

START

1260

CASE

INDEX.

	Direct	Cross	Re-direct	Re-cross
Jacob A. Goodman	10	30	51	52
Philip Schlosser	55	62-86	87	89
William B. Falconer	98	101		
James A. Gribben	104	108		

I N D E X.

	Direct	Cross	Re-direct	Re-cross
Mr. Gribben			113	114
Rufus D. Pitcher	115			

INDEX.

	Direct	Cross	Re-direct	Re-cross
Rufus B. Pitcher	131	131		
Charles Briskin	141	147	153	158
George H. Swartwout, Jr.	160	165	167	167
John Jenifer	169	172	173	174
Daniel D. Ryer	177	186		
Frank Francisco	187	196		
James F. Shevlin	201	207		
Thomas Aiello	208	211	213	213
Charles E. Ackron	220			

INDEX.

Direct Gross Re-direct

Charles E. Ackron

276

330

#1360

COURT OF GENERAL SESSIONS OF THE PEACE,
City and County of New York, Part III.
(July term continued)

----- X	:	
THE PEOPLE	:	Before:
against	:	
CHARLES HARRINGTON, alias	:	HON. THOMAS C.T. CRAIN, J.,
CHARLES JONES, and CHARLES E.	:	and a jury.
ACKRON.	:	
----- X	:	

Tried, New York, November 23rd, etc., 1910.

A P P E A R A N C E S.

ASST. DISTRICT ATTORNEY CHARLES C. NOTT, JR., for the People.

MESSRS. TOWNE & SPELLMAN, for the defendant CHARLES HARRINGTON.

MAX S. LEVINE, ESQ., for the Defendant CHARLES E. ACKRON.

Indicted for Grand Larceny and Receiving, as a second offence.

Indictment filed September 30th, 1910.

Frank S. Beard,
Official Stenographer.

CASE # 1260

2

TRIAL RESUMED.

New York, November 28th, 1910.

MR. NOTT: Now, if your Honor please, I would like to place on the record a concession which the defendants' counsel have agreed upon as to the prior conviction. If I do not state it correctly, please correct me, Mr. Spellman.

MR. SPELLMAN: I will.

MR. NOTT: It is conceded on this record that the defendant Charles Harrington, otherwise called Charles Jones, was, on the 13th day of April, 1896, in the Court of General Sessions, in this county, convicted of a crime, to wit, feloniously possessing implements of burglary and larceny, after a prior conviction of a felony.

And it is furthermore conceded on this record by the defendant, that the defendant Charles E. Ackron, on the 25th day of May, in the year 1894, in the Court of General Sessions --

MR. SPELLMAN: I think you have got the wrong date, Mr. Nott.

that is right.

MR. NOTT: Oh, yes, / It is conceded on this record that the defendant Ackron-- that, on the 12th day of December, 1895, in the Court of General Sessions, in the County of New York, said Akron was duly convicted of a felony, to wit, grand larceny in the second degree, upon

5
a certain indictment then and there in the said court pending against him.

MR. SPELLMAN: And so that I may get this pardon properly described, I will ask you to add this to the concession. And that he was sentenced to Sing Sing, for three years and ten months.

MR. NOTT: I don't know about that. The copy of the indictment doesn't state that. Three years and ten months, you say?

MR. SPELLMAN: Yes. Or you may omit that, if you like, if you take his pardon, because I want to describe it. Just a moment. I want you to concede the pardon. The stipulation was conditioned on that. Then it is conceded by the District Attorney that his Excellency, Levi P. Morton, Governor of the State of New York, on December 28th --

MR. NOTT: No; I prefer to have that go in as an offer of proof, to raise the question of --

MR. SPELLMAN: Then I shall offer it.

MR. NOTT: You may offer it, and I shall not dispute the fact, but --

MR. SPELLMAN: May it please the Court, under a verbal stipulation with the District Attorney, I offer in evidence -- no, you may strike that out. I offer in evidence a certificate of the Secretary of State, evidencing

the fact that the defendant Charles E. Ackron was duly pardoned by the Governor of the State of New York, on December 28th, 1896, of the crime of which it has just been stipulated that he was convicted, in the month of December, 1895. And the District Attorney concedes that this pardon covers the said offence.

THE COURT: Pardon me. What is the date of the pardon?

MR. SPELLMAN: December 28th, 1896.

MR. NOTT: The District Attorney does not make any objection to the form of the proof offered, that is, to this certified copy, but the District Attorney objects to its reception, on the ground that the evidence is irrelevant, immaterial and incompetent, and has no bearing on the question of a second offence.

MR. SPELLMAN: But, in order to have the record straight, Mr. Nott, or, rather, to have the record clear, you admit that the offence which is pardoned in this pardon is the one that we have stipulated was committed by Ackron, and of which he stands convicted in this county, in September 1895?

MR. NOTT: I admit that the paper which you now produce, that the contents relate to the same offence set forth in the indictment, that it is the same thing.

MR. SPELLMAN: Now, we may argue about this for any

0021200

length of time, we may discuss this one way or the other, on the objection raised, Mr. Nott. You may claim that the pardon does not wipe out the offence, ^{committed} because there was a subsequent pardon, or that his Honor should not receive the paper, or the concession. I will ask your Honor to take away from the jury the charge of second offence, so far as that is concerned, and objection has been raised to the introduction of the document, not to the form in which it is presented, but because it is irrelevant, and immaterial to the issues.

THE COURT: Well, before I will consider the question, I will ask you to state briefly, Mr. Spellman, what you consider the effect.

MR. SPELLMAN: I consider the effect to be what was said of it in the United States Supreme Court, in 4 Wallace.

THE COURT: No, just briefly. You need not cite any cases.

MR. SPELLMAN: But I cannot improve on the language in that case, your Honor, and therefore I will read it to your Honor. (reads.)

THE COURT: Very well.

MR. SPELLMAN: That particular doctrine was laid down in the United States Supreme Court, and I claim, therefore, insasmuch as there has been a full pardon by

6
the Governor that that offence cannot be used to predicate a second offence of the crime of which the defendant stands charged.

THE COURT: I understand your contention. Now, suppose your contention in that respect is sound, upon it you predicate what application?

MR. SPELLMAN: As it now stands to press the offer of the pardon in evidence, which has been objected to.

MR. NOTT: And then, later, to make it the basis of a motion to submit the case to the jury as to the defendant Ackron merely as a first offence, and not as a second offence, I take it?

THE COURT: Is that it?

MR. SPELLMAN: I take it that will be the question, unless, in the meantime, by a careful examination of the authorities, I think it goes to the entire offence.

MR. NOTT: Well does it go to the present offence, do you claim that?

MR. SPELLMAN: Oh, I will give my client the benefit of an examination of the authorities, and then see whether I can give my client the benefit of another motion.

THE COURT: Well, I am disposed not to receive it in evidence, but you may offer it again, as part of your case.

MR. SPELLMAN: At the present time, may it please the

7
Court, I desire to make a motion to take from the consideration of the jury, the charge of second offence against the defendant Ackron in this case.

MR. NOTT: How can he make that motion now? There is nothing to go to the jury now.

THE COURT: There is nothing before me now.

MR. SPELLMAN: Yes, sir, there is a stipulation, your Honor, that there was a conviction and that there was this pardon.

MR. NOTT: It seems to me that that motion is properly made at the close of the People's case, when they can move, at that time, to take away from the jury the consideration of the crime as a second offence.

MR. SPELLMAN: But there can be no harm done in receiving this document at this time. It is received for what it is worth, and if your Honor should hold that the legal effect of it is that the jury cannot consider the charge against Ackron as a second offence, and that it may not be made the basis of a charge of second offence, then its full effect will have been introduced into the case.

THE COURT: I have not examined the law, but, offhand, I think they are entirely two distinct questions. The question is whether, under the authority of the Sickles case, 156 N.Y., I think it is, modifying somewhat certain expressions contained in an earlier case, reported, if

0271260
CASE 271260

my recollection is right, in the 96 N.Y., an indictment as for a second offence, charges a crime that is so separate and distinct from the crime charged as a first offence, that evidence would not be receivable to substantiate the charge as for a first offence.

MR. NOTT: That is to say, whether it has got to be a second offence or not?

THE COURT: In the 96 N.Y., the remark went rather to this effect -- it is a good while since I had occasion to look it up, but this is my offhand recollection if it-- that the first offence, "when alleged in the indictment was nothing more than something in connection with the history of the defendant, and that it was not an ingredient of the crime with which he stood charged in the indictment, and that it was proveable merely for the purpose of enabling the Court to measure, under the provisions of law, the punishment to which he would be subjected.

In the Sickles case, that remark is the subject of comment, that, rather along the line of probabilities, it was inadvertently made, or, at all events, that it did not full or clearly express the relation of one thing to the other, and that it was a distinct crime, this second offence.

MR. NOTT: Yes, sir.

THE COURT: Now, I confess that I am a little in

doubt about the relation of one to the other.

MR. NOTT: I don't think, however, that your Honor will get to that question, because whatever those expressions made be in the United States Supreme Court case, the courts of New York have held the opposite.

MR. SPELLMAN: I am ready to argue on that point, and I am fully prepared.

THE COURT: Well, now, my only wish is to conduct the trial in a more orderly way, and I will consider these questions at any stage of the trial that you mutually think is most desirable.

MR. SPELLMAN: Well, suppose that I discuss these matters tomorrow morning? If the Court should be of the opinion that the pardon is good, and that the indictment cannot be for a second offence, we might save four or five days of testimony taking.

THE COURT: Suppose that I hear you gentlemen after recess today, on those propositions; and, in the meantime, you may introduce your evidence now, and I will hold the matter in abeyance? Is that agreeable, Mr. Nott?

MR. NOTT: Yes, sir; perfectly; that is agreeable to me.

MR. SPELLMAN: Yes, sir. And, in the meantime, I ask that this pardon be marked Defendant's Exhibit A for identification.

THE COURT: It may be so marked.

(It is marked Defendant's Exhibit A for identification.)

THE PEOPLE'S TESTIMONY.

J A C O B A. G O O D M A N, of 144 West 113th Street, a witness called on behalf of the People, and being duly sworn testified as follows:

MR. SPELLMAN: May it please the Court, I ask that all the witnesses in this case, both for the prosecution and for the defence, be excluded.

THE COURT: It is so ordered.

DIRECT EXAMINATION BY MR. NOTT:

Q Mr. Goodman, will you kindly raise your voice so that the jury can hear you? A Yes, sir.

Q What is your occupation? A Manager of the La Varossa Cigar Company.

Q Where do you reside? A 144 West 113th Street.

Q And how long have you been the manager of that company?
A The manager for about four years.

Q And that is a corporation? A Yes, sir, incorporated under the laws of the state of New York.

Q A New York corporation? A Yes, sir.

Q And you have been the manager how long? A Well about three or four years.

Q Were you connected with the company before that? A No, sir.

Q How long have you been in the cigar business? A About that length of time that I have been with them.

Q Where is the office or factory of the company? A 233 Pearl Street.

Q In the County of New York? A In the County of New York.

Q And will you state how near that is to John Street?

A Corner of John and Pearl.

Q On which corner? A The southwest corner.

Q John Street runs east and west? A Yes, sir.

Q And Pearl Street runs north and south? A Yes, sir.

Q Do you remember the number of the house on John Street that immediately abuts on the rear of your premises? A That would be 116.

Q 116? A Yes, sir.

Q Now on what floor is your factory in these premises?

A Our factory is up one flight.

Q How many floors are there in the building? A There is two others above that.

Q Can you state whether or not -- have you ever been on the roof of your building? A Yes.

Q Is there any skylight or scuttle there? A There is one skylight and three scuttles.

Q Yes. And where do they come down? A Well one comes down -- there is two actually. There is one over the elevator shaft, and there is two on Pearl Street, actually, and a scuttle hole on the John Street side, and a skylight.

Q And where does the scuttle hole come down on John Street? A Well, on to the top floor of our building.

Q Well do either of these scuttles have stairs going up to them? A Two of them have ladders.

Q Two of them have a ladder? A Yes, sir.

Q Well I will ask you do you remember, one day, returning to your office, and finding a buyer there? A Yes, sir; in the morning.

Q What morning was that? A The morning of August 8th.

Q Now, on the previous afternoon and evening were you in the factory? A Yes, sir. Well, it was on a Monday, ~~morning~~ the fire was. I was there on Saturday, August 6th.

Q Monday was the 8th? A Yes, sir.

Q And were you in the factory on Saturday? A Yes, sir.

Q And what time did you close up on Saturday? A I closed up about half past one.

Q In the day time? A Yes, sir.

Q Of Saturday? A Yes, sir.

Q That was August 6th? A Yes, sir.

Q And now will you tell the jury how many cigars at that time, roughly speaking, you had in stock? A We had in

stock 84,000 cigars, according to our revenue book.

MR. SPELLMAN: Just a moment. He says according to the revenue book. Now, I would like to ask the witness whether he is testifying from the revenue book. If he is, that is the best evidence.

THE WITNESS: Well, that is it roughly. It might be a thousand more or less.

MR. SPELLMAN: If your Honor please, the point I make is very clear, I submit. If the witness is safeguarding himself in his testimony by saying "According to the revenue book," meaning thereby that he doesn't know of his own knowledge, I submit the revenue book is the best evidence.

BY THE COURT:

Q Do you know of your own knowledge how many cigars you had? A Yes, sir; we had 84,000 cigars.

BY MR. NOTT:

Q Now how do you keep those cigars? A In zinc lined closets, on the second floor, up two flights of stairs, in closets around the wall.

Q Well what is the size of the closets? A Well, they are various sizes. Some of them extend up from the floor to about as high as where that window starts (indicating), and over to where that third man is sitting (indicating the ninth juror in the back row of the jury box. Of course, there are

smaller ones. There are various sizes.

Q And these, you say, are lined with zinc? A Yes, sir.

Q And are the doors of the closets kept locked, or simply latched? A Well, at night, we close them, we just close the doors, but don't lock them, and in the day time they are open.

Q They are not locked at all? A No, sir; no locks on them.

Q And, inside of the zinc lined closets, how are the cigars kept? A In boxes, in our boxes, wooden boxes.

Q Now how many different brands of these cigars do you carry? A We carry three brands.

Q And do you carry these cigars with wrappers? Are these cigars manufactured with wrappers, or without wrappers? A Do you mean bands?

Q Yes, bands? A Some have bands and some have not. You see we put the bands on, as a rule, when we ship them out, on some sizes, and others we have already banded in stock.

Q Yes, have you any label on your boxes? A Yes; on the inside of the boxes we have a label. When the goods are shipped out --

Q Now will you tell the jury when, in the course of your business, you affix the revenue stamps? A When they are ready to be shipped, when we pick the goods out for a shipment; and, also, a caution label on the bottom of the box.

Q Now you say when you left on Saturday at about one o'clock, according to your knowledge, there was somewhere in the neighborhood of 84,000 cigars in the factory? A Yes, sir.

Q And those cigars, had they been -- had they had revenue stamps affixed to them? A No, sir. They were unsold cigars, without revenue stamps.

Q And they were stored in these various zinc lined closets? A Yes, sir.

Q Now tell the jury what you found, when you reached the office on the morning of Monday, August 8th? A When I opened, on August 8th, on going to our stock room, I discovered a fire burning up there, and I had just about looked in, and went down, and went to the police station, and had them send in an alarm of fire to the Fire Department.

THE COURT: Just pardon me a moment.

BY THE COURT:

Q Were you the last person to leave the premises on Saturday afternoon? A Yes, sir.

Q On the preceding Saturday afternoon? A Yes, sir.

Q And you locked up the premises? Did you or did you not? A Yes, sir, I locked the Pearl street door. There are two doors one on John and the other on pearl street. I locked the Pearl Street door.

Q How was the door fastened from the hallway into your stock room? A Well, the entrance on Pearl street -- you

understand there is a stairway going up to our stock room. There is nobody else occupying the building but ourselves. We occupy the whole building.

Q Oh, you occupy the whole building? A Yes, sir.

Q Now then, ^{after} having this alarm turned in, you returned to the premises; did you? A Yes, sir.

Q Now describe to the jury the fire in the stock room. Where was it burning, and how extensive was it? A The fire was in the stock room. Well, it took the Department about twenty or twenty five minutes to put it out, and after the fire the closets are still there where these cigars that were missing were.

Q Now what part of the room was burning? A Well, this is one room by itself, the stock room, and, of course, I didn't get a chance to see, except to just look in and see the place was on fire.

Q But, after the fire was put out, on examining the room, could you state in what portion of the room the fire had been? A Well, mostly in one corner, towards the Pearl Street side, most of the fire.

Q Now did you then examine any of these zinc lined closets? A Well, after the firemen had left, we started to get our stock together, for the insurance company to make our schedules up.

Q Well what did you do? A We took everything out of the closets, everything that was there, and put the different sizes

around, and took up stock for the fire insurance companies, and we discovered that we were 35,000 cigars short.

Q Now you were in the premises when the firemen were there, weren't you? A No, sir; they wouldn't let me go upstairs.

Q But you saw them, the firemen go out? A Yes, sir.

Q Did the firemen take any cigars with them? A No, sir, I didn't see them take any; I didn't see any cigars with them.

Q Now you say that you were 35,000 cigars short. Now tell the jury how you ascertained that fact? A Why, we take stock on the first day of August -- the first day of each month, -- actually -- and we figured up what we made from August 1st to August 6th, and deducted what we shipped out between those dates, which gave about 84,000 cigars; and, of course, of those that we had on hand, there was actually only about 50,000 and that made us about 35,000 short, and we had emptied out all the closets at that time that we made that calculation.

Q And did you look into the closets when you emptied them out? A Yes, sir.

Q And did you see that any of them were in a condition different, as to the presence or absence of cigars, from what they were on Saturday night? A Yes, sir.

Q Did you help carry any cigars out of any of the closets? A No, sir, I did not.

Q Well did you see them carried out? A Yes, sir.

CASE 1260

Q Well, do you know how many cigars were in any particular closet? A Well that I couldn't tell you, exactly.

Q Do you know from which closet these cigars were missing?

A I can tell you from certain closets, yew, certain sizes that were in certain closets.

Q Do you apportion the different sizes between different closets? A No, sir; but usually one size is in a closet by itself.

THE COURT: If it is agreeable to you, Mr. Nott, suppose the witness gives a description of the arrangement of the stock room and the closets in them.

MR. NOTT: Yes, sir.

BY MR. NOTT:

Q Now will you comply with the Court's suggestion?

A The width of the room is about from the wall to this desk (indicating the bench).

BY THE COURT:

Q And the closets, where are they? A On both sides of the room, along the wall. Some of the closets were smaller, and some larger. The larger closets were about from the floor to that window sill there (indicating) and in width about as far as the third man on the rear row there (indicating the ninth juror.)

BY MR. NOTT:

Q That's about six feet high? A Yes, sir.

Q And seven or eight feet long? A Yes, sir.

Q And how far out from the wall did they project?

A Well, they didn't project out further than here (indicating).

Q Well, that would be about two feet and a half?

THE FOREMAN: That's about four feet.

MR. SPELLMAN: Well, it makes no difference. We will concede it either way.

BY THE COURT:

Q Are those closets built into the building or are they movable? A No, sir, they are movable.

BY MR. NOTT:

Q Now what sized cigars did you find to be missing out of those thirty-five thousand? A There was one size, Pettit Invincibles, and another size, Bachelors, and another, C. Perfectos, Rosa Perfectos, Penetellas, Coronas, Concia Specials. Those were a few of the sizes.

Q Now each of those sizes that you have mentioned had a separate closet by themselves; did they? A Yes, sir.

Q Now did you examine those closets? A Yes, sir.
The closets are still in our premises.

BY THE COURT:

Q What was the first thing you did after the fire, when you went into your stock room? A Well, we started --

Q No. What did you do? A Well, I just instructed the people what to do, to get the cigars together, and pack them up in different sizes.

Q Well, what did you look at, if anything. A No, nothing in particular. We just looked around, and, of course, the room was in a wreck. And, when they got them together, I discovered that certain sizes had been completely wiped out. We couldn't even find the boxes of them.

BY MR. NOTT:

Q And which were those? A The sizes that I have given you. We couldn't find any of those cigars, or even the boxes.

Q And on Saturday can you state whether there were boxes of those cigars in the factory? A Yes, sir.

Q To what amount? A The amount I have given you.

Q Did you subsequently go into the closets where the cigars of the sizes that you have mentioned were, on Saturday?

A Yes, I looked in them, after the fire, but there were no cigars in them.

Q Now state the condition of those closets where these cigars had been, and from which they were missing? State the condition of those closets, as to the fire? A Well, those closets were a little smoked on the outside; that's about all.

Q Was the floor burned in those closets? A No, sir.

Q Was any of the shelving consumed? A No, sir. The same shelving is there now.

Q Did you see in there the remains, ashes or charred remains, of any cigar boxes or cigars? A No, sir.

Q There were simply no cigars or cigar boxes there?
A No, sir.

Q Did you see Fire Marshal, Assistant Fire Marshal Sheehan there? A No, sir; he came after the fire.

Q Well, you saw him there; didn't you? A Yes.

Q And he made an examination; didn't he? A Yes, he made an examination.

Q Now, these cigars which you found to be missing of the sizes that you have mentioned, had any of those cigars been sold to anybody? A Well, different people buy them, of course.

Q But had any of the boxes of cigars that were missing been sold? A No, sir.

Q Had they revenue stamps affixed to them? A No, sir, they were all unstamped goods.

Q And did those boxes of those brands that you have named have your label on them? A Yes, sir; in the inside.

Q And can you state how many of them, if any, had bands on them? A Well, that I couldn't state.

Q Now you say, after this fire, you notified the insurance company? A Yes, sir.

Q After the fire did you ever go to the roof with anybody?
A Well, only when we were advised about the Police Department;

having recovered some cigars.

Q Then did you go to the roof? A Yes, sir.

Q With anybody?

MR. SPELLMAN: One moment. Just when was this?
Please fix the date.

THE WITNESS: Oh, I couldn't give you the date.

MR. SPELLMAN: Well, fix it by any incident, if you like. Was it weeks later?

THE WITNESS: Yes, several weeks later.

Q Now, do you remember going to the piano store of Schleicher? A No, sir; I went to Headquarters.

Q Well, do you remember when you went to Headquarters?

A No, sir. I remember it was a Friday evening, some weeks afterwards.

Q And when you got to Headquarters, what did you see?

A Well, they asked me if I could identify --

THE COURT: No, not what they said to you.

THE WITNESS: Well, I saw boxes of our cigars up there, unstamped, different sizes.

BY MR. NOTT:

Q And whereabouts were they? A They were over on a shelf, on the Grand street side, in the Detective Bureau, they were.

Q And who was present when you saw these cigars, in boxes at Headquarters? A Well, there was Detective Butts, Detective

Shevlin, from Headquarters, and Mr. Dougherty, Mr. Fitcher, and Mr. Donnelly from the Pinkerton Office.

Q And in their presence did you examine the goods that you found there? A Well, they had the cigars out on shelves there, but I examined them, and identified them as being ours.

Q Now will you step down here and look at these cigars please (indicating)? Now will you look in this valise and in this trunk that you see there, and state whose cigars those are that you find there? A The cigars belong to us, the La Barossa Cigar Company.

Q Now do you remember how many boxes you found at Headquarters? A I think there was 6875 cigars, if I am not mistaken.

THE COURT: Pardon me. Do you want those marked for identification?

MR. NOTT: Yes, sir, the trunk and valise containing these samples. I have had a sample box of each brought down.

(They are marked People's Exhibits 1 and 2 for identification.)

BY MR. NOTT:

Q Now, in looking over these cigars contained in these two receptacles, state whether or not you find there sample boxes of the various brands that you have mentioned here? A Yes, sir.

Q Now you say you identify them as your cigars? A Yes, sir.

PAGE 1260

Q Do you remember the factory number? A 449, Second District of New York.

Q And what does "25" mean? A Twenty-five in a box.

Q Now I show you the stamp on the bottom of these cigars. Is that the stamp giving the United States factory number?

A Yes, sir.

Q That is to say, under a revenue laws -- A That has to be on the bottom of each box.

Q The Revenue Department assigns to each factory a number?

A Yes, sir.

Q And that has to be stamped on each box? A Yes, sir.

Q And is the number I now show you stamped on each of those boxes your factory number? A Yes, sir.

Q And, in addition to that, your brand appears?

A Yes, sir.

Q Now, these cigars are put up, some in boxes of twenty-five -- A Yes, sir; and some in boxes of fifty.

Q Not in boxes of one hundred? A No, sir.

Q Now, on the day in question in September, you say you found some 6800 cigars at Police Headquarters? A Yes, sir.

MR. SPELLMAN: He said just 6875, Mr. Nott.

THE WITNESS: Yes, I said that.

BY MR. NOTT:

Q Now can you state to the jury whether the brands on those cigars that you found in Headquarters were the same brands that you have enumerated here? A Yes, sir.

Q And whether any of the boxes that you found at Headquarters had any revenue stamps on them? A No, sir, they hadn't.

Q Now, between the 6th day of August 1910, and the date when you examined these cigars at Headquarters, had you sent out from your factory any unstamped boxes of cigars?

A No, sir.

Q Except those that were missing on the night in question? A No, sir.

MR. SPELLMAN: Well, I don't understand that he sent those out. Did he?

BY MR. SPELLMAN:

Q Did you send out any such cigars? A No, sir.

BY MR. NOTT:

Q All right. Did you sell or send out from your factory any unstamped cigars? A No, sir, none whatever.

Q And, apart from the cigars that were missing from your factory on August 8th, had any unstamped cigars, between those dates, gone out from your factory? A No, sir.

Q Or prior thereto? A No, sir.

MR. NOTT: I ask to have this box marked for identification, as a sample.

(It is marked People's Exhibit 3 for identification.)

BY MR. NOTT:

Q Now Mr. Goodman, can you state the value of these cigars? Are you familiar with the market value of your cigars?

A Well, I know the prices for which we sell them.

Q And have sold them in the regular course of business?

A Yes, sir.

Q And I suppose these different brands bring different prices?

A Yes, sir. We have averaged them up.

MR. NOTT: I suppose you will concede that the 35,000 cigars were worth more than \$500., and then we will not have to go into a long computation.

MR. SPELLMAN: I will concede that, if you will concede that the amount of property found in the possession of the defendants, or in that place, which is now in the custody of the Police Department, or any other authority, who are now in charge of all the property recovered, is much less than \$400.

MR. NOTT: No, I won't concede that, until I interrogate the witness, because I don't know.

MR. SPELLMAN: Well, I thought we would save the time. That is the fact.

MR. NOTT: Well, if it is the fact, I certainly will concede it.

BY MR. NOTT:

Q Did you examine the property found in Headquarters?

A No, sir, I didn't examine it all. They had the different sizes there, and I just said that they were our goods.

Q Well, did you examine them enough to determine approxi-

mately how many boxes of cigars there were? A No, sir.

Q Well, you said that there were over 6000? A Well, that's the figures they gave me. They had the boxes all stacked around. I didn't count them.

Q Well, between what prices do the cigars of the brands you have testified to as missing run? A Well, our prices run from thirty dollars to \$120 a thousand.

Q They run from thirty dollars to what? A To \$120.

Q A thousand? A Yes, sir. And of the samples that we have there, they were almost all the highest priced stuff.

BY MR. SPELDMAN:

Q The samples that you have where? A In the court room now.

Q That is, you have seen about a dozen boxes in court?

A Yes, sir.

Q And you refer to them when you say that the samples run in the higher prices of \$120s? A Yes, sir.

BY MR. NOTE:

Q Now look at this truck and bag, and I ask you to enumerate what prices they bring, what they sell for, their market values, these cigars?

MR. SPELDMAN: I object to the testimony as to what the cigars sell for, as not the standard of value here. The defendants are charged with appropriating another man's property. The property cost the complainant so much

money to produce. I don't suppose they are charged with stealing the profits on the sale of the property. In other words, if the cigars cost the La Barossa Company five or six cents to produce, and if they can sell them for nine cents or even fifteen cents each, that these defendants can be charged with the profit on the sale.

THE COURT: It is the reasonable market value that they are charged with.

BY MR. NOTT:

Q Do you sell wholesale or retail? A Wholesale only.

Q And so that the prices that you give now are wholesale prices? A Yes, wholesale prices.

Q Now this box, People's Exhibit 3, is called "Epicures"?

A Yes, sir.

Q And what is the reasonable market value of those cigars on the 8th day of August, for a thousand of that brand?

A Seventy-five dollars.

MR. SPELLMAN: One moment, may it please the Court.

