet coming up into your room, whether you expected any carpet or not; is that so? A Yes, sir.

Q And did you tell him that you were expecting it?

A Yes, sir.

Q From whom were you expecting this carpet? A The only place I knew was 41st Street and Tenth Avenue, where the boy lived at.

Q Your brother-in-law? A Yes, sir.

Q And he told you that he was going to bring some carpet up to your house? A He did, that night, about one minute before the policeman. He came in ahead of the policeman, and told me he was going to fetch it up, about one minute ahead of him. They both came upstairs together, but my brother-in-law came in ahead, and told me about it.

Q Then the policeman and your brother-in-law came upstairs together? A Yes, sir.

Q And your brother-in-law went in a minute ahead of the policeman, and told you he was going to bring some

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carpet up? A Yes, sir.

Q Now, did you know that this carpet was stolen property, if it was stolen property? A No, sir.

Q Did you ever know anything at all about it, previous to the minute that your brother-in-law told you about it?

A No, sir.

CROSS EXAMINATION BY MR. O'CONNOR:

Q What does your brother-in-law do for a living?

A Nothing.

Q Nothing? A No, sir.

Q Where did you expect your brother-in-law to bring you a roll of carpet, 121 yards, from? A I didn't know how big the carpet was, how much was in it, when he come up and told me about it.

Q Well, did you know where he was going to get it from?

A No, sir.

Q Did you ask him where he got it from? A No, sir; didn't have time.

Q He had no way of making a living, had he? A No, sir.

BY THE COURT:

Q How old is he? A Fifteen years old.

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BY MR. O'CONNOR:

Q What time of night was this? A About ten minutes after nine.

Q At night? A Yes, sir.

Q And you didn't ask him where he had gotten it from, did you? A No, sir.

Q At ten minutes after nine o'clock, at night?

A No, sir.

Q Coming with a roll of carpet to your house? A I didn't have a chance.

Q Why, didn't you tell the officer that, on the Sunday previous, you had a talk with your brother-in-law, at your house, and that he told you he was going to bring some carpet to you, from 41st Street and Eleventh Avenue?

A No, sir.

Q Well, didn't you tell that to the police officer?

A No, sir.

Q Did you ever know your brother-in-law, Hoffman, to work as a blacksmith's helper?

A Yes, sir.

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Q When did he work as a blacksmith's helper? A I guess about a year ago.

Q About a year ago? A Yes sir.

Q And he hasn't done anything during the past year?

A I think he had one position, in a trunk store, for a couple of weeks.

Q With whom do you live at your house? A Who do I live with?

Q Yes? A My wife and children.

Q Was your wife there, that night? A Yes sir.

Q And your children there? A Yes sir.

Q When was Hoffman at your house, before this night when he brought this carpet? A I hadn't seen him in two weeks. He was there Sunday, my wife told me, and got out just ahead of me.

Q Then he was there Sunday? A Yes sir.

Q Then, when you told the police officer that you had a talk with Hoffman about having this carpet brought there, could you be mistaken about that? A When I was going out with the carpet, I said to my wife, "do you know anything about this carpet?" And she said, "No", and I said, "Did Gussie say anything about this carpet, when he was here

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on Sunday?" And she said, "No," but I understood her to say, "Yes". And I told that to the officer, when I was going downstairs with him.

Q And you say, a minute before the policeman came in, your brother in law came in? A Yes sir.

Q And what did he say to you, in that minute? A He said, "I've got some carpet, and I want you to take it."

Q And then you went downstairs with the police officer? A Yes sir; at his request.

Q And, when the police officer asked you -- A No; I didn't go downstairs.

Q Where did you go? A I went out in the hall, and they put it on the dumb waiter, and I helped to pull it up.

Q And, when the policeman asked you if you expected some carpet from 41st Street and Tenth Avenue, what did you say? Didn't you say, yes? A Yes.

Q How did you know it was to come from there?
A Well, only that it might have come from his home.

Q Well, this fellow had done nothing for a living?
A No sir.

Q And how did you expect him to pick up 62 yards of carpet? A Well I thought his father might have bought it.

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Q And did you tell the police officer that you expected him to leave the carpet at your house? A Yes sir; after my brother in law told me.

Q And then the policeman told you to receive it? A To help the boy up with it, which I did; and, as soon as I found out about it, I didn't want to have anything to do with the carpet.

Q And you knew, at the time, that it was not your carpet? A Well I didn't know but he was going to give it to me.

Q And you knew that your brother in law hadn't bought it for you, a sixteen year old boy? A No sir.

Q And you knew that your brother in law, having no home, could not get 65 yards of carpet honestly didn't you? A Well that's what I told you, unless he got it from his home.

Q Do you know who brought that carpet to your house? A Yes sir.

Q Who? A The policeman and the boy together.

Q 65 and a half yards? A Yes sir.

BY THE COURT:

Q Do you mean that the policeman helped the boy to carry it to your house? A Well I think he helped the boy in the street.

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Q Helped carry it to your house? A Well I don't think he could carry it alone.

THE COURT: Is that the testimony, that the policeman helped the boy to carry the carpets to this defendant's house?

MR. PENTECOST: My recollection of the policeman's testimony is that he met the boy, on the street, rolling the carpet, and he asked him where he was going to take it, and he said, "I'm going to take it to my brother in law's house," and then the policeman went along with the boy, and went upstairs, and sent the boy in to Bender's room, and followed him in, in a minute, and asked him if he was expecting some carpet, and he said, yes. He said, yes, the boy said he was going to bring some carpet; and the policeman said, "then help him up with it", and he did help him up; and then the policeman put the boy under arrest, and the policeman and Bender and the defendant went downstairs together.

MR. O'CONNOR: Here is the testimony of the officer, referring to Bender, and I will read it.
(Reads.)

BY MR. PENTECOST:

Q The policeman was in uniform, all the time; wasn't

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he? A Yes sir.

THE COURT: Well, that puts a very different aspect on the case.

MR. PENTECOST: I renew my motion, on the ground that there is insufficient evidence.

THE COURT: Yes. I will hear the District Attorney, now.

MR. O'CONNOR: Well, the policeman found Hoffman, with a roll of carpet in his possession, and, when he asked him where he was going with it, he told him he was going with it to Bender's house, and he brought him along to the house of Bender, with the carpet.

THE COURT: But there was no possession in Bender. How do you establish any possession by him?

MR. O'CONNOR: By his carrying it upstairs on the dumb waiter, and saying it was his carpet.

THE COURT: With a policeman standing there, in uniform? Oh, no.

The theory upon which you can hold a defendant, in a case of this kind, is that possession of stolen property, immediately after the commission of a crime, is evidence of guilt unless a proper ex-

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planation be made of the possession. But here is a case where a policeman comes along, in uniform, with a supposed thief, and brings the property to a man's house. Is it necessary for that man, then, to make explanation, when the property is in, or almost in the actual physical possession of the police officer?

No. There is no evidence here that would warrant me in submitting this case to the jury. The jury are directed to acquit.

The Jury found the defendant Not Guilty.

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-: I N D E X :-

	Direct.	Cross.	Re-D.	Re-C.
Daniel Moriarty	2	6	10	
William G. McLean	10	12	13	13

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