The defendants are charged in the indictment, and, after all, that is out guide, with having stolen 35,000 cigars, of the value of six cents each. Now that is what we are here to meet, cigars of the value of six cents each.

I don't take it that the witness will be allowed to say that they are worth ten or fifteen cents each.

MR NOTT: Some are worth more or less than six cents. That is the average.

THE COURT: I will allow the answer to stand.

MR. SPELLMAN: To save time, if your Honor please, I will concede that the reasonable market value of these cigars was, on the average, six cents each. Now, that is conforming to the indictment, and the District Attorney may put the admission in any language that he pleases.

MR. NOTT: All right. I will take the concession. You admit that these cigars were of the value of six cents each?

MR. SPELLMAN: It is admitted that the value of the cigars which are claimed to have been stolen, and which are the subject of this indictment, were, on the 8th day of August, 1910, of the reasonable market value of six cents apiece.

MR. NOTT: And that would make the total amount about \$2100.

MR. SPELLMAN: No, about \$400. That would be the value of the property you have on hand.

THE COURT: Very well gentlemen, the concession is on record. Proceed.

MR. SPELLMAN: But it only gives our respective contentions, or those that we will make, later on, your Honor,

BY MR. NOTT:

Q Did you ever sell, give, or dispose of any of the cigars mentioned to either of these defendants? A No, sir.

Q Did you ever have any business dealings with them?

A No, sir.

Q Or know them? A No, sir.

Q Did you ever authorize them to take either from your factory or otherwise any of these cigars? A No, sir.

MR. SPELLMAN: We admit all that.

MR. NOTT: You may cross examine.

CROSS EXAMINATION BY MR. SPELLMAN:

Q I would like you to examine this box which I show you, and I ask you whether that is one of the boxes, unstamped, which was part of the goods that were missing? A This is one of our sizes.

Q Just listen to my question, please. Which was part of the goods that were missing, as you have testified, to-day?

A Yes, sir, that is one of the missing sizes.

Q That is a box that contains cigars that were missing?

A Yes, sir.

MR. SPELLMAN: I offer it in evidence, to save time.

I don't want to mark everything for identification.

MR. NOTT: Well, I object to that as being marked as one of the missing boxes. I dare say that the witness testified that that is one of that brand.

MR. SPELLMAN: Now, please Mr. Nott don't suggest anything. The witness has testified. You were not listen-

32
ing to the testimony at that moment. The witness has testified that that was one of the kasing boxes, unstamped.

MR. NOTT: But he doesn't know. The stamp may have been taken off.

MR. SPELLMAN: Oh, I object to that, to any suggestion from the District Attorney.

THE COURT: Now, interrogate the witness as to when he last saw that box.

MR. SPELLMAN: No, if your Honor please I would like to have the testimony repeated by the stenographer, what the witness has already testified to.

THE COURT: It may be repeated.

(It is repeated by the stenographer.)

THE COURT: It may be marked for identification.

(It is marked Defendant's Exhibit B for identification)

BY MR. SPELLMAN:

Q You examined some cigars in this court room, this morning; is that right? A Yes, sir.

Q Take this box here, People's Exhibit 3 for identification. Do you say that that is one of the boxes which was missing? A Yes, sir.

Q You swear to that positively? A Yes, sir.

Q You will swear to that positively as to People's Exhibit 3 for identification? A Yes, sir.

Q And can't you swear equally positively as to Defendant

ant's Exhibit B for identification, which was just shown you?

A Well, I'll tell you --

Q No. Just answer yes or no.

THE COURT: No, he has started to answer you. Let him finish.

A (Answer continued) No, I can't.

BY MR. SPELLMAN:

Q Well, wherein is the distinction that enables you to testify that that is one of the missing boxes, the box produced by the People, People's Exhibit 3 for identification, and not to be able to swear positively as to this box produced by the defendant? Where is the distinction? A Well this one has the cigars in it, and this other one has none. You see we have a lot of empty boxes down there.

BY MR. NOTT:

Q That is People's Exhibit 3 for identification has cigars in it? A Yes, sir.

Q And the defendant's Exhibit B has not? A Yes, sir.
BY MR. SPELLMAN:

Q Did you ever give either of these defendants one of these empty boxes? A No, sir.

Q Did you ever sell to either of these defendants one of these empty cigar boxes? A No, sir.

Q Did you ever authorize anybody to give or sell them one of these empty boxes? A No, sir.

Q Are you accustomed to give out cigar boxes, empty cigar

boxes? A No, sir.

Q You have these cigar boxes manufactured for yourself?

A Yes, sir.

Q And you have them manufactured for the purpose of filling them with cigars? A Yes, sir.

Q And this is a cigar box that comes from your establishment? A It is one of our boxes. Our label is on it.

Q Your label is on it? A Yes, sir.

Q That is one of your brands, La Arrogancia? A Yes, sir.

Q And the Brand La Arragancia was missing from your establishment; is that right? A Yes, sir.

Q And this box was in your establishment; was it?

A It must have been, yes.

Q Well, this box, factory No. 449, Second District, New York, -- that is the factory number given to you according to the revenue law? A Yes, sir.

Q Have you ever given any of these boxes, these cigar boxes away to anybody at any time? A No, sir.

Q Your only object in having them is to fill them up with cigars; is that right? A Yes, sir.

Q Has this cigar box been stamped with the revenue stamp? Has the revenue stamp ever been on that box? Examine it very, very carefully? A No, it don't look as though it had.

Q Well, if a revenue stamp is put on a box, where would the revenue stamp be placed? Just indicate to the jury?

A Right here (indicating.)

Q It would be placed across the top of the box, and it would lap over on both sides? A Yes, sir.

Q And also where the box opens? A Yes, sir.

Q And which side of the box is it usually placed on?

A This side here (indicating).

Q Now I ask you to examine the particular side that you have indicated, where the stamp would be placed, and tell the jury whether, in your opinion, the stamp has been taken off, or washed off, or erased, or removed in any fashion whatever?

A Well, it don't look to me as if it had been.

Q And have you examined many boxes that had stamps on?

A On yes, quite a few.

Q And the stamp adheres to the box? A Yes, sir.

Q Very tightly? A Yes, sir.

Q And can you use a box again that has been once stamped?

A No, sir. Well, you can't use it. It's very hard to get the stamp off.

Q It's very hard to get the stamp off? A Yes, sir.

Q Have you ever tried to wash a stamp off a box?

A No, sir, I have not.

Q Have you ever seen a box where that attempt was made?

A No, sir.

Q You know of your own knowledge that it is very hard to wash it off, or remove it in any way, so as to clear the box of the stamp, without showing evidence of that having been

done? A Yes, sir.

Q And so that, in your opinion, this was one of the boxes that was amongst the stolen boxes; is that right? A Well, it is one of our boxes, of course, but, of course, I don't know where the box comes from.

BY THE COURT:

Q Do you manufacture your own boxes? A No, sir. There is a concern that manufactures our boxes.

Q And after the box is received at your factory in Pearl street is there anything that you do to the box, before you put cigars in it? A No, sir.

Q In other words it comes to you from the factory, with the labels already in it? A Yes, sir; just the way this box is here.

BY MR. NOTT:

Q That is, with the label and the stamp on the bottom of it? A Yes, sir, just in the condition that that one is in now.

BY MR. SPELMAN:

Q And your reason for being absolutely sure that People's Exhibit 3 for identification is part of the stolen property is because you find cigars in the box; is that right?

A Yes, sir.

Q That makes you absolutely sure? A Yes, sir.

Q So that, had I shown you this box now, with cigars in it, referring to Defendant's Exhibit D for identification, you

would have been equally sure?

MR. NOTT: I object.

MR. SPELLMAN: Now I want to ask the question, so as to have the witness clearly understood by the jury, whether, if this box contained the number of cigars that it is supposed to contain, and it was shown to him, would he then be as sure that this box was part of the stolen property as he would be about People's Exhibit 3 for identification?

MR. NOTT: And I object to that as immaterial, irrelevant and incompetent, and hypothetical.

MR. SPELLMAN: It seems to me that we are quibbling about a small matter, your Honor. Your Honor can see that the box has never been stamped.

THE COURT: I sustain the objection. He has given you his reason.

BY MR. SPELLMAN:

Q And that is the only reason that makes you sure in the case of the People's box and not sure in the case of this box.

A Yes, sir.

BY THE COURT:

Q What concern manufactures your boxes? A Schwartzkoff & Reichert, 35 Walker Street. And then another concern, Sladkus.

Q And they deliver the boxes to you? A Yes, sir.

Sladkus, 428 East 10th street.

BY MR. SPELMAN:

Q And they are both reputable concerns? A Yes, sir.

Q And you have not authorized either of those concerns to deliver this box to the defendants, or either of them?

A No, sir.

Q Or anyone in their employ? A Well, I don't see anybody in their employ, but they have instructions not to deliver the boxes to anyone but us.

Q No. That was not the question I asked you. Have you authorized anybody to deliver any of these boxes to anyone?

A No, sir.

Q Now you say that stock is taken once a month, according to the revenue laws to determine how many cigars you have manufactured during the month? A To determine how many cigars have been manufactured in the month, and how many we have shipped out, and how many we have on hand.

Q And that is one of the requirements of the revenue law? A Yes, sir.

Q And you have a book in which the record of that procedure is kept? A Yes, sir.

Q And you say that it shows the number of cigars on hand, on August 1st? A Yes, sir.

Q As about 85,000 cigars? A Yes, sir.

Q And, after the fire you counted the cigars? A Yes, sir.

38
Q And you arrived at a certain difference between the number on hand on August 1st, I suppose, and those that were manufactured between the 1st of August and August 6th inclusive?

A Yes, sir.

Q And the number you found on hand on August 8th, after the fire; is that right? A Yes, sir.

Q And then you deducted from that difference those that you had legitimately disposed of, between August 1st and August 6th? A Yes, sir.

Q And that deduction left the balance of 84,000? A Yes, sir.

Q And there being only about 50,000 on hand after the fire, you concluded that about 35,000 cigars were missing? A Yes, sir.

Q And that is where you get your information as to the number of cigars that are missing? A Yes, sir.

Q You didn't count the number of cigars that were on hand on August 6th, Saturday; did you? A No, sir.

Q You didn't personally count those that were on hand on August 4th, or 3rd, or 2nd, or on the 1st, either, after the inventory was taken? A No, sir.

Q Is that right? A That's right.

Q So that you don't know, of your own knowledge, though you closed the door, on Saturday night, and opened the place on Monday morning, how many cigars actually disappeared in that time? I am saying, of your own knowledge? A Yes, I do, of my own knowledge, because I do all the shipping out of the place. I know what goes out and what is manufactured.

Q You know what is manufactured? A Yes, sir.

Q But you don't carry the figures in your head, do you, Mr. Goodman? A No.

Q You relieve your mind by putting it on paper, or in books? Am I right? A Yes, sir.

Q And so that, having to do with the manufacturing, you nevertheless reduce to memorandum, how many cigars were manufactured? A Yes, sir.

Q And you did ~~not~~ depend upon your memorandum? A Yes, sir.

Q And hence, on August 1st, you found a certain number of cigars on hand? A Yes, sir.

MR. NOTT: I object to this, as repetition, your Honor.

MR. SPELLMAN: No, it is not repetition. And I haven't interrupted you once, Mr. Nott, and I thought you would let me go along quietly, without interruption.

THE COURT: Now, the witness has given you his sources of information. Why not proceed to something else?

MR. SPELLMAN: But it is very important to the defence to ascertain just the source of his information.

THE COURT: Well, he has given you his sources of information, or he has purported to do so, why he says the cigars are missing. But you may interrogate him further on that subject, if you desire.

BY MR. SPELLMAN:

Q Now the record of August 1st was jotted down? A Yes, sir.

Q And what was manufactured on that day? A Yes, sir.

Q And on August 2nd, 3rd, 4th, 5th and 6th? A Yes, sir.

Q The same is true of those other days? A Yes, sir.

Q The other days besides August 1st? A Yes, sir.

Q You don't keep in your mind the goods that were sold or disposed of, on each day; do you? A Well no goods were disposed of, without revenue stamps, and we had to keep track of the revenue stamps.

Q yes, exactly. When goods were shipped out revenue stamps were affixed to them? A Yes, sir.

Q But you didn't keep in mind just how many revenue stamps you purchased between August 1st and 6th; did you?

A No; we keep it in a book.

Q yes, you keep it in a book? A Yes, sir.

Q And you did not, every night, count how many cigars you had on hand, to see whether any were missing? A No, sir not every night.

Q And you didn't go that on August 6th, did you? A No, sir.

Q So that you can't testify then, of your own knowledge?

A Well, I can testify --

Q Of your own knowledge? A Of my own knowledge I can

testify that there were certain sizes, in certain closets, and on the 8th of August, those cigars were not there.

Q I see. You can testify that, to your own knowledge, that, on Saturday, you looked in certain closets? A Yes, sir.

Q And they were exposed, those cigars in them? A Yes, sir.

Q And you have given the dimensions of the closets? A Yes, sir.

Q On Saturday you saw a certain number of cigars, or brands of cigars, in your establishment, in different places? A Yes, sir.

Q And when you returned, on Monday morning, they were missing? A After the fire they were missing.

Q But how many of each brand you saw there, on Saturday, you will not swear to? A No, sir, I don't know the exact figures.

Q Exactly. That is just what I wanted to know. Now, I want to know how many doors 110 John Street is from your factory? A Well, our building is 118 John Street. Three hours between, I think.

Q And then 110 John Street is not two houses from 118, your place? A No, sir.

Q Now look at this photograph (indicating)? A yes, sir.

Q Is it a correct representation of your factory? A yes, sir.

Q And of the houses on the west? A Yes, sir.

Q Now just tell us please how many hours there are that you see there, and mark over each the number, as you know them. Or probably I can assist you, Mr. Witness, if you require it by indicating to you a house. Probably this will assist you. I can indicate a wall here, and ask you whether that is not the easterly wall of 110 John Street? A Yes, sir, I think it is.

Q Well, try to be sure, because we don't want to get more witnesses on the stand than are necessary, if we can help it?

A Well, that would be 110 John Street (indicating).

THE COURT: Now then, make your own mark and initials on that wall, with a pencil.

THE WITNESS: Yes, sir.

(The witness writes on the photograph.)

BY MR. SPELLMAN:

Q Now put a mark on what is 112 John Street, and your initials? A Yes, sir.

Q Have you done so? A Yes, sir.

Q Put a similar mark on what is 114 John Street? A Yes, sir.

Q Are you writing down the number of the house, too?

A Yes, sir.

Q That is good. And give us a mark for 116? A Yes, sir.

Q And your initials under it? A Yes, sir.

Q And 118 is your own building. You can mark, too, if you please, with your initials? A Yes, sir.

Q Now is that photograph you have in your hand a good representation of all the houses which you have marked off there? A Yes, sir.

Q Do you pass the place often? A Yes, sir.

Q And you say it is? A Yes, sir.

MR. SPELLMAN: I offer that in evidence, may it please the Court.

MR. NOTT: I shall not object on the ground of lack of technical proof, if the other side will consent to receive my photograph.

MR. SPELLMAN: Why, I will consent to anything. We are going to try to hurry this case right along. Anything you have, Mr. Nott, I assure you now we shall agree to.

MR. NOTT: On that statement, then, I waive any objection, and consent to the reception of the photograph.

MR. SPELLMAN: And I shall waive all technical proof as to the photographs he has in his possession.

THE COURT: Very well.

(It is marked Defendant's Exhibit C.)

THE COURT: I think it might be well for the witness to mark the loft in which the cigars were on that exhibit.

MR. SPELLMAN: Oh, yes, sir, if he can.

BY MR. SPELLMAN:

Q Mr. Witness, I show you another photograph and ask you whether you observe the premises 110 John Street. Let me ask you whether the premises which have the figures "110" written on them in pencil represent the premises 110 John Street?

A Yes, sir.

Q Will you put your initials under the figures "110", and will you kindly mark "112" in the same way that you have marked the other photograph? A Yes, sir.

Q Also "114". Is that on the photograph? A Yes, sir.

Q Is "112" on that photograph? A Yes, sir.

Q Is "116" on the photograph? A No, sir. And only part of "114".

Q Now is this photograph a good representation of the buildings which you have marked? A Yes, sir.

MR. SPELLMAN: I offer it in evidence.

MR. NOTT: No objection.

THE COURT: I will receive it.

(It is marked Defendant's Exhibit D).

MR. SPELLMAN: Now, in your presence, Mr. Nott, I will make an explanation of these photographs to the jury.

MR. NOTT: No, I object to that.

BY MR. SPELLMAN:

Q Now will you please indicate on this photograph where the police station is on John Street?

MR. NOTT: On what exhibit is that?

MR. SPELLMAN: On defendant's Exhibit D.

BY MR. SPELLMAN:

Q Show us the police station on that photograph? A Well, I suppose it is where this lamp post is here (indicating).

Q Now please write down "P.S", meaning not "Postscript", but "police station"? A Yes, sir.

Q You have put down "P.S" where the police station is; is that right? A Yes, sir.

Q And the letters are opposite a lamp post, which is shown on the photograph? A Yes, sir.

Q And has the lamp post a green glass? A Yes, sir.

Q Showing a green light? A Yes, sir.

Q How many doors west from 110 John Street is this police station? A I don't know exactly.

Q Well about? Perhaps this photograph will assist you? A I don't know the number of the police station.

Q Well, perhaps the photograph will assist you, besides your general knowledge. How many doors away is it? A I couldn't tell you. The number is either 98 or 100 John Street.

Q So that it about six or seven doors to the west? A Yes, sir.

Q And how much frontage has the police station? Do you know? A I don't know. It is a single building.

Q Then about 25 or 50 feet? A No; it is a single building, about 25 feet, I suppose.

Q Do you know how many feet high is the wall that separates the building 110 John Street from 112? A No, sir.

Q You never measured it? A No, sir.

Q Do you know how many feet high is the wall above the roof, how many feet high is the wall of 116 John Street above 118 John Street? A No, sir.

Q And the other question as to the height of the wall was intended to mean above the roof? A No, sir.

MR. SPELLMAN: Now, I would like to explain to the jury these exhibits.

MR. NOTT: And I object.

THE COURT: Just hand the exhibits to the jury. They may see them, those that are in evidence.

MR. SPELLMAN: But I just want to explain them to the jury, the numbers that he has put on.

MR. NOTT: Well, the jury can see them plainly. I can see them as plain as day.

MR. SPELLMAN: Now I ask you to look at these exhibits, gentlemen; and, where you find figures, the witness meant that to be the number of the house. And that lamp post there indicates the lamp post in front of the police station, which is six or seven doors to the west, as the witness stated. If your Honor will grant the jury a few moments to look at the exhibits?

THE COURT: Why certainly.

MR. SPELLMAN: With your Honor's permission, the building 112 is dark on the photograph, and the witness did the best he could by writing the figures on it, but they must be very closely looked at.

MR. NOTT: Well, I think if the jury can determine from the photograph just where 100 and 114 are, they can very readily determine where 112 is.

MR. SPELLMAN: And I think they can now, after your very lucid explanation, which is certainly more full than I ventured to make.

BY MR. SPELLMAN:

Q Mr. Goodman, have you ever tried to walk from the building 110 John Street to the building 118, across the roofs? A No, sir.

Q You didn't examine the scuttle on your roof until several weeks after the fire; is that correct? A Yes, sir.

Q And who were you with at the time? A I guess it was someone of the Central Office men, or one of the Pinkertons. I am not sure which.

Q Was Mr. Dougherty there at the time? A No, sir.

Q Or Mr. Butts? A Mr. Butts, I think, was there.

Q Was Mr. Shevlin with you at the time? A No, sir.

I think it was Mr. Pitcher or Mr. Donnelly from the Pinkerton men.

Q How many were with you at the time? A I think there

were only two, besides myself.

Q The Pinkerton men, had they been coming in and out of your place, your establishment, since the fire? Had they been coming in and out frequently? A No, sir, they hadn't.

Q How often had they been there since the fire? A Oh, I couldn't tell you that.

Q And your proofs of loss were delayed in forwarding them to the insurance company; weren't they? A No, sir. They were fixed up the next day after the fire, or the same day.

Q You say you submitted them to the insurance company the day after the fire? A Well, our insurance adjusters had them. I can't say about that.

Q And weren't you in doubt as to how many cigars were missing? A No, sir.

Q Or injured by fire? A No, sir. We had in there the total amount of cigars missing, about 35,000.

Q Well, some payment was made for missing cigars; was there not? A I don't know about that. No payment has been made yet at all.

Q I mean for goods out of sight? A I don't know.

Q How many scuttles have you on your roof? A Well, there is three scuttles and one skylight on the roof.

Q Do you know the condition of the other premises, 112 and 114, or 116? A No, sir.

Q Or 110? A No, sir.

Q Now you say when you left the premises, on Saturday, you locked the Pearl Street door? A Yes, sir; with a pad lock, and a lock on the door.

Q You didn't lock the John Street door; did you? A No, sir.

Q When you left? A No, sir.

Q And you were the last one out of the building? A The John Street door was locked when I left.

Q Well how do you know that? A Because I had occasion to go up John Street, and I saw the lock on the door when I went up that way.

Q You had occasion to go up John Street and saw the lock on the door when you went up that way? A Yes, sir.

Q Now was it an ordinary pad lock? A A pad lock and the other lock. There were two locks on it.

Q Two locks? A Yes, sir.

Q And you saw the pad lock in position; is that the idea? A yes, sir.

Q In a position indicating that it was locked? A Yes, sir.

Q In a position that indicated that it was closed? A Yes, sir; closed, and through the staple in the door.

Q It was through the staple on the door, and latched together, indicating that it was locked? A Yes, sir.

Q Well you can produce that same effect, can't you,

when you don't lock the pad lock? A Well there is a rod -- a staple and bar going across, and then you put it through the staple and then the lock is locked, you lock the door.

Q I understand. It went through the staple? A Yes, sir.

Q And wouldn't one of those pad locks give the same appearance, if you didn't turn the key? A I don't know anything about that.

Q But you didn't go up to the door and try it; did you?

A I went up to the door and tried it, as I do every other night.

Q You tried the locks, to see whether they were closed?

A Yes, sir.

Q Didn't you testify, a moment ago, that you passed up John Street and saw the locks on the door? A Yes, sir.

Q You didn't tell us in that answer that you went up and tried it; did you? A Well, I can tell it that way, as long as you want it that way, that I stop, and try those doors every night.

Q Well then you say it because I want you to say it that way; is that it? A No, sir; I answered your question before, and I answered the question that you put now.

BY THE COURT:

Q Mr. Witness, did you close up the place yourself, on Saturday? A Yes, sir.

Q And you were the last person there? A Yes, sir.

Q And your office is on what floor of the building?

A It is up one flight.

Q It was up one flight? A Yes, sir.

REDIRECT EXAMINATION BY MR. NOTT:

Q Is there an employe of your company, by the name of Schlosser? A Yes, sir.

Q Was he there when you closed, on Saturday? A Well, he left a few minutes before me, possibly ten minutes.

Q And is he employed in the stock room? A Yes, sir, upstairs. He is a packer on the stock room floor; yes.

RE-CROSS EXAMINATION BY MR. SPELLMAN:

Q Now, in what part of the premises was the fire?

A Up two flights. That's the second floor, I guess.

Q Well, we will call that the third floor. So this was on the third floor, wasn't it, Mr. Goodman? A Up two flights of stairs.

Q Very well, we will take it that way. It was up two flights of stairs? A Yes, sir.

Q And the fire was limited to one room? A There is a double building there. You can't see it from John Street or Pearl Street, and it was in the inside room, and the part where the cigars were kept was burned out.

Q Where these missing cigars were kept, A Yes, sir.

Q It was all burned out. A Well, there was a pretty good fire. It wasn't all burned out. I wouldn't say that. There is closets there yet where the cigars was in.

Q How is that? A The closets are still there where the cigars were. They weren't burned up.

Q Well, there is a lot of shelving still there; is there not, too? A Yes, sir.

Q And is the shelving made of wood? A Made of wood, yes.

Q And that applies to all the shelving on which all these missing cigars were? A Some of these cigars were in closets;

not out on shelves.

Q And how many were on shelves, and how many in the closets? A I couldn't tell you.

Q Half? A I couldn't tell you.

Q Or a third? A I couldn't say. Very few, I guess.

Q Well, at any rate, the shelves were intact? A Yes, sir.

Q Well, they were not burned out? A No, sir.

Q Now, about the closets. Just describe what that is, please, a closet? A What closet?

Q The closets where the missing cigars were kept?

A Well, there were different closets, zinc lining in them, and some had zinc lined shelves in them.

Q And were they burned out? A No, sir; some of them were just a little smoked.

Q And the most of the cigars were kept there? A Yes. Well, I won't say most of them. They were in different closets.

Q Well, in other words, none of the places where the missing cigars were kept, were burned out. A No, sir.

Q The shelves and closets were in good condition, except that they may have been smoked a bit, but fire had not reached them? A Well, fire hadn't reached them, because the closets are there, and the shelves are there.

Q And then the answer is that fire had not reached them; is that right? A I don't know what you mean. Certain clos-

ets the fire didn't reach, and others it did reach.

Q Where these goods were kept? I am speaking now of the missing goods. Did the fire reach any part of the premises where the missing goods were kept? We want to know that?

A Well, that I don't know how to answer, because the ceiling had been burned, and they did a lot of repairs down there, since the fire.

BY THE COURT:

Q Well, did the fire reach the inside of any of the closets in which any of the goods were kept? A No, I don't think it did.

Q Now, are you certain about it? A Well, I will tell you, some of the closets are there now, and some we have thrown out.

BY MR. SPELLMAN:

Q You have thrown out for what reason? A Because they were smoked.

Q A little charred, do you mean? A Yes, sir.

BY THE COURT:

Q On the outside or inside? A On the outside.

Q Were any of them charred on the inside? A No, I don't think they were.

MR. NOTT: Are the witnesses to remain in the court room, after they testify, or are they to go out, if your

Honor please?

MR. SPELLMAN: Well, they might be recalled, your Honor.

THE COURT: Very well; just as you gentlemen wish.

MR. NOTT: Well, I don't see what good it does to exclude them, after they have testified, if they can go right outside, and communicate with each other.

MR. SPELLMAN: Well, I would prefer that they should go out. They may be recalled.

THE COURT: Then they may go out, after they are examined.

PHILIP SCHLOSSER, of 444 Evergreen Avenue, Flatbush, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NOTT:

Q Mr. Schlosser, are you employed by the La Varossa Cigar Company? A Yes, sir.

Q And how long have you been in their employ? A Well, almost three years.

Q And how long have you been in the cigar business? A Well, for about thirty-five years.

Q Will you speak a little louder, so that all the jury can hear you? And what are you employed at, at this company's

5

place? A Why, I am a cigar packer.

Q You work in the stock room? A Well, I have to go into the stock room, every day, to get my cigars out on my packing table.

Q Well now where do you pack the cigars? On the same floor as the stock room, or a different floor? A Well, I pack them on the same floor, in the corner building. There are two buildings connected by a door.

Q That is to say, fronting on John Street? A Yes, sir. And, after the cigars are packed and pressed over night, they are taken into the stock room, which is in the next building, and put in the closets.

Q You don't have to go outside on the street to do that? A Oh, no. You go through a doorway.

Q The premises are all the premises of this company? A Yes, sir, that's right.

Q That is to say, which is shown on this picture here, there is one building in the rear and one in front?

MR. SPELLMAN: Will you identify the picture, Mr. Nott?

MR. NOTT: Exhibit C.

A There is the building where I pack, and there is my table (indicating), and here is the window, and this is a window right opposite, and that is the door of the inside building

CASE 1260

6

in Pearl Street.

Q And you indicate the third story middle window?

A Yes, sir.

Q And this is the stock room window (indicating)?

A No, sir; it faces -- now, suppose this is John Street (indicating) and right opposite that there window there, that's where the door is, that's where you go into the other building and that's where the stock room is located (indicating).

Q On the same floor? A Yes, sir.

Q Do you remember on Monday, August 8th, when there was a fire in the building? A Yes, sir.

Q And do you remember the previous Saturday to that?

A Yes, sir.

Q And were you working there on the previous Saturday?

A Yes, sir.

Q And when did you leave on that previous Saturday?

A Well, it must have been about half past one.

Q And before you left there on Saturday, the 6th of August, were you in the stock room? A Yes, sir; I was within ten minutes before I got out of the factory, because I got through with my lot, and whenever you have a few cigars over, you have to return them, and I went into the stock room, and saw the closets open.

Q And how many closets were there in the stock room?

A About eight closets, packed with cigars.

Q And did you have occasion to look into these closets where there was packed stock? A Yes, sir; packed in boxes.

Q Did you on that day look into any of these closets?

A I did. I seen every one of them.

Q Now what time did you arrive at the factory on Monday morning, the 8th? A Well, I arrived there before it was time to go to work. My time is generally anywhere from half past seven to eight o'clock, and I was there, that morning, I should judge about twenty minutes after seven.

Q Yes. A And my foreman wasn't there yet, and so I walked down to Fulton Street, and, when I come back again, I seen the fire engines coming back there, and I seen the place was burning.

Q Did you go up? A Well, not until about noon time.

Q About noon time? A Yes, sir, I went up then.

Q And when you got up there, were the firemen still there? A No, they had gone. There was a ~~fx~~ fireman in charge of the building.

Q And where were you during the fire? A Right opposite, outside of the building.

Q And did you see any cigars taken out of the building

8

while you were waiting outside? A No, I am positive none was taken, because it was well policed, and nobody could get away with any cigars there.

Q And when you went upstairs after the fire was put out, did you then look into the closets in the stock room?

A Yes; and there was nothing in them closets then.

Q That is to say, when you examined the closets after the fire, in certain closets you found nothing? A Yes, sir, that's right.

Q And in how many of those closets was that the case?

A In two closets, where the highest priced goods was kept. They were empty.

Q Now take those two identical closets, did you look into those closets on Saturday? A Yes, sir; I did.

Q And how many cigars, according to your judgment, were there in those two high priced closets on Saturday?

A Well, I should judge that there was all of about --

MR. SPELLMAN: I object to his judgment.

THE COURT: Oh, I will allow him to finish his answer. Proceed.

A (Continued) I couldn't exactly guess, within a box or two, how many.

BY MR. NOTT:

Q Well, then give us your best judgment? A Oh, I should

judge from eighteen to twenty-two thousand cigars.

Q In the two of them? A Yes, sir; in the two of them.

Q And were those closets, when you saw them on Saturday, full? Tell the jury how they were as to being -- were they filled, or half filled or a quarter filled, or how were they?

A Well, we will say pretty well filled. You see, sometimes, you might have boxes stacked up in a row, ten boxes high, according to the different grades, and ~~xxx~~ in the next, only five or six boxes high.

Q Well, you describe each of those closets as being pretty well filled then, on Saturday? A Yes, sir.

Q And did you look into those two closets on Monday?

A Yes, sir.

Q And were there any cigars in them, or in either of them? A No, sir.

Q And state as to the other closets. In looking into them, did you find any other cigars missing? A Well, in the unpacked closets, where the cigars were that were ready, but not packed, they were pretty well filled. There was very little missing of them.

Q Now then take the other closets where they were packed.

A Well, all of the cheaper grade cigars, in another closet, in different closets, there was quite a good number of them.

There was some tumbled off the shelves by the firemen, but we

found them there, and knew they belonged to that particular closet.

Q Now did you see those goods afterwards removed from those closets, and stock taken? A Well, it was between twelve and one, and I helped to clean up. Of course, there was lots of loose cigars and boxes burned and half burned, and bands laying around, but we couldn't get no trace of the finer grade of goods, and my foreman told me specially --

THE COURT: No, not what your foreman said.

BY MR. NOTT:

Q Now will you describe to the jury the condition of the two closets where you say there was absolutely no cigars left, as to being burned or not burned? A Well, they were pretty well burned outside, but they are still standing in the building there, to-day.

Q Well how about the inside? A Well, they were not so much burned. Inside they were only scorched.

Q Well; was the zinc lining melted or running inside?

A No, because there has to be a great deal of heat for that.

Q Well in those two closets were there the ashes of boxes or cigars? A No, sir; none whatever.

Q Now do you know from your own observation and inspection of the premises, before and after approximately, how many cigars were missing?

A Did I know?

61

Q Yes. A No, I don't know how many was missing.

Q Well, can you give an estimate of how many were missing?

MR. SPELLMAN: I object to that, if your Honor please.

THE COURT: Sustained.

BY MR. NOTT:

Q Now, can you state, apart from the two closets where the high priced goods were kept, whether you saw that, in other closets, there were fewer boxes than there were on Saturday?

A Will you please repeat that?

Q Now, leaving out the two high priced closets that we have spoken about, and taking the remaining closets, when you looked into those closets, can you state whether there was many boxes in those closets as there were on Saturday, or fewer boxes? A No, sir, I couldn't, because some of the closets were dumped over by the firemen, and some of the cigars, too, were scattered.

Q And now the goods that were dumped on the floor, were there any of the high priced cigars from those two high priced closets? A No, sir, none at all. We couldn't find one of them anywhere.

CROSS EXAMINATION BY MR. SPELLMAN:

Q What was your business in this establishment? A I was there as packer, packing cigars.

Q Packing cigars? A Yes, sir.

Q Were you a shipping clerk, may I ask? A Oh no. That's a different branch.

Q I just wanted to know what you were here? A Oh no. I was a packer.

Q You mean you packed the cigars in boxes for shipment?

A Yes, sir; packed the fresh cigars in boxes.

Q That was your only business? A Yes, sir; right there, yes.

Q Did you make any memorandum of the cigars that you packed away? A Yes, sir.

Q After you packed cigars into the boxes, would you make a private memorandum of it? A Yes; I have a ~~boxed~~ memorandum of my own. Our work is piece work, and I know that these goods that are missing I had packed the very week before the fire, and the week previous, the high priced goods, and I have it right here, in black and white.

Q In other words, the high priced goods which you have mentioned, that were missing, you didn't pack them all on August 6th? A Oh, no, sir, the week previous, and even some, the week before that, I think.

Q In other words, they were packed within the course of three weeks? A Well, say, in the course of four weeks.

Q And in the course of four weeks before the fire, you packed these high grade goods that you speak of? A Yes, sir.

Q And, after packing them, you make a note of the work that you do, for the purpose of being paid at the end of the

week; is that right? A Yes, sir.

Q You don't keep any memorandum of the goods that are sold? A No, sir, none whatever.

Q Or for which revenue stamps are bought? A No, sir.

Q That doesn't come in your department? A No, sir.

Q Or as to how much stock is on hand at a time, that doesn't come into your department; does it? A Well, we can't avoid seeing what is on hand.

Q Well, I didn't ask you anything about that. Does it come into your department to see how many cigars are on hand? A No, sir, it doesn't.

Q I thank you for that answer. You are not the stock clerk there? A I am not the stock clerk.

Q There is a stock clerk there; is there not? A Why sure, the superintendent.

BY MR. NOTT:

Q Do you mean Mr. Goodman? A Yes, sir.

BY MR. SPELLMAN:

Q When did you leave on Saturday August 6th? A Well, it was anywhere close to half past one.

Q Were you the last one? A No, sir; next to the last.

Q Who was the last one? A I think Mr. Goodman.

Q Well, do you say that you looked at these cigars on Saturday, before you went out? A Yes, and I do, every day.

Q When did you look at these high grade closets, on Saturday? A I couldn't say exactly; around noon sometime.

Q Did you place these cigars in those compartments or closets, or were they placed there by somebody else? A Well, they were placed there by somebody else.

Q You had a certain counter on which you left certain boxes of cigars, and someone else took them away? A Well, sometimes I placed the cigars in the closet myself, and sometimes my superintendent does it. I only do it to help him out, when he is very busy.

Q Did you place any in those two high priced closets on that day? A No, sir.

Q Or during the week previous? A No, sir; I think I didn't place any in there during the week previous.

Q That would carry it back to the first of August?

A Yes, sir.

Q These high grade cigars, the closets in which they were kept, were they open and exposed? A Yes.

Q Do you know how many goods were sold or shipped from those two compartments, that week? A No, sir, I haven't any idea.

Q And you don't know how many were taken out; do you? A No, sir.

Q Are these cigars just put up in one row or are there a number of rows in back of the front row? A There are a number of shelves in each closet.

Q And the shelves are how deep? A Well, they are about that deep (indicating).

Q No, not the height. I mean the depth? A Oh, three and a half or four feet.

Q And the cigars are placed up in rows? A Yes, on the shelves. There is a closet, which I should judge is about -- Well, there were some there wider than others. Some were four foot and others six foot high, and then they have six or eight shelves, that far apart (illustrating).

BY THE COURT:

Q And how far back do the shelves extend in the closet?

A About four foot.

Q That is the depth of the closet or of the shelf?

A That's the depth of the closet.

Q Well, what is the depth of the shelves? A Well, the shelves go back all the way, pretty near four feet I should say -- four feet, I should say.

BY MR. SPELLMAN:

Q And those four feet are used in piling up cigars; aren't they? A Yes, on every shelf.

Q And you couldn't see behind the first row of boxes, could you; you couldn't see how many boxes were behind them?

A Why, sure, if I stand in front of a cigar closet, I can.

Q Well, how can you? Isn't your view obscured by the first row? A Why no. I know how cigars are piled up. They don't pile up a big pile in front, and leave everything at the back hollow. The rule generally is to fill up the back of the

closet first.

Q And how many rows were filled up in this instance?

A Every shelf was filled up, pretty near, from back to front.

Q Back to front, filled up? A Yes, sir.

Q Well then how could you tell what was back of the front row, if they were all filled up? A Well, probably there was a row that wasn't filled up as high as the others, and, instead of being thirty boxes, to make it even, that row might be six boxes high, or the row behind it seven or eight boxes high, or nine boxes high.

Q Well, we understand that. It was in the shape of a ladder. But was that so that you could see that the back rows were filled up or not? A Yes, in some instances I could see the back rows, but in some I couldn't.

Q And are you sure how many cigars were there on Saturday. It is a little important, Mr. Witness. A I told you I couldn't tell to the cigar, but I would guess it to be between eighteen and twenty-two thousand cigars, because the cigars were fifty in a box, and twenty-five in a box, and you can't judge, off hand, to a couple of thousand cigars.

Q Now were those cigars just one quality of cigar, just one name? A No, they were different brands, and different sizes of cigars.

Q But you refer to them as high quality cigars? A The high grade goods, I said.

Q And what is the price of those goods; do you know?

A I don't know that. We only know that for a higher grade goods, we get a higher price for packing them. That's the way we are paid.

Q Are you sure that there was not as few as 7,000 there, on Saturday? A No, I am sure that there were at least twice as many as that.

Q How many were there on Friday? A Well, I can't tell you off hand, because they ship every day, and we pack every day cigars; and whatever they use, ship out, is taken out of the closets, and whatever has been taken out, the closets is refilled again.

Q Now do you know whether the cigars that you speak of, eighteen or twenty thousand, were stamped or unstamped?

A I mean boxes, no stamp.

Q Now how many were there the previous night? I want to know how you reach that figure? A Well, I reach that figure because I have an idea of how many cigars a cigar closet holds.

Q Well, give us your idea of the previous night, Friday?

A Well, I didn't see it on Friday night. I seen it on Friday afternoon, about four o'clock.

Q August 5th? A Yes. Well, the closets were very well filled. There was different sizes and grades, and they are all kept separate, you know.

Q Did you notice any difference on Friday evening, as to the number in the closets? A No, I didn't, not as to the high grade goods; no difference between Friday afternoon and Saturday.

Q Now how about Thursday? A Well, I can't recollect exactly, but I know that these closets where the fine goods were, were generally filled up, because we were pretty busy on those goods, making them up for stock.

Q And these two closets held about how much of the entire stock of the place, of the entire stock that was there, on Saturday? A Of the entire stock?

Q Yes. You say that these two closets had from eighteen to twenty thousand odd cigars, on Saturday? A Well, I should judge in the place -- well, I should judge they carry from seventy-five to eighty thousand cigars. That is my judgment.

Q In the whole place? A Yes, sir, altogether.

Q So that these two closets held about one-third of the whole stock; is that right? A Well, I haven't figured it out.

Q Well --

MR. NOTT: No, about a quarter of the stock.

BY MR. SPELLMAN:

Q Well, that is nearer a fourth than a third. Between a third and a fourth; is that right? A Well, you know what

CASE 1260

the fourth of the stock was. I should judge there was from eighty to eighty-five thousand cigars, that is, cigars in boxes; all the cigars in the place.

Q Have you had any conversation with anybody connected with this case, any police officer or Pinkerton man? A No, sir; I never saw any one, and never spoke to anybody.

Q Did you speak to Mr. Goodman about the case, about what you knew about this case? A No, sir. We only attend to business there. He gives out a lot of cigars, and we attend to them, we pack them. He never spoke to us about the case. I didn't know that I was to be a witness in this case until half past nine or ten o'clock this morning.

Q Not until half past nine or ten o'clock this morning?

A No, sir.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until 2 o'clock).

CASE 1260

After recess.

PHILIP SCHLOSSER, his cross examination being continued, testified as follows:

CROSS EXAMINATION CONTINUED BY MR. SPELLMAN:

Q Mr. Schlosser --

THE COURT: I will hear you now, gentlemen, if you care to be heard, on that application that was to be argued at this time.

MR. SPELLMAN: Oh thank you, sir. I have left my books in the office, but I can go over it very fully, though.

THE COURT: Before you argue it, I would like to see the pardon. I would like to read it.

MR. SPELLMAN: It is a full release by the Governor of the State, your Honor. Now, your Honor --

THE COURT: Pardon me a moment, until I read this.

MR. SPELLMAN: I beg your Honor's pardon.

THE COURT: Now I will hear you, Mr. Spellman.

MR. SPELLMAN: The pardon which your Honor has examined, I think you will conclude is a full and unconditional pardon.

The authorities hold that a pardon of that kind wipes out not only the punishment, but all the stigma and everything that goes with the crime which is pardoned.

That being the case, it is our contention that you cannot predicate a second offence on the conviction in that case. If the pardon takes away with it everything, why it wipes out all that ever was, that ever could attach to the crime of which he was convicted.

Now, the authorities, I believe, hold those propositions. I am told that your Honor has 53 Hun before you. I was going to send for it, but Mr. Nott said that you had it on your desk.

That was the case of the People against Price, and it was affirmed in the Court of Appeals, on the opinion of the lower courts, and we will therefore assume that it is the law of the State.

But, if it is intended to use that case against the proposition which we advance, I think that your Honor, with a little explanation, will at once see the distinction between that case and the case here. I think it is a case that applies here.

In the Price case, your Honor, there was a conviction in the State of Georgia, and there was a pardon by the Governor of the State of Georgia. Price came here, and was indicted for committing an offence in this State, and they charged in that indictment that that offence was a second offence, and predicated the second offence on this crime which he committed in Georgia, and of which he

CASE 1260

was pardoned.

The trial court allowed it to go to the jury, who found Price guilty, as a second offence, and the Appellate Division, or at least the General Term, affirmed it, and it was affirmed by the Court of Appeals.

I believe it is Judge Landon who says that the Legislature of this State had the right to enact the law that one who committed a crime in another State, and then who committed one here, could be tried as a second offender; and they had a right to regard the crime committed in the other State, of which he stood convicted, as sufficient to form the basis for the second offence, whether it was pardoned or not; and in that respect the case is different than the case here.

In other words, it was held that our Legislature had the right to determine what was a second offence, and they could use as the basis of it an offence committed in another State, which was pardoned in that other State.

And you will observe the opinion, that it speaks of the fact that the Georgia Legislature could not set aside the executive act of pardon in the State of Georgia, but this State Legislature, in New York, could set aside the executive act of the Governor of the State of

1260
CASE 22 1260

Georgia, and reasons out -- and I would like the opinion before me, so that I could show it to your Honor.

THE COURT: I have read it.

MR. SPELIMAN: And that it would not apply to a pardon in this State; that, in other words, the Constitution of the State of New York gives to the Governor of the State the absolute right of pardon. That comes from the Constitution of New York State, and the Legislature certainly cannot enact any laws contrary to our Constitution. The Governor of this State having just exercised that constitutional power, and having pardoned the defendant, the Legislature cannot come along and say, "We shall take away some of the effect which this pardon is entitled to, and allow the offence of which he stood convicted to be used as the basis of a second offence, if he commits another crime."

CASE 1260

1

THE COURT: I understand your contention.

MR. SPELLMAN: Your Honor does understand it?

THE COURT: Yes. Now, what have you got to say in regard to the case of Roberts against the State, reported in 160 New York, at page -- well, the opinion begins at page 221?

MR. SPELLMAN: Was your Honor the book before you?

THE COURT: Yes, you may see it.

MR. SPELLMAN: Why, this case, of course, does not treat the proposition in the same light in which it is being handled here. As I understand that case, it is an action in the Court of Claims where one seeks damages for an arrest and conviction, duly had at the hands of the jury, and remaining unreversed. And, because this man was pardoned, he went further, and tried to get damages against this State.

And, in that case, they held that the effect of a pardon was not to so far extinguish a formal conviction, as to make it assertive of his absolute innocence, and upon which could be predicated a claim for damages.

But here is a different case, may it please the Court. We are confronted here, not with the same rules of construction as would be used in that case, but a claim for damages was made. But here is a penal statute which

must be strictly construed.

MR. NOTT: No, the Penal Code says the statute is to be construed reasonably, not strictly.

MR. SPELLMAN: But we are not to give it that strained construction which will deprive a person, charged with crime, of certain rights that he has.

THE COURT: I think, Mr. Spellman, I can state in a very few words what I conceive to be the question of law in this case, and it is this: It is whether the enhanced punishment which the law says is to be inflicted where a person is convicted under an indictment charging him with a crime as a second offence, can be said to form any part of the penalty attaching to the commission of the original offence.

If it can ^{not} be said to form any part of the penalty attached to the original offence, then the pardon, as I would be inclined to think, at first blush, would be entirely inoperative to lessen the effect of the penalty or punishment so attached, as the result of a conviction under such an indictment. If it can be rightfully contended that the enhanced punishment is part of the penalty attaching to the commission of the original offence, then the Constitutional question suggested by you is one to

determine the decision of this motion. Now, have I made that plain?

MR. SPELLMAN: Exactly.

THE COURT: Now, I will say to you very frankly that I rather gather -- the subject is not, perhaps, quite as clear as it might be -- I rather gather from the language of the case of the People against Price, that the enhanced punishment, in the event of a conviction for a second offence, forms no part of the penalty attaching to the commission of the original offence. And I may say, also, that I rather gather that from the language of the decision of the Court of Appeals in the case of Roberts against the State.

In that latter case, Judge Martin says: "We think the effect of a pardon is to relieve the offender of all unenforced penalties --" but he does not stop there -- "annexed to the conviction". That is to say, it is a relief of all unenforced penalties annexed to the original conviction.

Now, the only unenforced penalty annexed to the original conviction, it seems to me, would attach where the pardon was granted during the actual incarceration of a defendant, under sentence on the original conviction, and

the continued deprivation of the rights of citizenship.

I would say that a pardon, a full pardon, as this is would have relieved the defendant named in the pardon of any balance of an unexpired term of imprisonment, had he been imprisoned at the date of the pardon, and would have restored him to the rights of citizenship.

I do not see that the enhanced punishment provided for where an indictment charges an offence as being a second offence, forms any part of the original penalty, and, therefore, apparently does not constitute suffering from which the pardon relieves.

Now, I would be very glad to hear you on that. I do not know that I have made it entirely plain to you.

MR. SPELLMAN: Oh, yes, sir, it is very clear to me, your Honor. May I have that case of the People against Price, your Honor?

THE COURT: I think that your contention that the case of the people against Price is not a controlling authority, because of the circumstance that there the original conviction was in Georgia, and the pardon was in Georgia may be true. But, at all events, there is an intimation there that the Constitutional question might arise in this State, where the pardon was, by the Governor of this State, on the theory that any action by the

Legislature, any limitation of the Constitutional power to pardon, would be unconstitutional.

MR. SPELLMAN: Now, you will observe, may it please the Court, in the people against price, it quotes the United States case, stating what is intended by a pardon.

THE COURT: Yes.

MR. SPELLMAN: And what was said in the case of Roberts against the State, 160 N.Y., in giving the effect of a pardon, doesn't mean that that is the only effect that the Court of Appeals of this State would give to a pardon. I don't understand that they enumerate and limit themselves to the only effect to be given to a pardon. Probably it was sufficient for that case to give the definition of what rights accrue under a pardon.

You see the case was not squarely presented, may it please the Court. It was not a case where the man was being tried for a second offence, and where the defendant claimed that the offence of which he had been convicted and was afterwards pardoned, was presented, that that question was presented.

THE COURT: Yes, I see. You can only use it by way of analogy.

MR. SPELLMAN: And it is very unfortunate that we haven't more on this subject, but I hope we won't be fore-

ed to make any law. But the People against Price seems to be the only case in the courts where it was passed upon by the higher courts, the assertion that the pardon relieved him of all liability. And in the case in the United States Supreme Court, 4th Wallace, the Court said (reads). And in this State, the people against Price, the Court here held that the pardon in the case of Price was not sufficient, because the first conviction was in Georgia, and the pardon was given there. I will read further from the Price case (reads).

THE COURT: Now, if you will read from the next page, you will find that they discussed there what would have been the effect, had the question arisen in Georgia. You will find a line or two that I have marked there. And that is why I say that the intimation at least is that the enhanced punishment attaching to a conviction on an indictment charging the offence as being a second offence is not part of the penalty attaching to the conviction on the original conviction.

MR. SPELLMAN: I think the question, may it please the Court, as far as it is for the first time presented here, and I am willing to go through it very fully, and I don't know whether it has been ever taken up before in a case that your Honor has tried, but I am perfectly wil-

ling to spend a great deal of time on the subject, and come back when I am fully prepared, although I feel I am fully prepared, as far as the cases of record are concerned.

THE COURT: Mr. Nott, is there any additional light that you can give us on the subject?

MR. NOTT: I have studied the cases on the subject very thoroughly, within the last few days, your Honor, and it seems to me that it is very clear that there is ~~an~~ absolutely no authority adduced by Mr. Spellman in support of his motion -- of his main contention that the pardon wipes out the crime, and leaves it as though it had never been committed, except certain dicta in the United States Supreme Court. Of course, in a dictum proceeding from such a source, is entitled to the greatest respect, but it is not a Federal question, nor did that question come up on any appeal from the State Courts to the Supreme Court, and the cases cited were pardons by the President in Federal cases, and, of course, the doctrine of the Supreme Court is not controlling on the courts of this State.

As matter of fact, the sentence cited by the counsel for the defendant is a pure dictum in that case.

In that case, it was decided -- the question was whether a pardon restored an attorney to the right to practice his profession, and that is precisely analogous to restoration to citizenship. No one will dispute that proposition, as far as I am aware.

Now, in the Price case, the real decision of Judge Landon was the first part of his opinion. What has been read by Mr. Spellman was, also, entirely dicta, in an endeavor to distinguish this case from the dicta of the United States cases.

He says, "It remains true that the defendant was convicted in the State of Georgia, although subsequently pardoned". And then he says as to section 692 (Reads). Now that is a flat decision on his part that it was not needed.

Now, as matter of fact, with all respect to Judge Landon, who was one of the ablest judges in this State, I conceive that this dictum of his is hardly correct, because the U.S. Supreme Court has held that full faith and credit are to be given to the official acts of the officers of any other state, and the pardon of the Governor of Georgia falls within that class, and the decision here is absolutely flat on the subject, and it seems to me that

it is so manifestly common sense, that it can be hardly overridden. The statute provides that when a man has been convicted of an offense, and subsequently commits another offense, he can be indicted as such.

Now that is a physical fact. Has he ever been convicted? That is the whole thing. And no pardon can change that.

And that is where the Roberts case is directly in point. It is not an analogous case, but directly in point, because that matter came up directly in the Roberts case.

Roberts was pardoned, and the Legislature passed a special act, allowing him to sue for damages if any; and his contention was that the pardon absolutely wiped out the conviction, and, therefore, no conviction having been had against him, because any conviction that was had was entirely wiped out by the pardon, he could say, "I was in prison, an innocent man, and therefore I am entitled to damages."

But the court of Appeals said "Before you can get damages, you must either show that you were not convicted, or that your conviction was improper, and that conviction is not a nullity, and was not wiped out by the pardon."

And that is what we contend here, that the conviction is a fact, and the Governor may remit the unexpired penal-

CASE 77-1260

ties, but the only thing that you have to show is that the conviction took place.

THE COURT: And the enhanced punishment on a conviction for a second offense forms no part of the punishment on the original conviction?

MR. NOTT: No, sir. We might as well say that, when a person come before the court as a second offender, though he is indicted as a first offender, that, because the Court, discovering that, is likely to give him an added punishment, that does not affect the question at all. And that pardon your Honor will see, recites that it is an act of grace on the part of the Governor.

THE COURT: I think, Mr. Spellman, for the present, I can dispose of the motion by ruling against you.

MR. SPELLMAN: Well, I should like to be heard on this, because, as I say, it has never been passed upon, and ought to be passed upon, once for all, and ought to be put flat-footedly before the Court of Appeals.

THE COURT: Very well. Proceed, if you wish to. The ruling, you may say, at this stage of the case, is of no practical importance whatever, until you come to the making of your motions at the end of the People's case, and so I may as well reserve my decision on the motion now; and if you have any other authorities to submit, you may do so.

MR. SPELLMAN: Well, I don't think there will be any additional authorities, your Honor, because there are so very few. There will be only a lot of reasoning on the subject, and, as your Honor has spent half an hour already on the subject, we might continue the argument.

THE COURT: Very well. You may proceed.

MR. SPELLMAN: In the 160 New York, may it please the court, was a case in which the judges would be apt to be discouraging, because we have practically the law in this state that the King can do no wrong, and where a police officer makes an arrest, you cannot make the State liable; and, even if this man was absolutely innocent, you can appreciate that, when the legislature came along and gave this man a right to sue the State, even if he were the most innocent man in the world, even if he had been acquitted, he would not have that right, and the court evidently frowned upon the Legislature, and would have killed it, if not upon that point than upon another point; and it is conceivable that they didn't give it the attention that they did in the Price case. It is true that this pardon is by grace of the Governor, and every act of the Governor is by grace, for it goes back to the olden days (Reads.)

THE COURT: Well, I shall have opportunity to look into the matter further, between this and the time that the

People close their case, and, if I rule by that time, that will serve every practical purpose.

MR. SPELLMAN: I see. But just one more observation, and I am finished. If the Court writing this opinion, as the Court of Appeals which passed upon it, were of the opinion that there having been a conviction, that was enough, and, having committed a second offense, that was a second offense, whether he was pardoned or not, Judge Landon would have said so, instead of trying to reconcile his decision with the United States Supreme court as to a pardon, saying practically that the pardon of the Governor of New York must be respected, while the pardon of the Governor of Georgia might be treated with disrespect.

But I will reason it out with your Honor, if you will give me permission, later on, and I will be grateful to your Honor for it.

THE COURT: Very well. We will proceed now.

CROSS EXAMINATION (Continued).

Q Now, Mr. Schlosser, you say that there were about 18,000 cigars missing. Is that right? A I said there was about --

Q Eighteen to twenty-two thousand? A I told you that there was between eighteen and twenty-two thousand cigars in those two closets.

Q In other words, you couldn't tell within 4,000 cigars;

is that it? A Well, not so close, no.

MR. SPELMAN: I see. That's all.

RE-DIRECT EXAMINATION BY MR. NOTT:

Q Now, Mr. Schlosser, I would like you, if you kindly would, to look at the cigars contained in that trunk and valise, and tell the jury whether those are the brands that were contained in those two closets or not. Will you step down and go over to them. I show you first the boxes contained in the valise, or bag, marked People's Exhibit 1 for identification. Just step back in the chair now. Have you now examined nine boxes of cigars contained in the valise, People's Exhibit 1 for identification? Have you looked at them? A Yes, sir, I saw the boxes.

Q And you have placed those boxes in one pile, and three boxes in another. Now the boxes in the pile of six boxes, in which closet were those? A Well, there are two closets alongside of each other, and in one closet was this Corona brand.

Q What I want to get at is this. These six boxes of Coronas, were they in one of the two closets that had the high grade goods that were missing in them? A Yes, sir.

Q Now I show you the other three boxes, two of which are Epicures, and one of which are Panetelas. Were they in that closet, or any other closet? A They were in another closet alongside of the one that contained the coronas.

Q Well, was that the other closet which contained the high grade goods, and from which the goods were entirely missing?

A Yes, sir.

Q Now will you step down and look at the cigars contained in that trunk? Now just examine those cigars, and make them into heaps, according to the brand or quality. Now will you please return to the stand? Now have you examined the eight sample boxes left in the trunk? You have examined those boxes?

A Yes, sir.

Q I show you a pile of three boxes, which are marked Bachelors and Regalia Especiales. In what closet were those?

A They were in the same closet with the Coronas and Rosa Perfectos.

Q That is to say, in one of these closets in which there were high priced goods, which were missing, on Monday?

A Yes, sir.

Q And I now show you another pile of three boxes, which are marked Puritana Fina, Pansteles Fina and Monopoles.

In which closet were those? A They were in a different closet altogether.

Q That is to say, they were not in either of the closets that you have been referring to? A No, sir.

Q But were in a closet where some of the cheaper goods were kept? A Yes, sir.

Q Now I show you two boxes marked Conchas Especiales, Puritana Fina and La Arrogancia, and ask you where those

were? A That was in one of the closets with the high priced goods.

RE-CROSS EXAMINATION BY MR. SPELLMAN:

Q Now you can't tell just how many boxes of the Conchas were taken out, between Saturday and Monday; can you?

A How many were taken out?

Q Yes; how many were missing between Saturday and Monday? A No, I can't tell that.

Q You can't tell how many of the Puritanos were missing between Saturday night and Monday; can you? A No, sir.

MR. NOTT: To save time, I will concede he couldn't.

MR. SPELLMAN: No, you needn't concede anything.

I have taken less time right along than you have. However will you concede that the witness cannot state whether the missing cigars of the following brands, Bachelors, Regalias, Especiales, Rosa Perfectos --

MR. NOTT: No, I will not concede that.

BY MR. SPELLMAN:

Q You can't tell how many of the Puritanao were missing between Saturday night and Monday; can you? A No, sir.

Q You can't tell how many of the cigars called Bachelors were missing between Saturday night and Monday morning?

MR. NOTT: I will concede that he cannot, as to any of those cigars, as to any of those brands that you have

mentioned.

MR. SPELLMAN: And do you concede also that you can't tell how many were on hand on Saturday night, of any of these brands?

MR. NOTT: Yes, of any one particular brand.

MR. SPELLMAN: Of any of these brands, Bachelors, Regalias Especiales, Coronas, Rosa Perfectos, Epicures, Panetelas, Conchas Especiales, Puritanos, Finos, and La Arrogancia? Now will you make the stipulation please, leaving out the names -- I don't care for the names, as the stenographer has them on the record? Will you concede that the witness didn't know how many of the brands of which I have given the names were on hand on Saturday night, when he left the premises?

MR. NOTT: I will concede that the witness didn't know what proportions the brands that you have named bore to the whole mass of these thousands of cigars; I will concede that.

THE COURT: Yes, the witness has testified that from eighteen to twenty-two thousand cigars were, in his opinion, missing.

MR. SPELLMAN: I will accept that concession.

BY MR. SPELLMAN:

Q I want you to look at this box, Defendant's Exhibit B, and state whether that is one of the boxes of the missing goods, which formed part of the missing goods? A Yes, that is my writing here, my color mark (indicating). There is my handwriting, to indicate the color of the cigars.

Q And that is your handwriting, that word "Clara"?

A Why, sure.

Q Now don't say sure. I was never in your place, you know. Is that your handwriting? A Yes, sir, that's my handwriting on that box.

Q And you identify your own handwriting? A I do.

Q Now when did you put your handwriting on that box, Mr. Witness? A After the box is packed and nailed shut.

Q So that this box, Defendant's Exhibit B for identification, is a box that you can swear was filled with cigars by you, because it has your mark on the bottom of the box? And

0321260
PAGE 1260

then take a smell of it, Mr. Witness, if you want to assist⁹² yourself. You will find the odor still there. A (No answer).

BY THE COURT:

Q What is your answer now, Mr. Witness? A There have been cigars in this box, and transferred out of it.

BY MR. SPELLMAN:

Q That is, you mean which have been used? A No. Sometimes we have different brands, and, if a man wants a different brand, you simply transfer them from this box to another box, or from another box to this box.

BY THE COURT:

Q Now what is there about that box indicating that cigarshave been transferred from it, in the sense that you speak of? A Because there is a color mark on the bottom of the box.

BY MR. SPELLMAN:

Q Where is the color mark on the bottom of the box?

A Right there (indicating).

Q Oh, the word "Clara"? A Yes, sir.

Q Oh, you mean the word "Clara" which shows that it contains "Clara" cigars? A Yes, sir.

Q Well, what about that? A Well, when cigars are put in a box, the packer puts his color mark on it; and, if there is no cigars put in it, it isn't necessary to mark anything on

the box. No marks are put on the boxes until they are packed with cigars.

Q Well, but you know that this particular box was packed by you, because it has your handwriting on the back of

it? A Yes, sir, it has the color mark, that it has been packed.

Q And, therefore, you can swear to this jury that this box contained cigars? A Yes, sir.

Q At one time? A Yes, sir.

Q But it contains no cigars now. I am not a magician, and have not any loose cigars that came out of it up my sleeve.

A Well, at one time, I say.

Q You see that the box contains no cigars now?

A No, sir.

Q But the fact that it has "Clara" on the bottom of the box proves to you -- A That at one time it contained cigars.

Q And proves to you that you packed cigars in this box?

A Yes, that's right.

Q And, therefore, it puts you in the position of swearing before this Court and jury that this box at one time contained cigars, which you packed? A Yes; judging from my handwriting.

Q And there is no stamp on this box? A No, sir.

Q And it wouldn't leave your place, even if it were sold or given away, without a revenue stamp on it? A It could not,

4
no.

Q You are sure of that? A Yes, sir.

Q Therefore, this mark at the bottom, showing you that there were cigars in this box at one time, and because there is no revenue stamp on it, and you knowing that a lot of cigars disappeared that were not yet stamped, and you knowing they were cigars of this size, you say that this comes from a part of the cigars that were stolen; don't you?

A I don't claim anything. You asked me if I could identify that box.

Q Well, wouldn't you say so?

A Put that question again please.

(The question is repeated by the stenographer)

A No, I don't.

Q You don't say so?

A No, sir.

Q You don't say that this box contained part of the cigars that were stolen?

A It might contain cigars, but I don't see any of them now.

Q Mr. Witness, I will take up the other end of it with you. You have identified a number of boxes of cigars here, boxes containing cigars?

A Yes, sir.

Q You have been willing to tell this Court and jury that, on that Saturday afternoon, there were from eighteen to twenty two thousand cigars on hand in those two cases? A I did.

Q And you say that those two cases contained cigars of which all these names you have given us were part; is that right? A Yes, sir.

Q You see cigars, don't you, in the court room, which you have been asked to identify on the direct examination or re-direct examination. A Yes, sir.

Q And are those part of the robbery? A They are.

Q They are? A Yes, sir.

Q There is no revenue stamp on them? A No.

Q What makes you swear they are part of the robbery? Tell us, please? A Well, I can give you my opinion. Because they are our brands, and I believe they are our cigars.

Q Well, how can you say so, so easily, that they are part of the goods that were robbed, - and yet you can't say that about the box that the defendant has brought into court? Tell us why? A Well, I can't say why.

Q Well, is it because one of the Pinkertons or some one else has told you that the defendant brought this box into the court room? A I have never seen one of the Pinkertons, or any of that lot.

Q No, the first time you knew you were to be a witness

was it half past nine this morning? A Yes, sir.

Q And you never spoke to the District Attorney or any of his assistants? A No, sir.

Q Or a county detective or subpoena server? A No, sir.

Q Or Pinkerton man? A No, sir.

Q Or detective from Headquarters? A No, sir.

Q Or your boss? A No, sir.

Q Or any human being? A No, sir.

Q Then how did they know about your knowing that there were so many cigars on hand on Saturday? A How did they know it?

Q Yes. A Because, when you work in a place like that, you can keep pretty well track, as a packer, of the goods that are on hand, and, by looking in the closets, I can tell pretty ~~xx~~ much, how many cigars are in the closets.

Q Now, how many were there on the previous Saturday?

MR. NOTT: I object to that as immaterial, irrelevant and incompetent.

THE COURT: Sustained.

BY MR. SPELLMAN:

Q Now how many cigars were there on March 30th?

MR. NOTT: Objected to.

BY MR. SPELLMAN:

Q Or on April 5th?

MR. NOTT: Objected to.

THE COURT: Sustained.

BY MR. SPELLMAN:

Q Or on Saturday, July 30th, or Friday, August 5th?

MR. NOTT: Objected to.

THE COURT: Sustained.

MR. SPELLMAN: Exception.

BY MR. SPELLMAN:

Q And then you say you can't tell why you think these are part of the stolen goods, and this box isn't? A I will explain that to you in my own way. I told you before that there was cigars in that box before, and there is none now. They might have been smoked up by the party that took them away, and, therefore, the box is empty.

Q And he might have ^{dropped} ~~put~~ them in the street, leaving the box open this way (illustrating)? There are a number of ways by which the box could be emptied. Is that what you mean?

MR. NOTT: Well, it is perfectly clear, your Honor.

He says that the cigars might have been smoked up, and other cigars transferred to the box, and in that way it got out of the factory, probably.

BY MR. SPELLMAN:

Q Why is it, Mr. Witness, that you can say that the boxes produced by the People are part of the stolen property, and you

can't say that this box is a part of the stolen property?

MR. NOTT: Objected to as already asked and answered.

THE COURT: I will allow it just once more.

A Well, that belongs to the same lot. They are the brand of our cigar factory.

BY MR. SPELLMAN:

Q And, therefore, this is part of the stolen property?

A I believe it is.

MR. SPELLMAN: I offer it in evidence, your Honor. That is all I want.

MR. NOTT: I have no objection to its being marked for identification, but I don't see at the present time-- however, I withdraw my objection.

THE COURT: I will receive it.

(It is marked defendant's Exhibit B in evidence).

WILLIAM B. FALCONER, of 84 Alexander Avenue, Yonkers, New York, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NOTT:

Q Mr. Falconer, what is your business? A Real estate broker.

Q Where is your office? A 92 William street.

0071-1260
PAGE 1260

Q And who are you in business with? A Charles F. Noyes Company.

Q And are you acquainted with Mr. Ludlow, a real estate agent? A Yes, sir.

Q Do you do any business with him? A Yes, sir.

Q And what connection have you with his business?

A Why, I do renting for them.

Q That is, you act as agent for them? A Yes, sir.

Q And are they also real estate agents? A Yes, sir.

Q Now I ask you whether, acting as such agent for Ludlow & Company, you leased a portion of the premises 110 John Street the first loft in that building, to anybody? A I did.

Q Do you remember about the date? A Why, the latter part of July, as I recollect.

Q July 1910? A Yes, sir.

Q Did you receive a lease? A I did.

Q Did you procure it to be signed by the lessor?

A Yes, sir.

Q Whom did you see in connection with that lease, as the lessor who proposed to rent the premises? A You mean the lessee?

Q No, the lessor. Yes, I mean the lessee? A A man named Blake, or that was the name given to me.

Q Do you see him in the court room now? A Yes, sir.

CASE 1200

Q Was he just brought in? A Yes, sir.

Q Will you point him out, please? Is that the man (indicating the co-defendant Knox)? A Yes, sir.

Q And when did you see him first? A At my office about that time, about a week previous to the lease, we will say.

Q And did he introduce himself? A Yes, sir.

Q Under what name? A John H. Blake.

Q And did you subsequently negotiate with him as John H. Blake for this lease? A I did.

Q Now I show you a paper, and ask you to look at it, and state what that is? A Why this is the lease, apparently.

Q Is that your signature as witness to the signature of John H. Blake (indicating)? A It is.

Q And did you see the defendant Knox sign that, under the name of John H. Blake? A Yes, sir.

Q State whether or not he made you any payment? A Yes, sir. He paid one month's rent down at the time of the signing of the lease, \$37.50 in cash.

MR. NOTT: I not ask, if the Court please -- I offer in evidence this paper, promising to connect it by showing the defendants joint tenancy and occupancy under this lease.

MR. SPELLMAN: I don't object to the lease going in evidence.

THE COURT: Received.

(It is marked people's Exhibit 4).

BY MR. NOTT:

Q Now do you know how long Blake, or the parties associated with him, remained in occupancy of those premises?

A No, I don't.

Q Did you ever receive any subsequent instalments of rent from them? A No, sir.

Q The only money that you received was that paid on the sealing and delivery of the lease? A Yes, sir.

Q You didn't go to the premises yourself after that?

A No, sir.

CROSS EXAMINATION BY MR. SPELLMAN:

Q With whom are you engaged, Mr. Falconer? A The Charles F. Noyes Company.

Q And you go down John Street where these premises are located often?

A Very often.

Q Are you folks interested in other premises in John Street?

A Yes, sir.

Q I want to ask you whether you can give us the idea of this easterly wall of 110 John Street, its height above the

roof of 112 John Street?

MR. NOTT: This witness doesn't climb roofs, and measure them. I will prove that, if the Court please, later.

BY MR. SPELLMAN:

Q Then you will prove it by actual measurements?

MR. NOTT: I will.

MR. SPELLMAN: Then I will not bother this gentleman further about that.

BY MR. SPELLMAN:

Q When did they first negotiate this lease?

A The latter part of July. The negotiations started about a week prior to the signing of the lease.

Q Well then about July 21st? A yes, sir, something around there.

Q And the gentleman who was just brought into the room, who was Mr. Knox, Mr. Henry Knox, signed, signed the name John H. Blake, is that right?

A He did.

CASE 1260

Q And did you do anything to these premises, in the way of decorating them or fixing them up? A No, but I know that it was done by Ludlow & Company, but not through any supervision of mine.

Q And who did they do this for? A Mr. Blake, the tenant that I recognized at the time.

Q Did you ever meet Mr. Harrington or Mr. Ackron there? A No, sir.

Q And how long did the decoration, the fixing up of the premises take? A I don't know.

Q You were not down there? A No, sir.

Q Do you know how much furniture they had in the place when they moved in? A No, sir.

Q Were you in the premises while they were occupying them? A I was not.

BY THE COURT:

Q On what floor were those premises? A The second floor of the building, that is, the first loft of the building.

BY MR. SPELLMAN:

Q Of course you have been inside of the building?

A Yes, sir.

Q And up to the roof? A No.

Q Or up to the top floor? A No, sir.

Q Well, what part of the premises have you been in?

A Not higher than the second loft. That is the floor above this particular floor, in that building.

Q Well, isn't this building so constructed that there is a door which separates one floor from the other? A On those two floors, yes.

Q That is to say, you walk up the stairs, and get on the landing of one floor, and then, before you can proceed up the stairs to reach the next floor, there is a door in between, and that is usually locked by the tenant above? A I don't recall this particular premises. I think probably not.

Q Well, don't tell us probably, but only what you know. A I don't know. I appreciate that, that you don't want any probability, and therefore I say that I don't know.

Q You don't know; do you? A No, sir.

Q I don't want any probability or guess. A Then I don't know. I will say distinctly that I don't know.

J A M E S A. G R I B B E N, of 198 Greenwood avenue, Richmond county, New York, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOTT:

Q Are you employed, Mr. Gribben by Ludlow & Company?

A Yes, sir.

Q Where is their office? A 149 Broadway.

Q Are they real estate agents? A Yes, sir.

Q And were they the agents of 110 John street, the property of Miss Esabella Freeman? A Yes, sir.

Q And for how long have they been such agents? A I couldn't say, sir.

Q And did you or did you not have a communication from Mr. Falconer, the last witness, in reference to leasing to John H. Blake a part of the premises in question?

MR. SPELLMAN: Objected to.

THE COURT: I will allow it. Yes or no.

A No, sir.

BY MR. NOTT:

Q Did you or Ludlow & Company have any communication with Mr. Falconer on that subject? A Ludlow & Company did.

Q And after that did you go to the premises? A I did.

Q And do you remember when it was that you went to the premises? A Well different times. The latter part of July and the first part of August.

Q And if your memory is refreshed as to the date by the statement that the lease bears date July 28, 1910, can you fix the dates when you went to the premises? A No. I can fix only one date, and that is the 1st of August.

Q And how many times did you go there, altogether in relation to getting these premises ready for occupancy?

A Well, I can't just say how many times I went there.

Q This was a loft? A A loft; yes.

Q How large? A I believe it was twenty by sixty.

Q And do you know how long it had been unoccupied?

A Why, over a year.

Q Over a year? A Yes, sir.

Q Now, on the first occasion you went there, did you see anybody there in the loft? A Well, after these people wanted to rent the loft you mean?

Q Yes, after the lease went into effect? A Yes, sir, I met one gentleman there.

Q The first time you went there? A Yes, sir.

Q Who was he? A Well, that gentleman over there (indicating Harrington.)

Q Which one do you mean? A That grey haired gentleman over there (indicating Harrington.

Q At the end of the table there? A Yes, sir.

Q Referring to the defendant Harrington? A Yes, sir.

Q He was there the first time you went there?

A Yes, sir.

Q Had any furniture been moved in? A No, sir.

Q What was he doing? A Pulling out nails, and some of those electric light slats that had been left there by the former tenant.

Q Did he say anything to you? A And he said he was waiting for things to come in.

Q And when was the next time that you went there? A About the first of August.

Q Approximately, how many days after the first time?

A The 1st of August was on a Monday, and so that was on a

106
C4
106
C4

CASE 1260

Friday I was there.

Q You were there on a Friday, and went there again on the 1st of August? A Yes, sir.

Q And who did you see there at the time? A Our plumber was there first. That's the first man I seen there. And then that gentleman over there, and Mr. Blake.

Q Which gentleman do you mean? A This gentleman here, by the name of Ackron, I believe (indicating the defendant Ackron.)

Q Referring to the defendant Ackron? A Yes, sir. And another man by the name of John H. Blake.

Q Do you see him here? A That gentleman there (indicating Knox.)

Q You indicate the man that just stood up? A Yes, sir.

Q How did you know what his name was? A I asked him if his name was Blake, and he said yes.

Q Did Ackron say anything at the time Blake said that? A No, sir.

Q Now did you have any talk with, or were any words exchanged between you and Ackron? A Just in regard to a partition that Ackron wanted to put up, to separate the toilet and wash basin from the main part of the loft, and I told him he would have to see the agent about that.

Q And that's the only talk you had with him? A Yes, sir.

Q Now were you there after that? A No, sir, not until the first of -- the 4th of September.

Q And did you see the defendants or either of them, or any of the parties that you had seen there before? A No, sir, I couldn't get into the loft. It was locked.

CASE 1260

Q Now, do you know when these parties ceased occupying the loft? A No, sir.

Q But have they ever been there subsequent to the 4th of September, in occupancy? A I don't know.

Q Well, do you know who the occupants were after September? A No, sir.

Q Do you know who was to receive the rent for the premises in your office? A Mr. Arneberg.

MR. NOTT: Will you concede that no rent was paid after the 1st of September, or do you want me to call Mr. Arneberg?

MR. SPELLMAN: I don't know about that. I will ask Mr. Ackron about that. Yes, I will concede that Mr. Ackron paid no rent after the 1st of August. I will concede that so far as Ackron is concerned, I will make that concession.

MR. NOTT: And do you make the same concession as to Harrington?

MR. LEVINE: And the same concession is made as to Harrington, that Harrington paid no rent after August 1st. The same concession is made as to him.

CROSS EXAMINATION BY MR. SPELLMAN:

Q When you were there, Ackron spoke to you about making some repairs? A About a partition.

108
7
3
0

CASE 1260

Q Well, that is repairs. He wanted a partition put up to separate the toilet from the main part of the loft?

A Yes, sir.

Q And were those repairs made? A No, sir.

Q It was asking too much of the landlord? A Well, that I can't say. I told him he would have to see the agent about it.

Q However, at any rate, the partition was not put up, or you didn't find it put up when you went there? A No, sir.

Q Well, what was done to the premises? A The ceiling was kalsomined, and a part of the wall was painted, where it had been painted before, and the other part papered, where it was papered before, and a new sink put in.

Q And they asked for the putting in of the sink?

A No; it was necessary to put in that. It was worn out.

Q But they requested the papering and painting?

A Yes, sir.

Q And how long did the repairs take? A I couldn't say.

Q They extended into August; didn't they? A The first day.

Q Do you mean to say that they got the occupancy of the place on the 2nd? A No. When I was there on the 1st of August, the painter was there, finishing up his work. Now, whether or not he got through that evening, I can't say.

Q Now do you know anything about this building, the interior of it? A No, sir, I don't.

Q Haven't you ever been in this building? A I have.

Q Well, how much of the building have you passed through? A Well, I have passed through it all.

Q Well, you know what kind of a stairway and landings it has, and doors? A Oh, yes, if that's what you mean.

Q Well, you know the tenants of the various floors?

A Yes, sir.

Q Or that were tenants on the various floors, on the 1st of August, 1910? A Yes, sir.

Q Now what loft did these folks occupy? A First loft, one flight up.

Q And then there were stairs leading to the next floor?

A Yes, sir.

Q Was there a door on the landing of the stairway in the first hallway, and the stairs leading up to the second loft?

A No, sir.

Q No division at all? A No, sir.

Q No door? A No, sir.

Q Now then you got up to the second loft, without any hindrance? A Yes, sir.

Q Now, after you got beyond the second loft, was there a door on the stairway, between that floor and the upper floor?

A No, sir.

Q It was unobstructed? A Well, there was a partition enclosing the stairway, separating it from the hallway.

Q But there was no door at the head or foot of the stairway? A No, sir.

Q There was no door whatever? A No, sir.

Q At any part of the premises? A Yes, sir, leading from the third loft to the fourth.

Q Oh, there was a door there? A Yes, sir.

Q And was the fourth loft the last loft of the building? A Yes, sir.

Q So that the people who occupied the fourth loft could keep out all the tenants in the building? A Well, that tenant had two lofts, the third and fourth loft, the same tenant.

Q Well then tell us all about it? A What do you mean? Tell you all about it?

Q He had two lofts? A Yes, sir.

Q And there was a door between the third and fourth loft? A Yes, sir.

Q And did it have a padlock? A It had some sort of lock. They kept it locked.

BY THE COURT:

Q What was the name of the tenant that occupied those lofts, in the month of August? A The third and fourth lofts?

Q Yes. A James P. Horner.

BY MR. SPELIMAN:

Q James P. Horner? A Yes, sir.

Q Have you been there at any time when that door was locked? A That door was always locked, every time I went there.

Q I see. Now, after you got to the fourth loft, was there still another loft before you got to the roof? A No, sir.

Q Well then how was the scuttle on that roof? A That I don't know.

Q How did you get off the roof? A I don't know.

Q You don't know whether it was a stairway leading to the roof, or whether you went up on a ladder; do you? A No, sir.

Q Mr. Horner is still a tenant in the place; isn't he? A Yes, sir.

Q Do you have anything to do with the repairs of that building for the tenants generally? A Generally I do, yes.

Q Well, do you know whether Horner's lock was ever in bad shape? A Well, Horner put that lock on himself. We had nothing to do with that lock.

Q Did you ever at any time hear that that scuttle or skylight was out of order, and had to be repaired? A No, sir.

Q Or that the scuttle had been forced, or the fastening on it broken? A No, sir.

Q And you heard nothing about it in August or September, about the scuttle being repaired, or the skylight or any other opening to the roof, at 110 John street? A No, sir.

Q And was it your business to attend to repairs?

A Yes, sir.

Q And, if any repairs were to be done there, you would have heard of it? A I would.

Q And you have never given any instructions to any one to repair the skylight or any other opening to the roof of 110 John street, since these folks negotiated for the lease?

A No, sir.

Q Ordered no repairs of a scuttle or any other opening by which you got to the roof? A No, sir.

RE-DIRECT EXAMINATION BY MR. NOTT:

Q Just a couple of questions. Are you aware, Mr. Gribben, that the hinges of the scuttle were found broken in the month of September? A No, sir.

Q And, if they are still broken, you don't know that? A No, sir.

Q You say that this door was between the third and fourth lofts? A Yes, sir.

Q Which were occupied by the same tenant? A Yes, sir, the third and fourth lofts.

Q Is there any means of communication between these lofts, except by that door? A Except the hoist way, a hand hoist.

Q. 3. 7. 11

CASE 1260

Q There is no elevator? A No, sir; no elevator.

Q And so that the only means of communication between the two lofts, of walking up and down between them, was the stairway? A Yes, sir.

Q Now, the repairing of the wash bowl, and the painting and kalsomining was done at the expense of the landlord, and not of the tenants? A No, sir, the landlord.

RE-CROSS EXAMINATION BY MR. SPELIMAN:

Q Now you were asked by the District Attorney whether you heard -- whether it was discovered in September that the hinges of this scuttle were broken? A Yes, sir.

Q If it had been broken, you would have heard of it; wouldn't you?

MR. NOTT: I object.

THE COURT: Sustained.

BY MR. SPELIMAN:

Q You have never consulted with me in this matter; have you? A No, sir.

Q And you have never spoken to any one representing either of these defendants? A No, sir.

Q Or either of the defendants? A No, sir.

Q And you have been subpoenaed by the People?

A Yes, sir.

Q And you have had charge of the repairs there?

A Yes, sir.

Q And you say that you have not fixed any hinge to any scuttle in the month of September? A No, sir.

Q And you have never heard of any being out of order?

A No, sir.

BY MR. NOTT:

Q And you have never gone up to the roof, and examined that scuttle; have you? A No, sir, I have not.

BY MR. SPELIMAN:

Q And are you the only person who would hear of repairs being needed there?

MR. NOTT: Objected to.

THE COURT: Excluded.

MR. SPELIMAN: Exception.

RUFUS D. PITCHER, of 333 Washington avenue, Parkville, Flatbush, Brooklyn, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NOTT:

Q What is your occupation? A I am assistant superintendent of the Pinkerton National Detective Agency.

Q And where is their office? A 57 Broadway.

Q How long have you been employed by that Company?

A Ten years.

Q And were you in their employ during the months of August and September, 1910, as assistant superintendent?

A Yes, sir.

1

Q Now, have you at any time been on the roofs of the premises 233 Pearl Street, 110 John Street, and the intervening buildings? A Yes, sir.

Q When did you first go there? A About the middle of September?

Q 1910? A Yes, sir.

Q And how did you go up to the roof? A Through the premises 233 Pearl Street.

Q That is a house, is it not, which is a double house, part of it on Pearl Street and part of it on John Street?

A Yes, sir.

Q And how long did you spend there? A I should judge about twenty minutes.

Q Who was with you, A Mr. Goodman, went up on the roof with me, and one of my operatives.

Q What is his name? A Mr. John Schilling.

Q Was anybody else there? A Only Mr. Goodman and myself and this operative.

Q No policemen with you at the time? A No, sir.

Q And did you take any measurements while you were there? A Yes, sir.

Q And did you make any examination of the skylights and scuttles on any of those roofs? A Yes, sir.

Q Now I show you three photographs, and ask you if they

2

correctly represent what they purport to represent, the roofs, looking in various directions, of those premises?

A Yes, sir.

MR. NOTT: I will offer them now in evidence, if your Honor please. I understand that the other side has seen them. I offer these three photographs in evidence.

MR. SPELLMAN: Offer two, and we will consent.

MR. NOTT: No, I will offer the three.

MR. SPELLMAN: We don't object to them because they are not testified to properly, because we agreed, in the beginning, that they should be admitted. We have no objection to these two going in, may it please the Court, and we will ask your Honor to treat those separately.

MR. NOTT: Then we will have those two marked first.

(They are marked People's Exhibits 5 and 6.)

MR. NOTT: And as to the other one, the witness has testified that it is an actual photograph or representation.

MR. SPELLMAN: All right, then, don't consider us as objecting. We would like to have it in evidence, in that case.

(It is marked People's Exhibit 7.)

BY MR. NOTT:

Q Now, Mr Pitcher, did you take a measurement of the

CASE 1260

height of the wall of No. 116 John street above the roof of the building--of the La Varossa cigar factory? A Yes, sir.

Q I show you People's Exhibit 6. Does that have marked on it the side elevation of No. 116, above the roof of the premises 233 Pearl street, or 118 John street, which is the same thing? A Yes, sir.

Q And what is that elevation? A Five feet four inches.

Q Then, after you get up on the roof of 116, state whether the roofs of 116, 114, and 112, are of the same height? A Yes, sir.

Q And then you come to 110 John street. Is the roof of that building--does that present another rise above the roof of 112? A Yes, sir.

Q Is that rise the same all the depth of the building, or is it higher in the front than it is in the rear? A It is higher in front.

Q And is there a chimney that goes up alongside of that building? A Yes, sir.

Q That is, it projects out from the wall? A Yes, sir.

Q And what is the height of 110 John street's roof above 112, at the place where the chimney goes up? A About nine feet seven inches.

Q How much? A About nine feet seven inches.

Q Yes. Now what do the figures "5 feet 9", what do they

represent? A Those figures are the height from the roof of 112 to the top of the stone work of the chimney, of the brickwork of the chimney.

BY THE COURT:

Q The chimney of what building? A That runs on the inside of 110 John street.

BY MR. NOTT:

Q That is to say, from 110 John street there is a chimney that goes up alongside of this 9 foot rise? A Yes, sir.

Q And you say the brickwork of the chimney is 5 feet 9 inches? A Yes, sir.

Q And above that is what? A The metal chimney.

Q The tin or zinc chimney? A Yes, sir.

Q But the top of the brick chimney, is that close to the wall? A Yes, sir.

Q And that is five feet nine inches? A Yes, sir.

Q And the whole rise is what? A Nine feet seven.

Q And then there is a difference of three feet ten.

A Yes, sir.

Q That is, between 110 and 112? A Yes, sir.

Q Now, Mr Pitcher, is there any room on the top of the brickwork of the chimney, or is it all taken up by the metal?

A There is the thickness of the brick.

Q That is, between the outer and inner surface of the chimney? A Yes, sir.

Q And the metal goes up out of the inner surface of the brick? A Yes, sir.

Q Now how did you get, you and your men, from the roof of 233 Pearl street up the first rise, onto the roof of 116 John street, the five feet four inches rise?

MR. SPELLMAN: Objected to as immaterial, irrelevant and incompetent, and not relating to any issue here.

THE COURT: Allowed.

MR. SPELLMAN: Exception.

A There is a metal pipe that goes up through the roof of 118, close to the wall.

Q Yes. And how high does that pipe go, if you know?

A About two feet or two feet and a half.

Q And how close is that pipe to the wall? A Within six inches, I should judge, about.

Q So that, in stepping upon that pipe is there any difficulty ~~from~~ in getting from the top of the pipe to the next roof? A No, sir.

Q Now, after you got to the roof of 116 John street, did you walk over that, and the other two roofs that were on the same height? AX Yes, sir.

Q State whether or not you then went onto the roof of 110 John street? A I did, yes.

Q Well, how did you get up that rise?

MR. SPELLMAN: Objected to as immaterial, irrele-

PAGE 120

vant and incompetent.

THE COURT: Allowed.

MR. SPELLMAN: Exception.

A There is a piece of scaffolding slanted up against the wall of--

MR. SPELLMAN: I object, further, on the ground that the conditions that he is now testifying to are not shown to be the same conditions as existed at the time of this larceny. The proper foundation has not been laid.

MR. NOTT: I am not asking him to show the conditions, but to show the possibility of getting up, how he got up.

MR. SPELLMAN: Well, I still object to that. If it means anything, it means at the time of the larceny that he got up, and if it is to show that, the conditions must have been the same at the time he went there.

MR. NOTT: Well, do you mean to say that the wall has been altered since?

MR. SPELLMAN: I don't know about that, of course.

THE COURT: I will allow the question.

MR. SPELLMAN: Exception.

A There is a piece of scantling tilted against the wall of 110 John street, from the roof of 112, by placing the foot on that scantling, and the other foot on the top of the

CASE 1260

brickwork of the chimney, you can get up.

BY THE COURT:

Q What do you mean by a piece of scantling? A Piece of wood. I have it measured there (indicating).

Q Is it a part of the building? A No, sir, it isn't built in the building.

Q Is it a piece of wood that you put there? A No, sir.

BY MR. NOTT:

Q Now I will show you Defendant's Exhibit D, and ask you if the piece of scantling ^{is} shown there, leaning up against the wall by the chimney? A Yes, sir.

Q Well, then by stepping on this piece of scantling, and then onto the chimney, you then stepped up onto the roof?

A Yes, sir.

Q Did you bring that scantling with you? A No, sir.

Q You found it there? A Yes, sir. It is weather beaten.

Q What? A It is weather beaten. Apparently it was there some time.

Q Now, Mr Pitcher, did you make any examination of the scuttle, first, of the scuttle of the premises at 233 Pearl street, when you came up? A Yes, sir.

Q Did that lead down into the premises of the La Varosna Cigar Company? A Yes, sir.

Q And did you make any examination of the scuttle on top of 110 John street? A Yes, sir.

Q Taking the latter, will you describe that scuttle to the jury?

MR. SPELLMAN: Just a moment. I would like to know when this examination was made, may it please the Court. I should think I would like to ask the question at this time.

THE COURT: I think he testified when he made it.

BY MR. NOTT:

Q Well, will you give the date? A About September 15.

MR. SPELLMAN: And I object to the conditions he found on the roof on September 15, 1910, as immaterial, irrelevant and incompetent; and these defendants should not be bound by any conditions existing then. A great many things might have been done between the date of this larceny and the 15th of September.

MR. NOTT: Of course there is force to the objection as to 233 Pearl street, but as to the scuttle at 110 John street, it seems to me that the evidence is competent, in view of the testimony of the last witness. The last witness was the defendant's witness as to the condition of the scuttle, and said that he had never been notified of its being out of order, or heard of it being out of order, and, in view of that testimony, I think it is competent to show the condition of that scuttle. As to the scuttle on the premises at 233 Pearl street, as to which there is no such testimony, I think the objection is well taken.

THE COURT: I will exclude it as to both.

CASE 123

BY MR. NOTT:

Q Well, don't state the result of any examination that you made then, but simply tell the jury how long an examination you made of the scuttle at 110 John street?

MR. SPELLMAN: I object to that, as long as the conditions are not shown to be the same as when the larceny was committed.

THE COURT: Well, I do not know what the conditions may have been then. I will allow it.

MR. SPELLMAN: Exception.

A About ten minutes. The roof of 110 John street?

BY MR. NOTT:

Q Yes. A Yes, about ten minutes.

Q Now, Mr. Pitcher, were you present at the time of the arrest of these defendants? A Yes, sir.

Q Do you remember what day that was? A I can't remember the exact date, no, sir.

Q Well, was it the same day that they were arraigned in the police court first? A Yes, sir.

Q Did you refresh your recollection -- I will withdraw that. And who else was present? A At the time of the arrest?

Q Yes. A Superintendent Dougherty, of our agency, and Officer Butts, and Officer Shevlin, of the Central Office.

Q And where did the arrest take place? A At the piano warerooms of Schleicher, in west 14th street.

EXHIBIT 1260
CASE 1260

Q In this county? A Yes, sir.

Q What time of the day was it? A It was around four P. M.; between three and four P. M.

Q And do you know approximately how many days before the arrest you went to these premises and made this examination that you have testified to? A It was about two weeks, I should judge.

Q Somewhere in that neighborhood? A Yes, sir.

Q The arrest took place before you went to the premises?

A Yes, sir.

Q Now which of the defendants were there at the time of the arrest? A Both of them.

Q Both of these defendants? A Yes, sir.

Q Was Knox there? A No, Knox wasn't there.

Q Now where did you first see the defendants on the day they were arrested? A In Schleicher's piano rooms.

Q You didn't see them before you got there? A No, sir.

Q Now what were the defendants doing when you came in there? A The defendant Harrington was tying up a package, a pasteboard package, and Ackron, when I saw him, was standing by one of the pianos.

Q Yes. Did you see any boxes or trunks there? A Yes.

Q Where were they? A Right in the front of the piano wareroom.

Q Now describe the truck? A The trunk was something

0371
CASE 1260

on the style of a steamer trunk, and the boxes were ordinary packing boxes.

Q Were the trunk and boxes open or closed? A They were closed.

Q Did you open any of them or see any of them opened?

A Yes.

Q All or some? A I saw the trunk opened, and I saw the pasteboard package.

Q And did you see what it contained? A Yes.

Q What? A Cigars, in boxes.

Q Now will you just step down here a minute? Will you look at this trunk? And now I show you a pasteboard box, and will you look at that? Now will you resume your seat. State whether or not the trunk that you have just looked at is the trunk that you saw there in those premises? A Yes, sir.

Q And is that paper box, on top of the wooden box, the pasteboard box? A Yes, sir.

Q And how about those two wooden boxes? A Those two wooden boxes were brought up out of the cellar.

Q Who brought them up? A One of the operatives of the agency.

Q Did you see them opened? A They were opened at the time they were brought up. There was nothing in them.

Q Now at the time of the arrest, state how full that trunk was? A It was as full as it could be packed.

Q The tray and trunk? A Yes, both packed solid.

0371
CASE 47-1260

Q And did you notice the band or name of the maker of the cigars in there? A Yes, sir.

Q What was it? A The La Barossa brand; different brands of the Le Barossa factory.

Q And what was in the cardboard box? A The same.

Q The same brand of cigars? A Yes, sir.

Q The same make of cigars? A Yes, sir.

Q And do you know what was done with the trunk, with the cardboard box, and the contents? A It was put in the patrol wagon, and taken to Police Headquarters.

Q And did you see it at Police Headquarters? A Yes, sir.

MR. SPELLMAN: Now, I will save a lot of time, if you will allow me to. Do you want to identify the cigars at Police Headquarters?

MR. NOTT: Yes. It is conceded that the trunk and cardboard box now produced in court are the same trunk and cardboard box which the witness testified he saw in the premises on West 14th street, and that the boxes of cigars now contained in the trunk were part of the contents of the said trunk, or cardboard box.

MR. SPELLMAN: I will concede that for Ackron, to save time.

MR. LEVINE: And I will concede that for Harrington.

BY MR. NOTT:

Q Now did you see that valise? I show you this valise?

A I saw that in Police Headquarters.

RECEIVED

JUN 10 1934

CASE 1280

Q And you don't know how it came there; do you?

A Yes, I do.

Q How did it get there? A It was brought in by Detective Butts, if I remember right, or one of our operatives.

Q Do you remember when that was brought in? A The same day.

Q What did that have in it when it was brought in?

A I didn't see it opened, Mr. Nott.

Q Now did you hear any conversation that took place -- I will withdraw that. You don't know of your own knowledge who brought the trunk and cardboard box to Schleicher's? You didn't see it taken into Schleicher's? A No, sir.

Q Did you hear any conversation had at the time of the arrest of the defendants, between the defendants and any parties, or officers that arrested them? A I don't remember of hearing any, no, sir.

Q Well, did the defendants say anything at all at the time they were placed under arrest?

MR. SPELLMAN: Why, he said he didn't hear any, your Honor.

THE COURT: He may not remember what was said, but he may have heard conversation.

MR. SPELLMAN: But he said that he didn't hear anything at all, your Honor.

THE COURT: I will allow it.

MR. SPELLMAN: Exception.

BY MR. NOTT:

Q Did the defendants say anything after they were arrested or at the time they were arrested, or before they left Schleicher's? A No, sir, I didn't hear anything said by them.

Q Well, did you hear any remarks addressed to them?

A No, sir.

Q How near was the defendant Ackron standing to this trunk when you came in there and saw him there? A About four or five feet.

Q And how near to the trunk was the cardboard box that Harrington was wrapping up, which contained the cigars?

A Right alongside of it, or standing on top of it. I am not sure which.

MR. SPELLMAN: Now, may it please the Court, it is four o'clock, and I don't know whether your Honor will take the adjournment now or not. But we may then meet at ten o'clock to-morrow morning, and continue to five o'clock to-morrow afternoon.

THE COURT: Yes, if it will serve your convenience to stop now, I will stop. Otherwise I would prefer to go on.

MR. SPELLMAN: I am, if your Honor please, still engaged in this United States Court matter, that I spoke of, and I would prefer to adjourn now.

THE COURT: Very well then, we will adjourn now.

(The court admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until Tuesday morning, November 29, 1910, at ten o'clock.)

TRIAL RESUMED.

New York, November 29th, 1910.

R U F U S B. P I T C H E R, on the stand:

CROSS-EXAMINATION BY MR. SPELLMAN:

Q Mr. Pitcher, when was the first time you visited the premises 118 John Street, the La Varossa Cigar Company's premises.

MR. NOTT: Pardon me. I had not completed my direct examination.

MR. SPELLMAN: Oh, pardon me. I thought you had finished.

Then the question is withdrawn.

DIRECT EXAMINATION CONTINUED BY MR. NOTT:

Q Now at the time you first saw the two boxes which you have testified were brought from the cellar at Schleicher's piano factory, can you state whether they had the same address or directions on them that they have on them now, to Fritz Lindinger? A Yes, sir.

Q They were that way when you first saw them? A Yes, sir.

CROSS-EXAMINATION CONTINUED BY MR. SPELLMAN:

Q (Question repeated)? A About September 8th, about a week previous to the time I took the measurements.

Q It was in the month of September? A Yes, sir.

Q Not in the month of August? A No, sir.

Q There are a number of office buildings which tower above the roofs of 118 to 110 John Street; are there not?

A (No answer.)

Q Probably this photograph will assist you, Mr. Pitcher?

A Yes, these in the distance here (indicating).

Q Well that's what we want to find out, what that perspective is. Perhaps this photograph will help you as to the distance. I am showing the witness Exhibits C and D? A I paid no attention to those surroundings. I just confined myself, my attention to the roofs between 110 and 118 John Street.

Q Well we want to know whether you are acquainted with that neighborhood. You have been there quite often; haven't you? A Well, in a business way, down through that section.

Q Naturally, yes. And there are some very tall office buildings in the immediate vicinity of this building, are there not? A Yes, sir; within three or four hundred feet I should say.

Q Are they represented are People's Exhibits C and D, as being as far as 400 feet away, or closer? A Well I should judge that one was nearer (indicating).

Q That is the one nearest to the La Varossa Cigar Factory; is that it? A Yes, sir.

Q This one here (indicating)? A Well I presume so. I couldn't investigate that, Mr. Spellman. I don't know any-

thing about it.

Q Well do you know much about those office buildings in that neighborhood whether they employ janitors who reside there, during Saturday afternoons and Sunday? A Yes, large office buildings.

Q And these large office buildings which you observe on the photographs are large office buildings; aren't they? A I should judge so.

Q And they have janitors who live there with their families, at least those that are married? A That's the rule, I believe.

Q And who reside there after the buildings are closed? A Well, they stay there usually. I don't know whether they live there altogether or not.

Q Now take this photograph. How wide is the roof from John Street.

THE COURT: Referring to what roof.

MR. SPELLMAN: Of the La Varossa Cigar Company, handing the witness Exhibit C.

A I don't know the width of that.

BY MR. SPELLMAN:

Q You took measurements there? A I took measurements of the height of the walls between the roofs.

Q Well don't you recall about how deep that roof was, running south? A Well I should judge from -- running along

John Street --

Q No, not along John Street, but running south? A Oh, running south?

Q Yes? A About 50 feet.

Q Probably 50 feet? A Yes, sir; on Pearl Street, and it tapers back on John Street.

Q And it tapers back to less than 50 feet, on John St?
A Yes, sir.

Q About how many feet would you say the roof was on John Street? A How many ^{feet} /wide?

Q Yes? Where it tapers off to the premises number 116? A Why, I should judge it tapers off about around 20 feet or so.

BY THE COURT:

Q In otherwords, starting at the extreme westerly end of the premises on the John Street side, and running back on a line parallel, or practically so, with Pearl Street, the roof was about 20 feet wide? A Yes, sir, the westerly end. I didn't measure it, however.

BY MR. SPELLMAN:

Q Now please tell us again what the height of the wall is between the premises 118, where the La Varossa factory is, and the premises 116?

MR. NOTT: Oh, I object to that on the ground it has been answered and answered, and the photograph con-

CASE 1260

taining the measurements on it have been put in evidence.

MR. SPELLMAN: Well isn't that a novel proposition, your Honor, that I can't cross-examine further on that.

THE COURT: Well what useful purpose does it serve? You have it on the record, and you have it on the photograph.

MR. SPELLMAN: But I can't afford the luxury of the stenographer's minutes, if your Honor please. My client can't pay for them. And I couldn't take notes fast enough yesterday.

THE COURT: Then he may answer it again.

A Five foot 4.

BY MR. SPELLMAN:

Q Now, from 110 to 112? A The total height of the wall there is 9 foot 7.

Q Now is the wall the same height from the front of the premises to the rear? A No, sir, it tapers down to the center, and this gives a good idea (indicating the photograph).

Q It tapers down to the center, and then there is a rise to the rear? A Yes, sir.

THE COURT: He has testified that 9 feet 7 is the least difference.

MR. NOTT: No, sir, I think he said that is the difference at the chimney, but that is practically the minimum.

BY MR. SPELLMAN:

Q And the difference you give us is near the minimum difference? A The measurement is right there, alongside of the chimney.

Q Well is there any point on this wall that is lower than the point of the chimney? A Yes.

Q How much lower? A I couldn't say. I didn't measure that. About a foot lower, I should think.

Q And did you measure the wall in the front? A No. I wanted to measure the height at the point where I went over, and the most natural place for anyone to go over.

Q At this point here (indicating)? A Yes, sir.

Q Now you say that you were present at the time that Ackron was arrested? A Yes, sir.

Q And Harrington? A Yes, sir.

Q And the arrest took place where? A In Schleicher's piano rooms, West 14th Street.

Q Now, on that afternoon you took away a number of cigars, didn't you, a quantity of cigars; didn't you? A Yes, sir.

Q Which are now in Police Headquarters with the Property Clerk? A Yes, sir.

Q Where did you find those cigars, Mr. Pitcher? A They were scattered all over the front of the store.

Q Scattered all over the store? A Yes, some of them. There is a large show window there, in which there was nothing

at the time and there was a number of them in the window, spread around.

Q How many in the show window about? Or give us the percentage of the different places, so that we may have an idea? A Probably a thousand or fifteen hundred.

Q In the show window? A The show window is very deep, about four feet deep, and this was in the part inside of the warerooms. They were not out in the window, but in the back part of the show window.

Q As I understand you, they were not against the window? A Not against the glass.

Q But they were in the show window and you could see them from the street? A No, sir, you couldn't see them from the street. There is something on the window there.

Q Was it a shade? A Yes, sir, a shade of some sort.

Q And the shade was drawn all the way down? A Yes, sir.

Q All the way down? A Well you couldn't see from the street, because I tried to look in, previous to that.

Q Well, I am asking you a question. Was the shade on the window drawn down all the way? A All the way to the bottom?

Q Yes? A If I remember right, it was.

Q And this was midday at Schleicher's piano factory?

A Yes, sir.

Q Was the shade drawn down on any other window of the

premises? A Not on the easterly half of the store, no.

Q But on this half where the cigars were there was a shade drawn? A This is a double building, Mr. Spellman.

Q But in the window where the cigars were the shade was drawn? A Yes, sir.

Q Have you ever told that to Mr. Nott? A No, sir.

Q You have been interrogated by Mr. Nott before this trial, no doubt, he asking you what you knew about the case? A No, sir, I haven't spoken to Mr. Nott. My only conversation has been with Mr. O'Malley.

Q Mr. who? A Mr. O'Malley.

Q Mr. O'Malley, one of the assistants? A Yes, sir.

Q And he has inquired of you what you know about the case? A No, sir, he hasn't. My conversation with him has been about placing my operatives around, to investigate.

Q Well you didn't testify to anything about the shade being drawn, on direct examination; did you? A No, sir.

Q It didn't occur to you? A No, sir.

Q I show you a picture here, and ask you whether that is a correct representation of Schleicher's piano factory? A Yes, sir, it looks like it.

Q It is? A Yes, sir.

Q Now please indicate on this picture the window where the cigars were, the show window where the cigars were? A Yes, sir.

Q Will you please mark it with an "X"? A You have it marked already.

Q Have I? A Yes, sir.

Q Then spread it, or draw it down further, and put your initials alongside of it, please. That's the idea? A Yes, sir.

MR. SPELLMAN: Now, I offer this in evidence, may it please the Court.

MR. NOTT: No objection.

(It is admitted and marked Defendant's Exhibit E.)

MR. SPELLMAN: Gentlemen of the jury, this is defendant's Exhibit E and the place marked X by the witness is the show window where the cigars were, or where some of the cigars were (indicating)

BY MR. SPELLMAN:

Q Now how many cigars were in that show window? A I should judge about 1500.

Q That would be 30 boxes, or were there boxes of only 25?
A Yes, some were 25 and some were more than that, 50 in a box, in the show window.

Q And now where was the other boxes? A If I remember right, some of them were on the floor. The show window is up about that high from the floor (illustrating).

MR. SPELLMAN: Indicating about three feet, Mr. Nott?

MR. NOTT: Yes.

THE WITNESS: And some were piled up between the

0021230
PAGE 1230

140
floor and the level of the show window.

BY MR. SPELLMAN:

Q On the floor in the store? A Yes, sir.

Q How many were piled up there, about? A Well there might have been the same amount.

Q About 1500? A Yes, sir, or 2,000.

Q And where did you find the other goods? A The other goods were in the trunk and in the large pasteboard box.

Q How many did you find in the trunk and the pasteboard box? A balance of about three thousand? A Well, about two thousand, I guess.

Q I see. Now, aside from those that you found in the trunk and box, and those that were on the floor, piled up against this wall of the show window, and in the show window, were all exposed to view? A Yes, sir, you could see them.

Q And they were all unstamped? A All unstamped.

Q How long have you been an operative with the Pinkerton Agency, Mr. Pitcher? A Well, before being assistant superintendent, you mean?

Q Yes. A I had been an operative seven years before that.

Q What was your business before that? A Before that I was in the real estate business.

Q Have you ever been convicted of a crime? A No, sir.

C H A R L E S B R I S K I N, of 234 East Broadway, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NOTT:

Q Mr. Briskin, what is your business? A I am a foreman.

Q You are a what? A I am a foreman in James P. Horner's place of business.

Q And where is that place of business? A At 3 Platt street.

Q Last summer did you have an office or place of business at 110 John street? A We had a branch there.

Q And did you used to work there? A Yes, sir.

Q And on what floor was your office? A On the third floor.

Q In the third loft? A Yes, sir.

Q How many lofts are there in the building? A Four lofts.

Q And did your concern also occupy the third loft?
A Yes, sir.

Q The third and fourth lofts? A Yes, sir.

Q Now state whether or not there was a stairway running between those two lofts, from the third loft to the fourth loft?
A (No answer)

Q Was there a stairway up which you could go to get from one loft to the other? A Yes, sir.

Q And the fourth loft was the top loft? A Yes, sir.

Q And was there any door at the bottom of that stairway?
A Yes, sir.

Q At the third or fourth floor? A The third and the fourth.

Q Well, I don't understand. Where was the door? Between your two lofts, or at the bottom of the stairs? A Between

the two lofts.

Q That is, at the bottom of the stairs leading up to the fourth floor? A Yes, sir.

Q And was that door usually kept locked? A Yes, sir.

Q At night? A Yes, sir. I locked it myself.

Q What kind of a lock was it? A A padlock.

Q A staple? A Yes, sir.

Q A padlock and a staple? A Yes, sir, and a staple.

Q And how big is the padlock? A Not very big.

Q And is the staple small, or a large staple? A A small staple.

Q A small staple? A Yes, sir.

Q Now, do you remember the time when these two parties, these two defendants (indicating) moved into the building?

A Yes, I do remember it.

Q And do you remember about when that was? A What do you say?

Q (Question repeated) When they moved into the building? A I don't remember it, no, that date.

Q But you remember their moving in there? A Yes, I remember.

Q And on which floor were they, if you remember? A On the first floor.

Q One flight up? A One flight up.

Q Now, did you have any talk with either of these men

CASE 1200

about the keys? A Yes. That man give me the keys. He changed with me the keys.

Q Which one, which man? A That old man (indicating the defendant Harrington).

Q How long was it after they moved in, before you had a talk with them about the keys? A About eight days after.

Q Do you remember the time that there was a fire around the corner, on Pearl street? A Yes, sir.

Q Now was it before or after that fire that you had this talk with him? A Before that fire.

Q Now tell the jury where you were when you had the talk with him? A I had the talk with him in my loft.

Q Now tell the jury what the talk was? A He come up, and changed me the keys.

Q Well, what do you mean by that? I don't understand you. A He changed the locks of the outside door, and he says he will keep his locks.

Q He said what? A That he will keep his locks.

MR. SPELLMAN: I object to that as immaterial, may it please the Court.

THE COURT: Overruled.

MR. SPELLMAN: Exception.

BY MR. NOTT:

Q Well, how did you know that he had changed the lock on the front door? A He come up with the new lock, and he take

CASE 1260

the key, and give me a new key, and he said he wanted to change that lock, he wanted to keep his lock.

Q He wanted to keep his lock? A He wanted to lock that door with his lock.

Q He wanted to lock with his lock? A Yes, sir.

Q And did he say where his lock was? A He brought me up that lock to show me that lock.

Q Was it a lock or a key that he brought you? A No, he brought me a key.

Q No. Was it the lock or the key that he brought to you? A No, only the key.

Q Now, did he say what ~~lock~~ lock that was the key of? A He said that it is a new lock, on the outside door.

Q And did he say who put the new lock there? A He says he put it himself; he changes this lock.

Q And he gave you a key for the new lock; is that it? A Yes, sir.

Q Did he say why he had put a new lock on the front door? A He didn't say why.

Q What did you say to him at that time? A I asked him for two keys; that I needed two keys, one for the office and one for myself.

Q And what did he say to that? A After a few days, he gave me another key, he gave me two keys.

Q Did you go into his loft at any time? A Yes, I go down.

CASE 1260

Q When was that? A I didn't see nothing.

Q When was it that you went into his loft?

MR. SPELIMAN: I move to strike that out.

MR. NOTT: I consent.

THE COURT: It is stricken out by consent.

MR. SPELDMAN: That part hasn't been reached yet.

BY MR. NOTT:

Q When was it that you went into their loft? A I was
in there three days after.

Q Three days after he gave you the key? A Yes, sir.

Q And why did you go into the loft? A Because the
painter borrowed the stepladder off me.

Q Because the painter in his loft borrowed your step-
ladder? A Yes, sir. And I come up and asked for the step-
ladder, and he said he will paint me the stepladder.

Q Now when was it that he had your stepladder?

A The whole time, until the fire:

Q What? A Until the fire.

Q When did you get your stepladder back from him? Was
it before or after the fire? A After the fire.

Q How long was it after the fire that you got it back
from him, your stepladder? A About two days after the
fire.

Q And was it at that time that you went into the loft?

A That time I went in the loft, and he says he will bring me
up the stepladder.

0021200
CASE 1200

Q Now what did you see in the loft? A I see some cases there.

Q Some cases? A Yes, sir.

Q Did you see anything else? A Nothing else.

Q Now did you see your stepladder there at that time?

A Yes, I see it.

Q Had it been painted? A It had been painted.

Q And after that he returned it to you? A Yes, sir.

CROSS EXAMINATION BY MR. SPELLMAN:

Q Mr. Witness, you say you went in there two days after the fire, to inquire again for your stepladder? A Yes, sir.

Q It was returned to you then; is that right? A Yes, sir.

Q And it had been painted? A It had been painted.

Q Was the color of paint on the stepladder -- what was it? A Grey color.

Q Grey color? A Yes, sir.

Q And did it show any indication that the paint was very neat? A (No answer.)

BY THE COURT:

Q Do you understand the question? A No, sir.

MR. SPELLMAN: The question is withdrawn.

BY MR. SPELLMAN:

Q Did the ladder show in its painted condition, that the paint had been rubbed off, or was it neatly put on? A No, it wasn't rubbed off. It was painted all right.

Q Yes, neatly painted? A Yes, sir.

Q And no paint rubbed off? A No, sir.

Q Now you had been down there when the painters were there, hadn't you. I withdraw the question. And was the paint on the ladder dry? A Dry, yes.

Q Dry? A Yes, sir.

Q And you had been there when the painters were there -- in their office, I mean? A Yes, sir.

Q And when were the painters there? How long before the fire? A About six days.

Q About six days before the fire, the painters were painting his loft? A Yes, sir.

Q These defendants' loft? A Yes, sir.

Q And do you know when they painted your ladder?

A I don't know when.

Q Well, when did these painters get through with the work? A I don't know.

Q How long after the fire? A I give him the stepladder just in that time when they come up and asked me for the stepladder, the painters.

Q Yes. I know you were obliging and let them have it when they asked you for it. And the painters were using the stepladder? A Using it, sure.

Q Weren't they? A They used the stepladder.

MR. NOTT: I object. He hasn't answered that question, and I object to the answer and move it be

00021200
JAN 12 1960

stricken out, as hearsay.

MR. SPELLMAN: Consented to.

THE COURT: Strike it out.

BY MR. SPELLMAN:

Q Did you see the painters using the ladder for painting?

A Yes, sir.

Q How big a ladder did you give them? A Not very big.

A small ladder.

Q How many rungs did it have? A I don't remember how many rungs it had.

Q Well how high was the top rung of the ladder from the bottom? What distance did that cover? A I can't tell you.

BY MR. NOTT:

Q Well, was it as high as your head?

MR. SPELLMAN: Just a moment. I have the witness.

MR. NOTT: Then bring it out.

MR. SPELLMAN: I am trying to bring it out.

THE COURT: Ask him the length of the ladder in feet and inches. Pardon me a moment.

BY THE COURT:

Q How many feet long, in all, was that stepladder?

A About eight feet long.

BY MR. SPELLMAN:

Q How high were the ceilings? A I can't tell you.

I don't know.

Q How many feet above the ladder? A I don't know.

Q When they asked you for a ladder, did they ask you for any particular sized ladder? A No, sir.

Q They just merely asked you to lend them a ladder?

A They just asked me for a stepladder.

Q And you loaned your stepladder? A Yes, sir.

Q And you saw the painter use it? A Yes, sir.

Q Now how many days before the fire did the painters leave this place? do you know? A I don't know.

Q How many days before the fire did you see the painter there, painting? A I didn't see him. I did not see the painter.

MR. NOTT: That's just what I thought.

THE WITNESS: I didn't see him painting, only just in that day when they borrowed the stepladder.

MR. SPELDMAN: Then it isn't just as you thought,

Mr. Nott.

BY MR. NOTT:

Q You saw them painting, that day when they borrowed the stepladder from you? A Yes, sir.

Q Where was the painting being done? A I don't remember this.

Q In their loft; was it? A Yes, in their loft.

Q Now you pay attention to me. Probably you don't understand me, and I want you to. Take your time. Now you say that Mr. Harrington, the old man, came to you and gave you some

CASE 1200

keys for a new lock that had been placed on the outside door of 110 John street? A Yes, sir.

Q And when he gave you a key you asked for two keys?

A Yes, sir.

Q You said you needed two keys? A Yes, sir.

Q And that was a lock for downstairs? A Yes, sir.

Q Was the lock downstairs the same pattern, and did it have the same key, as the lock on the third floor, which led to your premises, and the lock on the fourth floor? A No, sir, there is a separate lock. It isn't the same lock.

Q And you require different keys for those two locks than the ones that you required for downstairs, when the old lock was on? A Yes, sir.

Q This building at that time had how many tenants?

A Two tenants.

Q And the one who came first opened the door downstairs, unlocked the padlock on the door? A Yes, sir.

Q And the one who left last locked the padlock? A Yes, sir.

Q You remember the time of the fire; don't you? A I remember the fire, but I don't remember what day.

Q Well, you remember the time when the fire took place, I mean? A In the morning.

Q Yes, in the morning? A Yes.

Q It was on a Monday morning in August; wasn't it?

A Yes, sir, Monday morning.

CASE 1200

Q Did you go to your place of business on that Monday morning when the fire took place in the La Barossa cigar factory?

A Yes, sir.

Q When did you reach your place of business? A Eight o'clock.

Q Were you the first one there? A Yes, sir, the first one.

Q Did you open the door downstairs? A Yes, sir.

Q So that you unlocked the door to the building?

A Yes, sir.

Q And then you proceeded to your place upstairs?

A Yes, sir.

Q When you reached the third floor, did you unlock the lock on the third loft, the door? A I unlocked it.

Q Mr. Witness, if you don't understand me, I will repeat.

A I unlocked the door.

Q And the lock was in good condition? A In good condition.

Q And then you went up to the fourth floor, did you?

A Yes, sir.

Q And did you unlock the lock on the fourth loft?

A Yes, sir.

Q And did you find the lock in good condition? A In good condition.

Q Was the staple in good condition? A All the doors

is in good condition.

Q Did it show any signs of being tampered with? A (No answer.)

MR. NOTT: I object to that, as being a conclusion asked for from the witness.

THE COURT: Sustained.

MR. SPELLMAN: Exception.

BY MR. SPELLMAN:

Q Now you got to the roof of the building 110 John street through your premises on the fourth loft; is that right? A Yes, sir.

Q There is a scuttle there that leads onto the roof? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. NOTT:

Q And there is a ladder that goes up to that scuttle? A It isn't closed over. It is open.

Q What? A It is open. It isn't open, but it isn't locked up.

Q It isn't locked? A No.

Q And there is a ladder that goes up to it? A Yes, sir.

Q Now are there two doors to your -- is there a door, across the stairs, to each of your lofts? A To each of my lofts.

Q And they both had a staple and padlock? A Yes, sir.

Q And are they both small staples? A Yes, small

staples.

Q Now you stated that, on the day they borrowed your ladder -- you said to the defendant's counsel -- you took the ladder down into the loft; is that right? A (No answer.)

Q Did they carry it down, or did you carry it down?
A No, they carried it down.

Q Who carried it down? A That old man (indicating Mr. Harrington.)

Q And how long was it after he carried the ladder down that you went in there? A About ten days after, I asked him for the ladder.

Q I thought you said that, on the same day that he took the ladder, you went into the loft? A Yes.

Q Is that right? A That's right.

Q Then all right. Now how long after he took the ladder was it that you went into the loft? A About two days after.

Q You don't understand me.

MR. SPELLMAN: I object to that, may it please the Court. It is for the witness to say whether he does or doesn't understand him.

THE COURT: Overruled.

MR. SPELLMAN: Exception.

BY MR. NOTT:

Q Now do you remember the day that they ~~brought~~ borrowed

the ladder from you? A Yes, I remember that day.

Q Now on that day did you go into their premises, into their loft? A Yes, I went there.

Q And how long after they borrowed the ladder was it that you went into the loft, on that same day? A I don't understand this.

BY THE COURT:

Q How long had they had the ladder before you went down there? A They had the ladder ten days then.

Q Well, you say that, on a certain day they took the ladder? Do you understand that? A Yes, sir.

Q And you say that, on the same day, you went down into their loft, after they took the ladder? A Yes, sir.

Q Now how long was it afterwards that you went down? A About two o'clock.

Q About two o'clock in the day you went down? A Yes, sir.

Q And when did they get the ladder? A In the morning.

Q About what time? A About eight o'clock.

Q About eight o'clock in the morning? A Yes, sir.

Just as I opened the door they asked me for the ladder.

Q They got the ladder at eight o'clock?

A Yes, sir.

Q And you went down, on the same day, at two o'clock?

A Yes, sir.

BY MR. NOTT:

Q Now when you went in there, were the painters at work?

A Yes.

Q How many painters?

A Only one.

Q And didn't he have a board or boxes and barrels?

A No, nothing at all.

Q Well, was he on the stepladder when you went in?

A No; nobody is on the stepladder.

Q All right. Did you see any painter using that stepladder?

A Yes, I seen it. I seen a painter use my stepladder.

Q But you say that there was noone on your ladder at that time?

MR. SPELLMAN: I object to this, as cross examination of his own witness.

THE COURT: Now, I am going to allow it, counselor. We are trying to arrive at the truth here.

MR. SPELLMAN: Exception.

BY MR. NOTT:

Q Was the painter using the ladder when you went in there?

A Yes, sir, he was using the ladder.

Q Well, what was he doing? A He was painting the floor, and then he go up and paint the walls, and when he came down, he makes--I don't know how to say it.

Q You speak German? A I speak Jewish.

BY MR. NOTT: Will the official interpreter interpret that question to him?

MR. SPELLMAN: No, I object to that. We are getting along very nicely in English. He seems to understand English very well.

THE COURT: No; I think not, and, therefore, I will allow it to be interpreted to him.

MR. SPELLMAN: I take an exception.

(From this point on the witness testified through the official interpreter, Mr Rosenthal.)

BY MR. NOTT:

Q Now what was the painter doing with the stepladder?

A He took the stepladder from me, but when I came downstairs, he was painting something on the floor.

Q Who was? A The painter.

with

Q Yes. And what was he doing ~~on~~ the stepladder? A When I came down, the stepladder was covered with whitewash.

BY MR. SPELLMAN:

Q Kalsomine? A Kalsomine.

BY MR. NOTT:

Q You mean that he rested his pot and brushes on it?

CASE 1200

A No; it was only poured over the stepladder.

Q Well, was he using the stepladder in any way, or was it just standing there? A He was only standing there, but the stepladder was covered with the whitewash.

Q Yes. That is, whitewash had been spilled on it? Is that what you mean? A Yes, sir.

Q And is that why he told you he would repaint it for you? A For that reason, the old man here told me that he would paint it over, but not the painter.

Q Well, then did you at any time see the painter using the stepladder in his business of painting? A I didn't see that.

RECROSS-EXAMINATION BY MR. SPELLMAN:

Q You saw the stepladder in the premises, where was the stepladder? Was it in the middle of the room or against the wall? A Near the wall.

Q And was the painter painting that wall where the stepladder was at the time? A Yes, sir.

Q And when you say he was painting the floor, you mean the wall near the floor, or the floor itself? A The wall near the floor.

Q Now, the wall directly above the floor he was painting, did that show indications that it had been painted, and I am referring now to the wall where the ladder was? A It was painted already. He was afterwards painting the lower part

(indicating).

Q And could you tell which side of the wall was not yet painted, and which side of the wall was painted? A As soon as I entered, I could see that the wall just opposite me was painted already.

Q And it had been painted up to the point where the ladder stood; is that right? A Yes; up to that place it was painted already.

Q Now when you say there was some kalsomine or whitewash on the ladder, tell us whether you mean there were spots of kalsomine carried there on the ladder, or whether the ladder was spilled all over with kalsomine, as if it had been dumped over it? A The whole ladder was sprinkled over with the whitewash.

Q That's all. Oh, yes, just one more question. Now, you said there were small staples in the doors where you had the padlocks? A Yes, sir.

Q Leading to the third loft and fourth loft of your premises, is that right? A Yes, sir.

Q Did you take notice, the morning you got to your place, whether those staples bore evidence of having been pulled out, or being disturbed in any way?

MR. NOTT: I object to the form of the question.

I don't object to its gravamen.

THE COURT: Yes; I sustain the objection to the

form of the question. Now you can ask what he saw in regard to those staples.

BY MR. SPELLMAN:

Q Did you see anything in regard to those staples when you arrived at your place of business on the morning of the fire? A I didn't see nothing. Everything was correct.

BY MR. NOTT:

Q One moment. Had you asked Harrington to change the lock on the door? A I didn't ask him. He asked me.

BY MR. SPELLMAN:

Q Just a moment. Didn't Mr Harrington tell you that he changed the lock because the landlord didn't have a key to give him to the present lock, and so he took off that lock, and furnished you, as another tenant, with the two keys?

A No, sir, he didn't say nothing about that.

Q Did you object to it at all? A No, sir.

Q It made no difference to you what lock there was on the door, so that you had keys to enter; is that right?

A Yes, sir; I didn't care about it.

G E O R G E H. S W A R T W O U T, J r., of 71 Orange

street, Brooklyn, a witness called on behalf of the People and being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. NOTT:

Q Mr Swartwout, what business are you in? A Paper

ruling.

Q Where is your place of business? A 110 John street.

Q And was it there in the months of August and September last? A Yes, sir.

Q Are you in business for yourself? A Yes, sir.

Q How long have you been in business there? A This is my second year.

Q And on what floor are you? A Second.

Q Two flights up? A Yes, sir.

Q Now do you remember these two parties here (indicating the defendants,) Ackron and Harrington, moving into the loft below you? A Yes, sir.

Q Do you remember approximately when it was they moved in? A I think it was in the first of August.

Q Of this last summer? A Yes, sir.

Q Which of these two men did you see first? A Why, the gentleman on this side, with the heavy mustache.

Q Indicating Ackron? A Yes, Ackron.

Q Where was he when you first saw him? A Well, he come up to my place and asked me for a key of the front door.

Q Do you remember when that was? A That was the first day they were in.

Q And did he say when he wanted it, or where his place was? A Why, he asked me for the key, and I told him I

didn't know who he was, why I should lend it to him, and he told me he had a lease on the loft downstairs for a year, and asked me if that wouldn't make any difference, and I said no; if he called up the agent, Mr Ludlow, on the telephone, and if Mr Ludlow told me to give him the key, I would, and so Mr Ludlow did.

Q And you gave him a key? A Yes, sir.

Q And was that a key of the lock that was then on the door? A Yes.

Q Well, how many keys did you have? A One.

Q And when you gave him that key, did that leave you without any key? A Well, he told me he was going to have a key made, and he would bring mine back to me.

Q How many times did you see him about the key, before you gave him your key? A Only the one.

Q Did he bring your key back to you? A No, sir. He brought another key back, and said that he had put another lock on the door.

Q And how much later was that? A I think it was that afternoon.

Q The same afternoon? A The same afternoon.

Q Does the door of the front door lock by a padlock, or lock by an ordinary lock? A A padlock.

Q And he told you that he put a new padlock on and gave you a new key? A Yes, sir.

Q Now did you see him after that? A I seen him, off and on, each day.

Q And did you have any further talk with him? A Later on the week they put another lock on the door, and brought up another key.

Q I am talking now only of Ackron. Did you have any further talk with him? A No, sir.

Q Now go back to Harrington. When did you first see Harrington? A I think it was the first day they moved in.

Q Did you have any talk with him on that day? A I think he come up and borrowed a hammer.

Q Yes. Now after that what talk did you have with Harrington? A On that day?

Q No, at any time. What was the next talk that you remember with Harrington? A Well, just in saying good morning, when I came in, and went out in the evening, when he was there.

Q Well, do you remember any other talk? A Why, later on, I was talking with him. It was when he was moving out.

Q But you said, a minute ago, that he brought you a second key? A Yes, sir.

Q And when was that? A Later on in that same week.

BY THE COURT:

Q That was Ackron; was it? A No, sir; Ackron brought the first one.

BY MR. NOTT:

Q And do you remember when it was he brought you the second key? A I think it was on Friday of the same week.

Q Now state to the jury whether or not you remember a fire that took place in the neighborhood, in the neighborhood of the La Varossa Cigar Company, on the 8th of August? A I remember there was a fire there, but I didn't take any particular notice of it.

Q And they moved in, the first of August, you say? A Yes, sir.

Q And they brought you the first key on the first day they were there? A Yes, sir.

Q And then, later that week, on Friday, Harrington brought you another key? A Yes, sir.

Q Now state what talk you had with Harrington when he brought you that second key? A He just said that the first lock was no good, because it caught too much, and they was putting a good lock on it.

Q And he gave you another key? A Yes, sir.

Q Had you seen any trouble with the first lock? A No, sir.

Q Now after that did you have any further talk with him? A Not until they was moving out.

Q And did you have any talk with him about shelving?

A Well, that was when Ackron come up with the first key.

Q Yes? A He told me that he was going to have his carpenters in, the following day, and that was Saturday, to put in shelving,, and, if Mr Briskin and I weren't working, he wouldn't have any key to open the door, and he wanted my key to stay there late Saturday afternoon.

Q He wanted a key to the building? A Yes; so that he could get in there Saturday. He wanted the key to the front door.

Q What did he say about shelving? A He said that he was going to have carpenters there, putting up shelving.

Q Well, now, were you in the premises before they moved out, later in the month? A I was at the door.

Q Did you look in? A Yes, sir.

Q Had you looked in before they came in? A Yes.

Q Did you see any change in the condition of the premises? A The only change was that before they moved in, the painters were fixing it up. That's the only change I could see.

Q Did you see any shelving put in? A No, sir.

MR. SPELLMAN: We admit there was not, Mr Nott.

BY MR. NOTT:

Q And he told you he wished the key to get the carpenters in there, to put up shelving? A Yes, sir.

CROSS-EXAMINATION BY MR. SPELLMAN:

Q The fact is that Mr Ackron as a tenant in that build-

ing, was entitled to a key to the front door; wasn't he?

A Yes, sir.

Q And it made no difference to you, did it, whether you used the lock that was on when he moved in, or another lock?

A No, sir.

Q It made no difference to you, so long as you had a key to the lock that was on the front door? A Yes, sir.

Q And so long as you had a key to admit you to the premises? A Yes, sir.

Q And that is quite true, isn't it? A Yes, sir.

Q And you made no objection when they suggested putting on a new lock? A No, sir.

Q Or when they came with the second key? A No, sir; that isn't my place.

Q Now did you notice any furniture in the premises, in the first loft there? A After they moved in?

Q Yes. A There were some desks and chairs.

Q How many desks were there? A As near as I can remember, there were two desks, one high desk and another a roll top.

Q Yes. And any chairs? A A chair for each desk, and a railing running across.

Q And an office railing? A Yes, sir.

Q That was put up; wasn't it? A Yes.

Q To give a sort of privacy to-- A To the middle of

the room; to separate the desk from where the door was.

Q And there were two big counters there? A I don't remember the counters.

Q I see. You don't? A No, sir.

BY THE COURT:

Q Was the door going into their loft a door that was entirely of wood, or was there any glass in it? A There was glass.

Q There was glass? A Yes, sir.

Q Do you remember whether there was any lettering put on the door? A There was none.

REDIRECT-EXAMINATION BY MR. NOTT:

Q At the time that they handed you the second key, did you give them back the first key, or keep it? A I gave it back.

Q You gave back the first key? A Yes, sir.

Q To whom? A To the gentleman with the white hair.

Q To Mr Harrington? A Yes, sir.

Q So that you no longer had a key that would unlock the first lock that they gave you? A No, sir.

RECROSS-EXAMINATION BY MR. SPELLMAN:

Q Mr Witness, did you carry much stock in your paper ruling business? A I don't keep any stock at all. People send me the paper and I rule it.

Q It is heavy merchandise; isn't it? A It is paper.

Q Just paper? A Yes, sir.

MR. SPELLMAN: I would like to inquire of the District Attorney, if your Honor please, whether the last witness has left the building.

MR. NOTT: I don't know whether he has left the building or not. I will inquire. Get Briskin. Briskin has gone. Do you want him sent for?

MR. SPELLMAN: Well, yes, at his convenience. I don't like to disturb a man at his business. I just wanted to show what kind of a business he is conducting there. It escaped me for the moment.

MR. NOTT: I dare say that the last witness, Mr Swartwout, would know.

THE COURT: Well, what business were you informed was his business?

MR. SPELLMAN: Well, I understood that he conducted a cigarette business there of very large proportions, and that he carried a very valuable stock, and that you had to go through the premises of Mr Briskin to go to the roof, and that he didn't miss anything.

MR. NOTT: Well, I will concede that nothing was stolen from Mr Briskin.

MR. SPELLMAN: Well, then it is conceded, is it, that to reach the roof you must go through the premises

occupied by Briskin's people, on the third loft and fourth loft, and that at the time--in the month of August, 1910, they had a very large and valuable stock of merchandise on hand, and that there was nothing stolen there from either the third or fourth lofts?

MR. NOTT: Yes, I will concede that.

MR. SPELLMAN: And then that does away with the necessity of subpoenaing him. I will also add to the concession, with your permission, that he had a large and valuable stock there.

MR. NOTT: No, I don't think I will concede that, because I don't know anything about that.

MR. SPELLMAN: Well, then that he had a large stock, amounting in value to several thousand dollars?

MR. NOTT: All right, I'll concede that, to save time.

J O H N J E N I F E R, of 204 West 65th street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. NOTT:

Q Mr Jenifer, are you employed at the premises 110 John street? A Yes, sir.

Q And what do you do there? A Porter.

Q And who are you employed by? A By the Pittsburg

Manufacturing Company.

Q And they have got the ground floor? A Yes, sir.

Q How long have you been there? A Oh, I've been there with them quite a while; five or six years, I guess.

Q And do you remember the time when these two parties here (indicating the defendants) moved into the loft above your place? A About the time, sir, I guess.

Q Last summer, wasn't it? A Yes, sir.

Q Did you help to move out anything for them? A I did, sir.

Q Do you remember when it was? A I don't exactly remember. I think it was July or August.

Q Well, do you remember a certain day when a fire took place in the Cigar Company's place at the corner of Pearl street? A Yes, sir.

Q Was it before or after that fire that you moved out some things for them? A After the fire.

Q How long after? A I couldn't say.

Q Well, do you remember whether it was a long while or a short while after? A I don't think it was very long, sir.

Q Well, would you say it was the same week, or later or earlier? A I couldn't say whether it was the same week or not, sir.

Q But you remember that it was after the fire? A After the fire, yes.

Q And what was it that you moved out at that time?
What did you move for them? A Well, I helped to move down
a desk and some chairs and some boxes.

Q Yes. Did you help them more than once? A Only
once, sir.

Q And who asked you to help them? A The old gen-
tleman there (indicating Harrington).

Q Harrington? A Yes, sir.

Q How many boxes did you move out? A I didn't take
particular notice. I suppose five or six, I guess.

Q Were they large or small boxes? A Rather medium
size.

Q Will you look at those boxes in the court room there
(indicating). Were any of them about the same size as those?

A I disremember now. I know some were smaller. I don't know
whether there were any of the same size as them, though.

Q And what else did you move? A Some chair and boxes
and a desk.

Q Well, what were they loaded into? A Well, I
couldn't say, except as to two of them. Two was open.

Q Two boxes were open? A Yes, sir.

Q And did you see anything in them? A Yes, sir.
Fixtures for a lady's hat.

Q Fixings for a lady's hat, do you mean? A Yes, sir.

Q And what was in the other box that was open? A There

1260
CASE 1260

was iron blocks, kind of round blocks.

Q Then the other boxes were closed, and you don't know what was in them? A No, sir.

Q Now what did you load these boxes onto? A On a wagon, covered wagon.

Q Express wagon? A Well, it was a wagon. I don't know whether it was a regular express or not. I know it was a covered wagon.

MR. SPELLMAN: Do you want me to concede anything at this point, Mr Nott?

MR. NOTT: No.

BY MR. NOTT:

Q And after that time did you see the parties in the premises any more? A There was a wagon come there, but I didn't see who come with it.

Q Well, after the day when you helped them load up this wagon with these cases and this desk, did you see these two men in the building any more after that? A No, sir.

Q And you have been there right along, haven't you? A Yes, sir.

CROSS-EXAMINATION BY MR. SPELLMAN:

Q Now, Ackron wasn't there, the day you helped Harrington load the wagon; was he? A No, sir.

Q Now, you meant these (indicating) when you said fixtures

for ladies' hats? A Yes, sir.

Q And the case was open? A Yes, sir.

MR. SPELLMAN: I offer this in evidence, if your Honor please.

MR. NOTT: No objection.

THE COURT: Received.

(It is marked Defendants' Exhibit F.)

BY MR. SPELLMAN:

Q Were they attached to this card, a card like this (indicating the exhibit)? A Yes, sir.

MR. SPELLMAN: Gentlemen, this is Defendants' Exhibit F (indicating).

BY MR. SPELLMAN:

Q Would you be able to identify these cases if you saw them, Mr Witness? A I don't think so, sir.

MR. SPELLMAN: I would like to suspend with this witness' cross-examination, before we go any further, if your Honor please, and bring the cases into court. I believe they can be here this afternoon.

THE COURT: Very well.

MR. SPELLMAN: I thank you very much, sir.

REDIRECT-EXAMINATION BY MR. NOTT:

Q During the time these parties were in the building, did you ever deliver any cases for them to any customers? A No, sir.

Q Did you ever see anybody going into their premises, except the painters? A I never noticed anybody going in there, sir.

Q And you were around there all the time? A Yes, sir; pretty much all the time.

PAGE 1280

RE-CROSS EXAMINATION BY MR. SPELLMAN:

Q Well, what was your business there? A Packing and unpacking metal.

Q For the tenant on the first floor, on the store floor?

A Yes, sir.

Q And where did you do the packing? A Inside mostly, but sometimes on the street, if the cases was too large.

Q And you nailed them up, outside, when the cases were too large? A Yes, sir.

Q But most of your work was with smaller cases that you could take inside? A Yes, sir.

Q And most of your work was inside? A Well, the principal part of it was inside, sir.

Q Well, people wanting to go upstairs on the first loft, into the premises occupied by the defendants, didn't have to go through the store; did they? A No, sir.

Q And so that, at times, you were occupied in the store, and you couldn't see people who went up the stairs leading to their lofts; could you? A No, sir.

Q You don't recall whether it was a week or two weeks or three weeks after the fire that they moved out; do you? A No, sir, I couldn't tell you exactly.

Q Well, can't you say whether it was near the end of August, August 29th? The fire occurred, I understand, on August 8th? A I couldn't say positively about that.

Q Do you recall the day of the week? A I couldn't call the day of the week neither, that they moved out.

Q Were there any other cases exposed or opened except those two cases? A I didn't see any others exposed or open at all.

Q Well, did you take particular notice? A No, sir, I didn't notice particular at all.

MR. NOTT: Now, do you want this man kept here?

MR. SPELDMAN: Well yes, just a moment.

BY MR. SPELDMAN:

Q Was there a great deal of printed matter in the cases, too? By printed matter I mean circulars, little pamphlets and such things? A I didn't see any.

Q You are acquainted with that neighborhood, aren't you Mr. Witness? A Yes, sir.

Q How long have you been in that neighborhood? A About thirty-five or forty years now.

Q On John street? A Yes, around in that section.

Q Do you live down there too? A I have been living down there but I am living uptown, sir.

Q Well, how long have you lived down there? A Well, I only go down there for day's work now.

Q Now do you know any of the people who live at 110 to 118 John street? A No, sir.

Q Do you know any janitors who live across from these premises, 110 to 118 John street? A No, sir.

CASE 1260

Q You are not acquainted with any janitor's families in that neighborhood? A No, sir.

MR. SPELLMAN: I would like to have him recalled to identify the cases, later.

MR. NOTT: No, I don't think that is necessary.

If you bring the cases into court I will concede them.

BY MR. NOTT:

Q Now, if they brought certain boxes into court and asked you if they were the boxes that you helped to load on a truck, would you be able to identify them or not, would you be able to say whether they were the boxes or not?

MR. SPELLMAN: One moment. The witness is under cross examination, and I would like him to see the boxes before he says whether he can tell whether they are the same boxes or not.

THE COURT: Yes.

MR. NOTT: Yes. He can be shown the boxes, of course, if it makes any difference. There is no dispute that the boxes went out.

MR. SPELLMAN: Now what is the use of making a speech before the witness.

MR. NOTT: I am addressing the Court.

MR. SPELLMAN: But unfortunately the witness can hear what you say. Then the witness may return at two o'clock?

THE COURT: Yes, at two o'clock.

DANIEL D. RYER, of 145 West 130th street, a witness called on behalf of the People, being duly sworn testified as follows:

DIRECT EXAMINATION BY MR. NOTT:

Q Mr. Ryer, what is your business? A I am with the Pinkerton Detective Agency.

Q And how long have you been employed by that agency? A Twelve years and over.

Q And were you employed by them on or about the 8th day of September, 1910? A I was.

Q On that day -- where were you on that day in the morning? A Well, was that the 8th or 7th?

Q The 8th? A Well, I was over in the vicinity of 123 Reid avenue Brooklyn.

Q And were you there also on the 7th? A I was there on the 7th.

Q And were you there on the 8th? A Yes, sir; and I was there on the 8th.

Q Now do you know who lives at those premises you have mentioned in Reid avenue Brooklyn? A Yes, sir.

Q Who? A Mr. Ackron and Mr. Harrington, at the time.

Q Had you seen them going in and out of there?

A Yes, sir, I did.

Q And you were sent to watch those premises on that day?

A Yes, sir.

Q Now what did you see on the 7th? A On the 7th, about 7:30 in the morning, Mr. Ackron came out of the house, and went shopping in the vicinity.

About nine o'clock Mr. Harrington comes out, and goes to the vegetable store, 135 and 137 Reid avenue, and then goes back to Mr. Ackron's house. And, about 9:10 Mr. Harrington came out again, and went to Tice's livery stable.

Q Was that Harrington or Ackron that went to the livery stable? A Mr. Harrington.

Q And that is at what number? A 270 Reid avenue.

Q And that is the livery stable? A Yes, sir.

Q And that is the same premises where the house was?

A No, sir.

Q Where was the house? A 123 Reid avenue.

Q Did you see him go into Tice's livery stable?

A Yes, sir I did.

Q How long was he there? A The first time, about ten minutes. And then he went back to Mr. Ackron's house, and comes out again, about 9:30 or 9:40, and goes back to Tice's livery stable.

Q And how long was he there, the second time? A About fifteen minutes. And came out with a rig.

Q What kind of rig? A A black body and top wagon, a business wagon, and a bay horse.

Q A black bodied wagon? A Yes, sir. And with that rig Mr. Harrington went to the side entrance of Mr. Ackron's

house.

Q Is that on a corner? A Yes, sir, right on the corner. And Mr. Ackron and Mr. Harrington brought out two cases and a brown colored box.

Q Well, what kind of cases? A Wooden cases.

Q Boxes? A Well, about that size (illustrating).

Q And what kind of a brown colored box? A Well, it was a brown colored box, about that size and that high (illustrating).

Q Were you present at Schleicher's at the time the arrest was made? A I was not.

Q Now look at the two boxes that you see there (indicating).

MR. SPELLMAN: Mr. Nott, we concede that those are the two boxes that he saw.

BY MR. NOTT:

Q Are those the boxes? A Yes, sir.

MR. SPELLMAN: Now, may it please the Court, we concede that the two boxes in the court room now, and the brown paper box are the boxes which the witness saw put on this buggy, and which were the boxes from Mr. Ackron's house, the boxes that the witness refers to now.

MR. NOTT: All right.

BY MR. NOTT:

Q Now who loaded the boxes on the wagon? A Mr. Ackron and Mr. Harrington.

Q Anybody with them? A No, sir.

Q And then what did they do? A Mr. Harrington went in the house, and changed his derby hat for a cap, and came out with a patch on his left eye.

Q And after he put this patch on his eye, and the cap on his head, what did he do? A He got on the wagon, and drove the horse and wagon to Broad street, New York.

Q Was he dressed the same way as he is now? A Well, about. I didn't take much particular notice to the dress.

Q What kind of a cap did he have on? A A dark cap, black.

Q And where did he drive the wagon to? A The vicinity of 103 Broad street.

Q In this county? A Yes, sir.

Q In Manhattan? A Yes, right in New York; Broad street New York.

Q And was Ackron with him? A No, Mr. Ackron met him there.

Q Whose premises are at 103 Broad street? A I think it is a warehouse.

Q And what did they do when they got there? A Well, Mr. Harrington and the bootblack in front of the cafe of Mr. Lindinger, Mr. Fritz Lindinger took the cases off and the box.

Q And was Ackron there then? A Yes, sir.

CASE 1260

Q And what was he doing? A He went inside of Mr. Fritz Lindinger's cafe.

Q And how long was he in there? A Well, Mr. Harrington also went in there.

Q With these goods? A No, the goods were left outside.

Q And then he came out, Harrington came out, and helped the bootblack move them in; is that it? A No. I left before the goods were taken away, because Mr. Harrington come out, and got in the rig again, and went back to Brooklyn.

Q I thought you said you saw them move the goods in, Harrington and the bootblack? A No, sir; they were left on the stoop of the warehouse, after being taken out of the buggy.

Q And then Harrington came out and drove away? A Yes, sir.

Q The goods being left on the stoop? A Yes, sir.

Q And you followed him? A Yes, sir. And he went back to Mr. Ackron's house, and changed his cap for his derby hat, and took the patch off his eye, and went back to Mr. Tice's stable.

Q And this was all on September 7th? A Yes, sir.

Q Now did anything happen of any account on that day, in addition to that? A No, sir.

Q Now, on the next day, where did you begin work? A At 123 Reid avenue.

CASE 1260

Q And did you see -- well, Harrington drove the wagon from Brooklyn over here to New York, and back to Brooklyn on that day? A He did, sir.

Q Now, the next day whom did you see first, Ackron or Harrington? A I saw Mr. Ackron come out first.

Q What time was that? A In the morning, at about eight o'clock, or around that hour.

Q And were you detailed to watch him, or watch Harrington? A Well, I was detailed to watch both, in case they were together.

Q On the day previous, was anybody with you? A On the 7th?

Q Yes. A Yes.

Q Who? A Mr. Weiler.

Q Anybody else? A No, sir. Him and I were the only ones in that vicinity.

Q And on the 8th, who was with you, if anybody? A Mr. Weiler.

Q Now tell us what you saw the two defendants or either of them, do on the 8th? A Well, they merely talked together. There was nothing transpired, on that day.

Q You saw them going in and out of the house? A Yes, sir; and they walked around, and talked together.

Q And on the 9th, where did you first see them? A At 123 Reid avenue.

Q What happened on that day? A Well, Mr. Ackron came out first, and went shopping, and then Mr. Harrington came out; and Mr. Harrington went back to the house, and Mr. Ackron met him, and they conversed for a while, in front of the house.

And then Mr. Ackron went down to the corner saloon, and stood by the door, and talked with the bartender or proprietor, I don't know which, and Mr. Harrington met him there.

And Mr. Harrington boarded a surface car later, and I deemed it wise, as Mr. Ackron was in the vicinity --

MR. SPEELMAN: I object to that, and move to strike that out.

THE COURT: Objection sustained. Strike it out.

BY MR. NOTT:

Q Well, what did you do? A Then I left the place, and went over to the vicinity of No. 2 West 29th street.

Q Then you didn't follow Harrington? A No, sir.

Q And when did you get to 2 West 29th street, in this Borough? A Well, about eleven o'clock I got there.

Q And did you see the defendant Harrington there?

A Yes, I saw Mr. Harrington there, and I saw Mr. Ackron there, about 11:30.

Q In what part of the premises? A Well, Mr. Harrington was in the rear.

Q Well, is it an office, or what? A Well, it is a picture frame place, and you can look right through into the basement.

Q A picture frame place? A Yes, sir.

Q And any name on the door? A I didn't notice.

Q And did you see them both there? A Yes, sir, I saw Mr. Ackron go in. And they came out, about noon and stood in front of the place and talked together. And Mr. Ackron went inside again, and Mr. Harrington boarded a Sixth avenue car and got off at 14th street, and he went to Mr. Knox's house, 209 and 211 West 13th street.

Q By Mr. Knox, do you mean the man who was in court yesterday? A Yes, sir.

Q Did you see Knox at that house, 209 and 211 West 13th street? A I did.

Q Where was he? A On the stoop.

Q Well describe what happened when Harrington reached the house? A Well Mr. Harrington went in the house, and, in a few minutes came out, and then went back to 29th street.

Q And where was Mr. Knox at the time? A I saw him later in the day.

Q He was at Knox's house a few minutes, and then went back to No. 2 West 29th street? A Yes, sir. And Mr. Ackron and Mr. Harrington and a man by the name of Simon, about 1:45, went back to Mr. Knox's house.

Q That's the second time that Harrington went there, that day? A Yes, sir.

Q And how long were they there? A Well, they were there

for at least twenty minutes.

Q Then what happened? A Why, Mr. Harrington comes out first, and goes up to the corner, and there was a van standing there, and he goes up, and rings the bell of No. 44 Seventh avenue, and Mr. Ackron came right up to him, and Mr. Ackron got on that moving van, and drove around to Mr. Knox's house.

Q Was there anybody else on the van? A No, sir.

Q Any driver? A No, sir, I didn't see any driver.

Q Well, they drove the van around to Knox's house?

A Yes, sir. And then Mr. Ackron, Mr. Knox and Mr. Harrington brought out the two cases and box that were taken from Mr. Ackron's house, and they put it on the van, and also a trunk.

Q They brought out two boxes, two cases, the trunk and the box? A Yes, sir.

MR. NOTT: Do you concede that this is the trunk (indicating)?

MR. SPELLMAN: Yes.

MR. NOTT: It is conceded that the trunk in the court room now, that has been marked for identification, is the trunk in question?

MR. SPELLMAN: Yes.

BY MR. NOTT: What did they do with the two cases, the box and the trunk? A Put them on this van.

Q Knox, Harrington and Ackron? A Yes.

Q Well then what happened? A Well, then they covered

U.S. DEPT. OF JUSTICE
PAGE 185

them over, and one of the attendants there --

Q What did they cover them over with? A With a blanket.

And then one of the attendants of the truck drove it away, and I waited to take charge of Mr. Knox.

Q Well, after that you followed Knox? A Yes, sir.

Q Was anybody with you at the time? A Yes.

Q Who? A Mr. Weller, Mr. Ribbeth and Mr. Francisco and a Mr. Euston.

Q You were not present when these boxes, the trunk and the cases were taken into Knox's house? A No, sir.

Q You only saw them brought out of there? A Yes, sir.

Q And you didn't go to Schleicher's piano store? A I did not, sir.

CROSS EXAMINATION BY MR. SPELMAN:

Q Harrington drove the horses attached to the wagon, in going to New York, in coming to New York? A The one horse. There was only one horse.

Q Yes. A He certainly did.

Q Did Mr. Harrington drive the horse to New York?

A From Mr. Ackman's house?

Q Yes. A Yes.

Q And drove it back again? A Yes, sir.

Q And when you saw him in the street, he was there with a derby hat, and without the patch on his eye? A When he first went out of the house?

Q Yes. A Yes.

Q But when he went out to drive the horse, he had the patch on his eye, and a cap? A Yes, sir.

Q Was it such a patch as is usually worn by people with weak eyes? A Yes, I suppose it was the usual patch, I should think it was.

Q And he wore that all the time he was on the wagon, going to New York, and going back to Brooklyn; is that correct?

A Not all the time.

Q Did he take it off at any time? A He took it off, yes.

Q Well, for how long a time? A Well, I should say for one or two minutes.

Q And then put it back again? A Yes, sir.

Q And then when he came back to Brooklyn he took off the patch and the cap, and put on the derby hat again? A Yes, sir.

Q Were you present at the time the arrest was made? A I was not.

FRANK FRANCISCO, of 126 West 100th street,
a witness called on behalf of the People being duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. WOTT:

Q Mr. Francisco, what is your business? A I am
employed as a operative --

MR. SPELLMAN: One moment. These witnesses are in
the jury room, they were permitted to sit there by your

Honor, but I notice quite a few of them standing near this door, with the transom open.

THE CAPTAIN: Those are not witnesses in the case. They are police officers in another case.

MR. SPELLMAN: Then I beg pardon. I thought they were witnesses.

BY MR. NOTT:

Q What is your business? A I am employed as an operative for the Pinkerton Detective Agency.

Q And how long have you been employed there? A About two years and six months.

Q What was your business prior to that? A I was confidential secretary to Warden Benham, at Auburn Prison.

Q And how long were you employed by the State Prison Department, at Auburn Prison? A Three years.

Q Now where were you on the 7th day of September of this year? A In the vicinity of Fritz Lindinger's cafe, at Broad St.

Q And while you were there did you see these defendants, or either of them? A No, sir.

Q And what time did you get there? A 5:30 P. M.

Q In the afternoon? A Yes, sir.

Q Now did you see any goods taken out of that place?

A I saw two cases, two wooden cases and a dark covered pasteboard box.

MR. SPELLMAN: May it please the Court, that is conceded. It will save time to concede it.

CASE 1260

MR. NOTT: Well, I will have to have it in before it is conceded.

MR. SPELLMAN: Well, tell me what you want me to concede.

MR. NOTT: Well, I can get it out quicker than I can by a concession from you, from him.

BY MR. NOTT:

Q those two
Q Similar to/wooden cases and this box (indicating??

A Yes.

Q Now where did you first see them? A They were sitting on the step of the storehouse adjoining Mr Lindinger's cafe.

Q And what did you see ~~next~~ done with them? A They were transferred/~~in~~ from the storehouse, and placed in Engel's Express Office.

Q Where is that? A Opposite, directly across the road.

Q Where? A On Broad street.

Q And who took them over? A Well, that I can't recall, but it was a short man. I imagine he was an employee of Engel's Express Company.

Q But it wasn't either of these defendants? A No, sir.

Q The goods were taken over from Mr Lindinger's place to Engel's express office? A Yes, sir.

Q And how late did you stay there? A Eight o'clock.

Q Did you go back on the morning of the 8th? A Yes, sir; 6:30.

Q And how long did you watch there? A The entire day; up to 7 o'clock in the evening.

Q Were the goods taken away that day? A No, sir.

Q Did you go back on the 9th? A Yes, sir; 7:30 in the morning.

Q Did you see the goods removed on that day? A Yes, sir, about 8:05 A. M.

Q Who removed them? A One of Aiello's express wagons.

Q And did you follow them? A I did.

Q And who was driving the express wagon? Anybody you knew? A No, sir.

Q Either of these defendants? A No, sir.

Q Now where did the express wagon go to? A To 100 West 29th street.

Q Is that Aiello's express office? A I think it is. Where it remained for some time. The cases remained on the wagon.

Q And how long did they stay there? A About one hour.

Q And then what happened? A And then they were driven to the residence at 209 West 13th street.

Q Do you know whose residence that is? A Mr Knox's.

EX-100
CASE 1260

Q Now when they got down to Knox's house on 13th street, did you see anybody there? A At the time the goods were delivered?

Q Yes. A No, I didn't. They were taken in the basement.

Q Well, who took them in? A Well, I didn't know Knox at the time, but a man I learned afterwards was Knox, and the driver of the wagon.

Q Well, did the man who assisted the driver of the wagon come out of the house? A Yes, sir.

Q And you have seen Knox since? A Yes, sir.

Q And, in your opinion, that was Knox? A Yes, sir.

Q And the goods were taken into the basement? A Yes, sir.

Q Now how long did you stay there? A Until one or half past one.

Q And what time was it when the goods reached there? A 10:45.

Q And you stayed there until half past one? A Yes, sir.

Q And then what happened? A About one o'clock Mr Ackron and a man named Mr Simon came, and walked down to 209 West 13th street. Shortly afterwards--

Q Did they go in? A Yes, they entered Mr Knox's residence, and shortly afterward Mr Ackron came to the corner--

no, Mr Shepherd there (indicating Harrington).

Q Who do you mean by Shepherd? A Well, alias Harrington . Came up the street, and entered the cafe on the corner; and, shortly after, a truck, belonging to Schleiker & Company, of West 14th street, was driven to Mr Knox's house.

Q Well, when you saw Ackron and Harrington arrive, when did they come there? A Well, I saw Mr Simon and Mr Ackron come together.

Q When did they reach there? A Shortly before one o'clock.

Q Well, when did Harrington get there? A Well, I can't recall seeing Harrington coming there.

Q Well, who was it, Ackron or Harrington, that went up to the corner? A Harrington.

Q And what happened then? A He came out, and then, with Mr Ackron, they went with the truck to 209 West 13th street.

QZ And who drove the truck? A Mr Ackron.

Q And then what happened? A Then the cases were brought out, with the olive green trunk.

Q Who brought out the cases? A Well, there was all these men concerned that I have named.

MR. SPELLMAN: We admit we did it, your Honor.

BY MR. NOTT:

Q Well, they brought them out and put them on the

wagon? A Yes, sir.

Q Including the olive green trunk? A Yes, sir.

Q Was that a trunk similar to the one that is in court now (indicating)? A Yes, sir.

Q And what happened then? A They were driven to West 14th street.

Q Did you follow the truck? A No, sir, my partner did.

Q Did you go to 14th street at all? A Yes, sir. He telephoned me. I went to the cafe there, and waited until Operative Weiler telephoned me the whereabouts of the goods, and then I proceeded up to Schleiker's piano store in West 14th street, and Mr Weiler joined me there.

Q And had the defendants been arrested then? A No, sir.

Q And how long did you remain there before any police officers came? A About an hour and a half or two hours.

Q And during that time that you waited there, did you see either of these defendants? A Yes, sir. They were on the west side of the store, back of a piano.

Q What were they doing? A They were walking around, and I could see them bending up and down (illustrating), and placing--walking from the vicinity of a small spot over to the back of the piano, but the piano obstructed my view, and I couldn't see what they were doing.

Q Did you see either of them come out of the store?

A I saw Mr Ackron come out with Mr Simon and go to a cafe near the piano factory, and they had some refreshment there; and I overheard a conversation between Ackron and Simon, that he would do this and that, to-night.

Q Who said that? A Mr Ackron said that he would do this and that.

Q And what did you hear Ackron say to Simon? A That he would do this or that, but I couldn't get the real language of the conversation; just that.

Q And did you see them go back to the piano store?

A Yes, sir.

Q And what happened after they got back there? A Well, they just entered the store, and I didn't know until I went in with the officers.

Q Now, after that did Mr Pitcher and the police officers, the Central Office men, come there? A Yes, sir; joined us, sir.

Q And what time was that? A I think it was about five o'clock. I can't just remember.

Q And what happened? A We all entered, and, upon entering, I found Harrington there, tying up a case, with the cigars in it.

Q What kind of a case do you mean? A It was a small box, about that long (illustrating). And he was tying it up

with--well, with a band made of cloth, about the width of your finger.

Q Do you refer to this case here (indicating)? A No, sir, I don't think that's the case.

Q All right. Go on. A And I walked through, and in back of the piano, and on the platform of the window were numerous boxes of cigars, and some on the floor. And shortly after that--

Q Well, how near were these boxes to the trunk and the two wooden boxes? A Well, they were all right there in the vicinity, a matter of two, three or four feet, or something like that.

Q Did you look into the trunk? A The only case that I recall looking into was the box Harrington was tying up.

Q What did it contain? A Cigars.

Q And did you notice the brand of the cigars? A I don't recall that now.

Q Well, did you overhear any conversation between the defendants and the officers, when the officers entered? A I heard Mr Dougherty and Mr Ackron talking, but I can't just recall the conversation.

Q Then what was done? A The cigars were placed-- taken from the platform--and Officer Butts and myself placed them in these boxes and put them in the patrol wagon, and they were carted away, with the defendants, to Police Headquarters.

Q Was Ribbeth with you in front of Knox's house while you were waiting? A Later, after the arrest. Not before the arrest. I will correct myself. We were all there together.

Q Well, do you know whether he followed these defendants up to Schleiker's? A No, I don't.

CROSS-EXAMINATION BY MR. SPELLMAN:

Q Just a question or two. You were at Schleiker's when the arrest was made? A Yes, sir.

Q And of the operatives, you got there first? A Second.

Q Who got there first? A Mr Weiler, Operative Weiler.

Q Has he been on the stand yet? A No, sir. He is away.

Q Well, you were watching the premises of Schleiker all the time? A After I arrived there, yes.

Q How many doors are there, into the premises of Schleiker's, leading into the premises of Schleiker? A I think there is two.

Q Two? A Yes, sir.

Q And which door did Mr Ackron go in there? A When he returned from the cafe?

Q No. When he first went in? A Well, I don't know that.

Q You don't recall? A No, I didn't follow him. I

came there after--

Q Well, then, when he came back from the cafe? A I can't recall which door he entered.

Q Now what time of day did you get there? A To Schleiker's?

Q Yes. A I think it was around three o'clock.

BY THE COURT:

Q In the afternoon? A In the afternoon; yes, sir.

BY MR. SPELLMAN:

Q Now tell us the appearance of the windows and doors there? A Well, they are very large glass windows, and they are regular show windows with pianos in them; that's all.

Q And how many show windows are there there? A I think four.

Q Yes. And were the show windows all exposed to view? Could see everything in the windows? A In the particular window I looked into, there was pianos.

Q And could you see the pianos? A Yes, sir.

Q And this window--is that where you find the mark X (indicating Defendant's Exhibit E)? Take you time and look carefully? A This is the window here where the piano is (indicating), and the cigars were in back of that.

Q Well, just show us. Is it the same window? A The same window.

Q Then you indicate the window which has an X mark?

A Yes, sir.

MR. SPELLMAN: It is conceded, I take it, that it is the same window identified by the other witness, Mr Pitcher.

MR. NOTT: I presume so.

BY MR. SPELLMAN:

Q And you say that you could see in this window the pianos? A Yes, sir.

Q How high were the pianos that you could see through this window? A Why, they stood on a platform, of course. I didn't pay no particular attention to the size of the piano.

Q You say the piano was set on a platform in the window? A Yes. From the front, you can walk around that window into the doorway. I'll show you on the picture there (indicating).

Q I wish you would, please? A There is the window here, and you stand there, and you enter the entrance, and you can look through the side window there (indicating).

Q That is to say, not only can the show window be seen through the glass, in front, but also from the side, as you enter the door, the show window that you indicate, and another one on the left? A In the same window, yes.

Q There is a door that separates two big show windows? A Yes.

Q And the one that you refer to is on the right?

A Yes, sir.

Q And you can view everything in the show window from the outside, and also from the short entrance, or vestibule like, as you enter? A Yes, sir.

Q And in the window that you have pointed out you saw pianos? A One piano.

Q One piano? A Yes, sir.

Q And did you see it from the street, or from the short vestibule at the side? A From the street and from the vestibule too.

Q And how high was the platform on which the piano stood? Just give us your best idea? A About two and a half or three feet.

Q And above this platform of two and a half or three feet was the piano? A Yes, sir.

Q How high was the piano? A I can't recall. The regulation size, I imagine.

Q Would you say five feet? Was it an upright piano?

A I think it was.

Q And you saw it, at that time; did you?

A Yes.

Q Exposed to your view all the time?

A Yes, sir.

Q From the front and side?

A Yes.

MR. NOTT: I object to this, if your Honor please,
as repetition.

THE COURT: I will let him answer again.

THE WITNESS: Yes.

BY MR. SPELLMAN:

Q And were the shades drawn at any time? A Not that
I recall.

Q And how much of the time did you watch these windows?

A Well, it was a matter of ten minutes.

Q Ten minutes? During all the time that you were there?

A Yes. I just walked over casually, to see what was trans-
piring inside, and during the other time of the surveillance
I was across the street.

Q And while you were across the street you could view that window? Couldn't you? A No. I watched the entrance of the stores, of the building.

Q And in watching the entrance of the stores, didn't you see the same window that you had pointed out? A I wasn't watching that particular window. I was watching the entrance on the east side of the stores.

Q Didn't you see the show window that you have indicated here? A Yes.

Q So that you had that in view all the time while you were on the other side of the street? A Yes; the same as the other window.

Q And how long was that period of time? A Well, most of the afternoon, while we watched the stores there.

J A M E S F. S H E V L I N, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NOTT:

Q You are a member of the Municipal Police Force of this city? A Yes, sir.

Q And how long have you been a member of the Force?

A About eight years and a half.

Q And to what part of the detective -- to the Police Department were you assigned in the month of September 1910?

A Detective Bureau, Manhattan.

Q And did you arrest the defendants? A Yes, sir.

Q When? A On the 9th day of September.

Q Whereabouts? A 37 West 14th street.

Q Is that the premises of Schleicher's piano factory or store? A Yes, sir.

Q Where did you go from when you went to Schleicher's?

A From the Detective Bureau.

Q Who went with you? A Detective Butts.

Q And anybody else? A And a man named Donnelly, attached to the Pinkerton Agency.

Q Was that your first assignment to the case? A Yes, sir.

Q And you went with them to Schleicher's? A Yes, sir.

Q Now describe what you found in Schleicher's place when you got there? A Well, when we arrived on 14th street, with Donnelly, we met Mr. Dougherty, of the Pinkerton Agency, and he said --

Q Never mind what he said. You went into the premises?

A Yes, sir.

Q And were the defendants there? A Yes, sir; the two defendants were there.

MR. SPELMAN Now it please the court, I object to this evidence as immaterial, irrelevant and incompetent. We make no contention about any of these points. We concede it all. We concede that Ackron was there, and that he drove that wagon that brought that trunk and packages of cigars there.

THE COURT: I will allow it.

BY MR. NOTT:

Q Now tell the jury what you saw and heard after you entered those premises? A After we entered the premises, I saw the two defendants and another man, who was afterwards also arrested, Jacob L. Simon. There were a number of boxes of cigars, back of a window, and there was also a trunk, which turned out, later, to be filled with boxes of cigars, and there was a pasteboard box there.

Q And what were the defendants doing at the time you entered? A They were standing around there, standing around there.

Q Did you see Harrington doing anything? A No, sir.

Q Well, what happened then? A Well, I asked Dougherty if those were the men he had reference to, and he said yes. And I asked him if those were the cigars he had spoken of.

MR. SPELMAN: Now, I object to that, and move to strike it out, a conversation he had with somebody else.

MR. NOTT: I consent.

THE COURT: Strike it out.

BY MR. NOTT:

Q Did you have any conversation with the defendants or either of them? A Yes, sir; I asked Ackron if he knew anything about that property and he said no, he didn't know anything absolutely about that property, and that he was in

there for the purpose of purchasing a piano. And Harrington said nothing; he remained absolutely silent.

Q Now, after Ackron had made this statement, then what happened? A Detective Butts went downstairs, in company with one of the Pinkerton men, and I remained upstairs with one of those defendants and they returned with a couple of wooden cases and another pasteboard box.

Q Now, are those the wooden cases directed to Fritz Lindinger (indicating)? A Yes, sir.

Q And what was done with the trunk, the cardboard box and the two empty cases? A They were taken to Police Headquarters.

Q And are they the trunk, the cases and the cardboard box now in court? A Yes, sir.

MR. TOTT: I now offer them in evidence, with the same marks that they received for identification.

MR. SPILLMAN: We consent to that.

THE COURT: They may be so marked.

(They are marked respectively as marked for identification.)

MR. TOTT:

Q What did you do then? A Took the defendants to Headquarters.

Q What did you do then? A Went to Brooklyn with Mr. Dougherty.

Q Where did you go to there? A To Mr. Ackron's.

Q And do you remember the number? A I don't remember the number, but I remember the street. It was Reid avenue.

Q And did you obtain anything there? A Mr. Dougherty got two boxes of cigars.

Q What were they in? A I don't know where he got them. I remained downstairs, and he found them somewhere in the upper part of the house.

MR. SPELLMAN: If your Honor please, the witness says he doesn't know where he got those cigars, but we will admit that he got them from Ackron's house, to save time.

THE COURT: Very well.

BY MR. NOTT:

Q What were they in, or what were they put in? Do you know? A The two boxes, one of them was a full box, and the other was partly full.

Q Were they placed in anything? Did you see this small hand satchel there anywhere? A No, sir, that wasn't there.

MR. SPELLMAN: May we have that marked for identification, as you have asked a number of questions about it?

THE COURT: Yes, it may be marked for identification.

(It is marked People's Exhibit 8 for identification.)

BY MR. NOTT:

Q Do you know what was done with the two boxes that you saw in Dougherty's hands, over there in Reid avenue, Brooklyn? A I know they were brought to the Detective Bureau.

MR. SPELLMAN: If you let us see those boxes, we will probably concede them. Shall I open them, unwrap them, or will you?

It is conceded that the boxes now produced by the District Attorney are the boxes which were taken from Mr. Ackron's home. On what day was it, Mr. Nott?

BY MR. NOTT:

Q Was that the same day that you made the arrest?

A Yes, sir; on September 9th.

MR. SPELLMAN: Then I concede that it was on September 9th.

MR. NOTT: I offer them in evidence.

MR. SPELLMAN: There is no objection to their being marked.

MR. NOTT: I ask that the box of Epicures, the goods of the La Barossa Co. be marked separately.

THE COURT: Very well.

(The box is marked People's Exhibit 9.)

MR. NOTT: And the other box is a box of another factory, in Pennsylvania. I ask that that be marked separately.

(The box is marked People's Exhibit 10.)

BY MR. NOTT:

Q And after that did you have any further conversation with either of these defendants at any time?

A No, sir.

CROSS EXAMINATION BY MR. SPELLMAN:

Q Mr. Shevlin, how long were you at Schleicher's premises, that day, the day you made the arrest?

A Oh, I should say twenty minutes or half an hour; something about that.

Q And what part of the premises were you in?

A I never left the main floor, as I say, when the other men went downstairs. I stayed upstairs, with those defendants.

Q Oh, just one more question, Mr. Shevlin. You say there was another man arrested. Was his name Simon?

A Yes, sir.

Q And was he released? A Yes, sir.

Q Was any charge made against him? A He was held on suspicion of being connected with the larceny of those cigars, and, two or three days later, after an examination in the Police Court, in Jefferson Market, he was discharged.

Q And that is the man you referred to as having been arrested with Ackron? A He was the third man arrested in Schleicher's place in 14th street, in company with those two defendants.

MR. NOTT: Will you concede that this receipt was presented by Knox to Engel's Express, and the goods obtained upon the presentation of the receipt by Knox?

MR. SPELLMAN: I will not admit anything about that receipt. I will admit that the goods were obtained from Engel, on the instructions of the defendant Ackron.

MR. NOTT: Well, under the name of Cole?

MR. SPELLMAN: I will not admit anything on that proposition. I don't see what that has got to do with it.

THOMAS AIELLO, of 2314 Hughes avenue, Bronx, a witness, called on behalf of the People, being duly sworn testified as follows:

DIRECT-EXAMINATION BY MR. NOTT:

Q Mr Aiello, are you in the express business? A Yes, sir.

Q Where is your office? A 100 West 29th street.

Q In the Borough of Manhattan? A Yes, sir.

Q And were you in that business on September 9th, 1910?

A Yes, sir.

Q Now will you state whether you sent a cart of yours from your place down to Engel's express office, on that morning? A Yes, sir.

Q Who ordered that? A A gentleman.

MR. NOTT: Will you have Knox brought up, please?

BY MR. NOTT:

Q Did you make an entry of it in your book? A Yes, sir.

Q And an entry of the name and of the order? A I haven't no name, but I entered the order, where I take it from, and where I take it to.

Q Now I show you a paper, and ask you when you first saw that? A Well, that time this order came in the office, I wasn't down in the office, but my representative took the order.

MR. SPELIMAN: I object to that, what his representative did, if he wasn't present.

THE COURT: Yes. Sustained.

BY MR. NOTT:

Q When did you first see that paper (indicating)? A I never seen it at all.

Q You have never seen it before, until you have it in

your hand now? A No, sir, I never seen that paper before.

Q What is the name of the representative that you spoke about? A Jimmy Desposito. He's my nephew.

Q Did he give the paper to you? A No, sir.

Q But do you know the names--under what name was the order given to get the parcel from Engel? A I don't know.

Q Do you know whether Desposito had any order on Engel's for the delivery of the goods?

MR. SPELLMAN: I object to that. Just a moment.

I object.

THE COURT: Sustained.

MR. NOTT: All right. I will withdraw it.

Q Is Desposito working for you now? A Yes, sir.

Q Is he at your store? A No, sir, he is out with a truck, doing business.

Q And is he the man that went down for the goods?

A No, sir; he gave the order to one of my men.

Q And he is the man who received the order? A Yes, sir.

MR. SPELLMAN: I object to that, as the witness was not there.

THE COURT: Objection sustained. Strike out the answer.

BY MR. NOTT:

Q Can you have him down here, at 2 o'clock? A Well,

I am very busy, and my men went on a strike, and I wish I could be off myself.

MR. NOTT: Well, I am informed that the witness is at his office, and will come down, as soon as this witness gets back.

THE COURT: Very well.

MR. NOTT: You may go.

BY MR. NOTT:

Q You didn't see the man who gave the order? A No, sir.

CROSS-EXAMINATION BY MR. SPELLMAN:

Q You have your book there for the month of August?

A Yes, sir.

Q Will you turn to August 13th?

MR. NOTT: I submit this is not cross-examination.

It is not crossexamination, I take it. You are making the witness your witness.

A Yes, August 13th.

BY MR. SPELLMAN:

Q Do you find an order there to take four cases and a hamper from West 29th street to Brooklyn?

MR. NOTT: Objected to as immaterial, irrelevant and incompetent, and also as leading.

THE COURT: How is that material?

MR. SPELLMAN: It will be material on our defence,

and I'll have to bring the man back, that's all. It's part of our defence.

THE COURT: Well, I will allow him to answer.

BY MR. SPELLMAN:

Q Now just tell us that? A What?

Q Did you have an order, on August 13th, to remove some cases to Brooklyn?

MR. NOTT: I object to that. They haven't proved the books, or that he had personal supervision of the transaction. It may be hearsay that he is testifying to.

THE COURT: Yes, I think you will have to bring him back.

MR. SPELLMAN: I will withdraw the question.

BY MR. SPELLMAN:

Q Now, having seen your book, and the entry of August 13, 1910, are you able to state whether or not you took an order to remove several cases and a hamper, from No. 2 West 29th street in this city to the home of Mr Ackron in Brooklyn?

A Yes; I took an order personally.

Q From whom did you take it? A From No. 2 West 29th street.

Q No, from whom did you get the order? A That gentleman on the chair there (indicating.)

Q From Ackron or from Harrington? A No; that gentleman outside there (indicating Knox.)

Q Indicating Mr. Knox? A Yes, sir.

Q And what was the order; to do what? A To get four cases and a hamper from No. 2 West 29th street, and bring it over to Brooklyn, 123 Reid avenue, Brooklyn.

Q Did you have anything to do with the moving of these cases and this hamper personally? A No, sir.

Q Or did you leave it to your men? A I sent my man over to Brooklyn; I sent my man over to pick up these cases, and go right over to Brooklyn.

Q Who was the man you sent? A A colored man, at the time.

Q He has been subpoenaed several times by us; hasn't he? A Yes.

Q What is his name? A His first name I know, it is Eddy, but I don't know his last name.

Q Was it Eddy Wells? A Yes, I guess that's the last name.

Q And he is the man whom you sent over to Brooklyn, to do the work? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. NOTT:

Q Do you remember what name was given when the order was given? A No, sir. I don't ask no name, or take no name, when I get a cash order.

Q And this was a cash order? A Yes, sir.

RE-CROSS EXAMINATION BY MR. SPELLMAN:

Q You say this was a cash order? A Yes, sir.

MR. SPELLMAN: That's all. You can go now.

MR. NOTT: Oh, wait a minute. Bring your book back.

Show me that page that you were referring to.

BY MR. NOTT:

Q Now please take the stand again. What is the name "Cole" on the top of that page? A Well, that's a customer of mine.

Q Well, why is it entered on the top of the page, and not on any order? A Well, because that's a customer what pays me weekly.

Q Does that mean that the orders entered there are the orders of that customer? A Yes, sir.

MR. NOTT: All right. That is all.

MR. SPELLMAN: Just let me see it, a moment.

BY MR. SPELLMAN:

Q Was this entry made at the time? A At the same day?

Q Yes. A Yes.

Q It was? A Yes, sir. Well, not the time I taken the

Brooklyn job .

Q It wasn't? A No, sir. That was in the morning, I suppose, that wasn't entered until the afternoon.

Q But this is your regular book; isn't it? A Yes, sir.

MR. NOTT: If the court please, with the exception of this witness that I would like to call from the express company, to prove this order, with that exception, the People rest. I will rest now, if I can be granted leave to call that witness when he gets here.

THE COURT: Any objection to that?

MR. SPELMAN: No, sir. Of course we have also reserved the right of cross examining the witness who is coming back here at two o'clock, I believe. It was reserved, because we were to bring our cases here, and we expect them at two o'clock this afternoon.

Well, that being the case, the People resting, will your Honor at this time receive in evidence the pardon, so that I may make a motion, and have you consider the entire subject?

THE COURT: Yes, I will receive it in evidence. I understand that no objection is taken to the certification?

MR. NOTT: No, sir.

MR. SPELMAN: And it is received in evidence, and given the same letter which it has as an exhibit for identification?

THE COURT: Yes.

MR. NOTT: And I now renew my objection, on the ground that it is immaterial, irrelevant and incompetent.

THE COURT: Well, I will receive it, so that we may have it in the case.

MR. SPELLMAN: And we move now to dismiss the indictment, may it please the Court as to the defendant Ackron. And I am given permission by counsel for Harrington to make the same motion for him, and I now do so.

I move to dismiss the indictment as to the two defendants, on the ground that the People have failed to prove facts sufficient to constitute the crime charged in the indictment, or any other crime.

And, as to the defendant Ackron, we specially move to dismiss, upon the ground that there is now in evidence a full pardon, a full release and pardon, granted by the Executive of the State of New York, who is authorized under the Constitution to grant pardons for offenses, of the crime of which Ackron was convicted, and which is made the basis of the second offense. This being so, the section of the Code in respect to second offenses cannot extend to a case where there was a conviction of which the defendant was subsequently pardoned.

THE COURT: Will you kindly hand me the pardon, which is an exhibit?

MR. SPELLMAN: Yes, sir, certainly.

THE COURT: Or, if you will give me the date of it, it will be enough, Mr Spellman.

MR. SPELLMAN: Here it is, your Honor, here is the pardon.

THE COURT: I will deny the motion as respects both the defendants, and I will state specifically with respect to the motion as made in behalf of the defendant Ackron:

Section 1941 of the Penal Law provides, as did formerly section 688 of the Penal Code, that, "A person who, having been convicted within this State of a felony x x x commits any crime within this State, is punishable upon a conviction of such second offence as therein provided."

It is alleged in the indictment, and conceded, that the defendant Charles E. Ackron was convicted within this State of a felony on May 25th, 1894.

It is in evidence that, after such conviction, and on the 28th day of December, 1896, the said defendant was pardoned by the Governor of this State.

An examination of a certified copy of such pardon shows that it was full and unconditional. Because of such pardon the defendant contends that the conviction of

May 25th, 1894, was so obliterated that the defendant cannot now be found guilty of the alleged crime with which he is now charged as a second offence.

Full effect must be given to the pardon, and it must be conceded that the statute cannot constitutionally limit the pardoning power as conferred by the Constitution.

Full effect is given to the pardon, if it is permitted to relieve the defendant Ackron of all unenforced penalties annexed to his original conviction. The enhanced punishment receivable upon a conviction as for a second offence forms no part of the penalty annexed to the original conviction. The pardon implies guilt of the original offence, and the original offence is an essential ingredient of the offence as charged in the indictment.

These views appear to be sustained by the reasoning in the opinions in *People against Price*, 53 Hun, at pages 188 and 189, affirmed in volume 119 of the *New York Reports*; *Roberts against the State*, 160 New York, at page 221; and *People against Sickles*, 156 New York, at pages 544 and 545.

The motion to dismiss, therefore, is denied, and you have an exception.

MR. SPELLMAN: Exception. As to both defendants?

THE COURT: As to both defendants.

MR. SPELLMAN: We move that your Honor take from the

consideration of the jury, as to the defendant Ackron, the crime charged in the indictment, the crime of second offence charged in the indictment, upon the same grounds urged for the granting of the motion to dismiss the indictment against the defendant Ackron.

THE COURT: Denied.

MR. SPELLMAN: Exception.

We ask your Honor to take from the consideration of the jury the crime of larceny, charged in the indictment, upon the ground that there is no evidence in the case to sustain that count in the indictment as against either defendant, and the motion is made in behalf of both.

THE COURT: Denied.

MR. SPELLMAN: Exception. On behalf of both defendants, I move to dismiss the indictment as to the count of larceny charged against the defendants, upon the ground that the People have failed to produce facts sufficient to constitute that part of the crime charged.

THE COURT: I will deny your motion, and I am inclined to think that it is preferable that I should not state the reason for the declination.

MR. SPELLMAN: Exception. And I make a similar motion as to the portion of the indictment charging criminally receiving stolen goods.

THE COURT: Denied.

MR. SPELLMAN: Exception.

(The Court then admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and took a recess until 2 o'clock.)

AFTER RECESS.

(Mr Spellman opened the case for the defence.)

THE DEFENCE.

C H A R L E S E . A C K R O N , of 123 Reid avenue, Brooklyn,
one of the defendants, being duly sworn, testified as follows

DIRECT-EXAMINATION BY MR. SPELLMAN:

Q Mr Ackron, you are one of the defendants in this case?

A Yes, sir.

Q Now, let me admonish you, Mr Ackron, to speak loud
enough for all of us to hear you? A Yes, sir.

Q You are a married man? A Yes, sir.

Q Where do you reside? A 123 Reid avenue.

Q How long have you resided there? A Fourteen months.

MR. SPELLMAN: Will your Honor permit an interrup-
tion for a moment, so that these boxes may be brought in
that I spoke of before recess?

THE COURT: Yes.

BY MR. SPELLMAN:

Q Do you know the defendant Harrington? A Yes, sir.

Q He came to live with you? A Yes.

Q When? A I think it is a year ago, this month.

Q He came to live with you and your family, at 123 Reid
avenue, Brooklyn? A Yes, sir.

Q And what name did he go by when he came to live with
you? A John C. May.

Q Has he been under any other name since that time?

A No, sir.

Q Outside of this trouble, has he ever been arrested since he came to live with you? A No, sir.

Q Or in trouble of any kind? A No, sir.

Q And your household consists of you and your wife?

A Yes, sir.

Q How many children?

MR. NOTT: I object to that, as immaterial.

THE COURT: Sustained.

MR. SPELLMAN: Exception.

BY MR. SPELLMAN:

Q The La Varossa factory is located at 118 John street in this city; is it not? Do you know that place? A I know of it now, yes.

Q Did you have anything to do with any larceny that was committed in that place of the cigars which have been spoken of here? A No, sir, I did not.

Q Or any other larceny? A No, sir.

Q Did you counsel, or advise, or abet any one in the commission of that larceny? A No, sir.

Q Did you know that any larceny had been committed there?

A No, sir, not until we were arrested.

Q And you were arrested September 9, 1910? A Yes, sir; September 9th.

Q You purchased a saloon on East 21st street? A Yes, sir.

Q From whom did you purchase it? A A man by the name of Cooper.

Q Do you know his first name? A William S. Cooper.

Q And when did you purchase it from him? A On the 3d day of August, 1910.

BY THE COURT:

Q Where was that saloon, Mr Ackron? A 26 East 21st street, four doors from Broadway.

BY MR. SPELLMAN:

Q Tell us, please, how you came to have that transaction regarding the purchase of that saloon? A Why, two or three days previous to my taking possession of that saloon, this man Cooper happened into No. 2 West 29th street, where my office was at that time, and was negotiating, or trying to negotiate, with a man by the name of Houghton, who was in the real estate business, and, I think, president of the Herbert Building Company.

This man Houghton had had a saloon in Broadway, between 29th and 30th streets, or 28th and 29th streets--I couldn't say just which block--, and wanted me to take the management of it, a little over a year ago, and he had some experience in the saloon business, and dickering with this man Cooper for

the 21st street saloon, at least a day or two before I knew what Cooper was in the office about.

As soon as Mr Houghton realized the fact that he couldn't--

MR. NOTT: I object to this, if the Court please.

THE COURT: Sustained.

BY MR. SPELLMAN:

Q Well, were you brought in contact with Mr Cooper?

A Mr Houghton introduced me to Mr Cooper.

Q How long before you purchased the place? A I believe it was a day before. That would make it the 2nd of August.

Q And did you negotiate with him towards the purchase?

A Yes, sir.

Q And what did you finally agree upon with Cooper?

A One Thousand dollars.

Q And when was this agreement reached? A On the 3rd.

Q What time in the day? A The morning.

Q And how were the thousand dollars to be paid?

MR. NOTT: Was this agreement reduced to writing?

MR. SPELMAN: I am trying to find it, and I am just using up time asking these questions, while I look that the paper among my papers.

BY MR. SPELMAN:

Q Pardon me, have you the bill of sale? A Yes, I have.

Q Was this transaction afterwards reduced to writing? A Yes, sir.

Q When was that done? A On the 3rd.

Q And have you the paper with you? A Yes, sir.

Q I ask you to look at the signature on the paper, and state whether you recognized who signed the name Cooper?

A I wasn't present when he signed his name to this bill of sale.

Q Well, you had a conversation with him before he signed it? A Yes, sir.

Q Where was this conversation? A Both in my office and at the cafe in 21st street.

Q Well, was anything said in the conversation about his signing the bill of sale? A Why a price was agreed upon, and he and Mr. May went to a Notary Public.

Q By Mr. May you always mean Mr. Harrington? A Mr. Harrington, yes. They went to a notary public at the Breslin, corner of Broadway and 29th street.

Q What was said before they went to the notary public, before going there if anything? A Well, I simply said I wanted a bill of sale, and wanted it acknowledged, and also some kind of a guarantee as to how much stock I could rely upon being there.

I said, "I know that the place is mortgaged, and all that, but how much stuff have you got?"

And he said "Well, I don't know how much exactly is there, because I haven't been in possession not only a couple of weeks, and there was some stock there when I took possession, but there has been very little stock bought since that time."

"Well" I says, "about how much? A rough estimate?" And he said, "Well, approximately -- I believe he states in this paper \$650, but will guarantee \$550 worth. And I found very little stock there.

Q No, don't go to that yet. What further was there said about the bill of sale? A Well I said "If you have a proper bill of sale drawn up, and embody what we have talked about

3

into it, why, I will look it over, and, if it is satisfactory, have it acknowledged, and the deal will be consummated."

Q Well, you met him later? A Yes, sir.

Q Did he show you this paper which you have in your hand now? A Yes, sir, he brought it back and showed it to me.

Q Did he deliver it to you, this paper (indicating)?

A Yes, sir, he delivered it to me.

MR. SPELLMAN: I offer this paper in evidence, if your Honor please. It identifies itself, in fact, because it was signed before a Notary Public.

BY THE COURT:

Q At the time he handed it to you was it signed?

A Yes, sir.

BY MR. SPELLMAN:

Q It was in the same condition that it is now?

A Yes, sir. And then I told him, "You will have to come down to the saloon, and instal me there."

MR. SPELLMAN: I offer this paper in evidence your Honor.

MR. NOTT: No objection.

THE COURT: Received.

(It is marked Defendant's Exhibit G.)

(Mr. Spellman reads the exhibit to the jury.)

BY MR. SPELLMAN:

Q Mr. Ackron, after the receipt by you of the bill of sale --

CASE 1260

THE COURT: Pardon me, what is the number of the exhibit?

MR. SPELDMAN: It is Defendant's Exhibit G.

BY MR. SPELDMAN:

Q. (Question repeated) What did you do? A. Why, I went down to the cafe with Mr. Cooper and Mr. May and there he installed me.

Q. And what time was this? A. It was just one o'clock on the 3rd of August, right after the rush hour.

Q. Had you heard anything about the brewer? A. Yes, sir, that morning.

Q. Did you dismiss the mortgages on the premises with Mr. Cooper? A. Yes; and he said that there was a first mortgage held by the brewer, and the second mortgage was held by the man who he had bought from.

Q. When had he bought it? A. A few weeks before.

Q. And did he tell you how the second mortgage was payable? A. He told me a hundred dollars a month.

Q. And did he tell you when the first mortgage was payable? A. Well, in fact I knew, because those brewers' mortgage are all alike.

MR. HOTT: I object to that, and move to strike that out.

THE COURT: Yes, strike that out.

BY MR. SPELDMAN:

Q. Go on please? A. Well, he didn't say. He said it was a

CASE 1260

brewer's mortgage.

Q And when did you see the brewer, if at all?

A On the morning of August 3rd, the same morning.

Q And whom did you see? A I saw the lawyer. I don't know his initials. He is Mr. Hupfel, of Hupfel's Brewery, which was serving the place.

I went up to the brewery with Mr. Cooper, and saw the head of the brewery, as I supposed. I have since learned that he was a lawyer, Hupfel.

Q Was it the J. Christian G. Hupfel Brewing Company that had the mortgage on the place? A Yes, sir.

Q And what took place there? A Well, I asked Mr. Hupfel if he was in a hurry for his money on that case, and he said well, under the circumstances he thought he was justified in making a demand for it, and he had done so, and insisted upon being paid.

And I told him that I was negotiating for the place, and asked him if he would give me sufficient time to consult another brewer in reference to taking up their mortgage, which I had done before.

Why, he said he didn't know that there was any objections to extending it a day or two, if I anticipated buying the place, and giving me an opportunity to interview another brewer.

I told him that there was two brewers that I could go

to and he said very well, go ahead." I then went and closed the deal with Cooper, and took possession at one o'clock.

Q You took possession: What do you mean by that?

A After I seeing the brewer, I went down to the cafe, that is, went down to my office, and consummated the deal with Cooper, and went down, and was installed as the new proprietor and found the barkeeper drunk and discharged him, and was obliged to go behind the bar myself, and stay there until the place closed, at night.

Q And when did you go behind the bar? A About 1:15.

Q And when did you hear next about this first mortgage?

A Well, about 3:30 that afternoon, I was called to the phone, and somebody said that somebody from the brewery wanted to talk with me, and I recognized Mr. Hupfel's voice, and, in fact, he made himself known to me on the telephone.

And he said that he had spoken to his brother about the matter, and, inasmuch as he had given the matter to the Marshal to advertise, and he had advertised that it was to be sold the next morning at 9 o'clock, he thought that they would not interfere, but let the Marshal go ahead and sell it at nine o'clock.

Q Now, before you took possession at one o'clock, had you delivered the consideration for this bill of sale to Mr. Cooper?

A Yes, sir.

Q What was the ~~consideration~~ consideration? A Four months note, for \$100, secured by a first mortgage on twenty lots at Islip, Long Island.

CASE 12345

Q What were those lots worth?

MR. NOTT: I object to that, if your Honor please.

MR. SPELLMAN: Well, I will withdraw that question.

BY MR. SPELLMAN:

Q Now go on with your conversation with Mr Hupfel over the telephone? A Well, I said to Mr Hupfel, if that was the way he proposed to treat me, after I taking possession, or closing the proposition, why I thought it was rather an unfair thing.

I says, "I had your word that you would go to another brewer, but, if you insist upon foreclosing, and selling the place, at 9 o'clock to-morrow, that don't give me ample time to get to a brewer to make any arrangements, because you can't see the head of a brewery before 9 o'clock." And I had in view the Otto Huber people, which I had done business with before, and I could have got to him, that afternoon, and closed the deal with him.

MR. NOTT: I object to that, and move to strike it out, what he could have done.

THE COURT: Motion granted.

BY MR. SPELLMAN:

Q Now go on, please? A I was behind the bar all the afternoon, until 12:30 at night, or thereabouts, when the place was closed. The restaurant business was over, practically, when I took possession. There was only two or three

more lunches served after I took possession. It was principally a noonday business, lunch hour business, in the restaurant. And the kitchen and restaurant was downstairs, and the bar was in front, and I was confined to the front, the bar room.

Q What did you take in, that day, in cash?

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

THE COURT: Sustained.

MR. SPELLMAN: Exception.

BY MR. SPELLMAN:

Q How long did you remain in this place? A Seventeen hours.

Q Did you leave the place? A Yes. I remained there 17 hours from the time I took possession until the foreclosure sale, and then it wasn't my place any longer. And I was there, I guess, until 12 o'clock on the 4th of August, getting things out, that is, the stocks, liquors, and these cigars, and one thing or another that had been packed up.

It took me until about 12 o'clock, I should judge, to get everything out of there.

Q Now, Mr Ackron, had you left the place at all during the 17 hours? A No, sir, not at all. I stayed there all the time, and I was pretty tired by half past twelve, and Knox and I stayed there all night, and I sent May, or Harrington, as he is called here, to my wife about 7:30, to say that I

wouldn't be home. And I stayed there until 12:30 before I closed the doors, and after that we went down into the kitchen.

Q Did you receive any property in this cafe, or did any property come into the cafe after you became the proprietor?

A Anything that was there in the way of stock was mine, regardless of the mortgage.

MR. NOTT: I object to that, and move to strike that out.

MR. SPELLMAN: I consent that that be stricken out.

THE COURT: Yes, strike that out.

BY MR. SPELLMAN:

Q Now from the time you took possession of the place up to 12 o'clock the next day, even after the sale, did you receive any property into the place? A Nothing at all, except that the beer ran out, and I had to send out and buy a half barrel of beer, from one of Hupfel's customers in the immediate neighborhood. I don't know where they got it from, but it was paid for by myself.

Q Did any cigars come into your place during that period of time that you have described? A No, sir.

Q Did any other property, other than money which you received for sales of liquors or other stock, come in?

A No, sir.

Q And what did you do after half past 12 that night?

A I went down in the kitchen, and had something to eat, first,

and then I went upstairs, and looked for the keys of some doors that I found padlocks in the basement.

And that was the first time I had been down in the basement, and I said I would go back and look up the keys, because I saw several keys in the cash register.

And then I got the keys, and unlocked the stock room and the icebox and everything that had a lock on I unlocked, and investigated to see what I had bought.

In the stock room, there was some glassware, a very little liquor, some Rhine wine in bottles, and perhaps four or five gallons of bulk goods, one kind of whiskey, and that was all, and those cigars.

BY THE COURT:

Q When you say those cigars, you mean what? A Those cigars that I had in my possession at the time they arrested me.

BY MR. SPELLMAN:

Q These cigars which are the subject of this larceny, or that part which has been recovered by the authorities or the Police Department? A Yes, sir; the cigars that they found in my possession.

Q Now did you take out anything from that saloon, any merchandise or anything else? A The next day I did.

Q On the 4th? A Yes, sir.

Q Before we go to that. Did you do any packing there at any time? A I did, that night, from 12:30. After I

got something to eat, I got all the stuff out, the stuff that I thought was worth moving, I got it out and packed it up in packages, so that it could be put onto a wagon, and moved out. Some of the stuff was carried up from the basement, and sat in the rear of the floor of the store.

Q Are any of the cases in which you packed those things in the court room now? A Yes, sir.

Q They have been brought here since the afternoon session began by certain truckmen? A No, oh, no, those are not the cases. There is one cigar case here. That is all that was there.

Q Just point it out to us? A It has red lettering on it, on the side of it. It is a long case.

Q Well, just come down here, and point it out to us?

A This case here (indicating) with the red letting on it.

MR. SPELLMAN: I offer it in evidence, if your Honor please.

MR. NOTT: No objection.

THE COURT: I will receive it.

(It is marked Defendant's Exhibit H.)

BY MR. SPELLMAN:

Q Mr Ackron, you have pointed out a case on which appears on the side, in red ink, the words, "American Beauty Cigarettes"? A Yes, sir.

Q That was one of the cases produced by the District

CASE 1260

Attorney, and concerning which his witnesses testified; is that right? A Yes, sir.

Q Now you say this is one of the cases in which you packed the goods which you took out of this cafe and saloon, on the 4th, is that right? A Yes, sir.

Q And how many cases did you have? A Oh, I couldn't tell you. There was a whole lot of cases, and butter tubs, a whole truck load. I should judge there must have been from 12 to 15, possibly more. They were boxes, and butter tubs, where we took the working bottles out of the back bar, that is, the bottles that were in use, and those that were nearly full, and those that were nearly empty we dumped right down into the sink. We packed up those that were nearly full, and dumped the others out.

Q And how many cigars did you take away? A Well, all cigars were in the storeroom, and I utilized a lot of those cases in packing up those liquors. And even a box of toilet paper I took up, and a box of soap, this hang up soap, there was a full box of that, except a dozen or so cakes taken out.

9501

CASE 1260

Q Now where was this property taken to? A To my office No. 2 West 29th street.

Q Was all the property taken there? A Yes, all that I took, all that I thought worth taking.

Q Well, did you give any of the stuff away? A Not until I had dissected it again, and repacked it at my office.

I took all the stuff up there except some soft stuff which I got Mr. Flannery, of the Van Twigger Hotel, to send over a wagon, and take away the soft stuff. I gave that to him gratis.

Q Now did the mortgage sale occur? A Yes, sir, in the morning, at nine o'clock.

Q On August 4th? A Yes, sir.

Q And do you know who the Marshal was? A I know him by sight, and have for years, but, in fact, I don't know his name, and I never knew his name, but he called me by name when he came in.

MR. WOTT: I object to that.

BY MR. SPELMAN:

Q Well, he was there that morning? A Yes, sir.

Q And conducted the sale? A Yes, sir.

Q And to whom was the property sold? A Mr. Hupfel bid a thousand dollars, and there wasn't anything in the way of another bid, and it was knocked down to him.

Q You don't know whether he purchased it for himself or

anyone else; do you?

MR. WOTT: Well, I object to that.

THE COURT: Sustained.

MR. SPELLMAN: Exception.

BY MR. SPELLMAN:

Q Now when you got to 29th street with this stuff, where did you place it? A Some of it in the back part of the store, and some alongside of the wall, near a door leading into the back part, through a partition.

Q Were the cases opened at that time? A Some of them were and some were not.

Q When you say they were opened, some of them, were the cases of cigars open? A No, sir.

BY THE COURT:

Q The cases containing cigars were closed when you found the cases in the premises 26 East 21st street; is that so? A All but one box, and that had one end loose. You could raise up the end.

Q But, with the exception of that, you didn't open any? A Well, I opened them all, during that night, that is, all the boxes and packed liquors, the cases that I took from the premises, in the basement of the cafe. I utilized them to pack my liquors and all my belongings in. And then those that had covers, I nailed them on.

Q What I want to find out is whether you opened and closed

CASE 1260

again the boxes that contained cigars, while you yourself were in the premises 36 East 21st street? A I don't understand that, your Honor.

Q You were in the premises 26 East 21st street; were you not? A Yes, sir.

Q And you say that there were certain cases there, that had cigars in them? A Yes, sir.

Q And you say that those cases were closed, and not open? A All but one.

Q And those that were closed, did you open them while you were in 26 East 21st street? A Yes, sir.

Q And closed them again, and took them away? A Yes, sir, I opened them first to see what they contained.

BY MR. SPELLMAN:

Q And then you nailed them up again? A I nailed them up again, yes.

Q Now, when you got to 29th street, did you give away any of these cigars to anyone? A Yes, sir.

Q I show you this box which has been marked in evidence as Defendant's Exhibit B. Is there any mark on that box which recalls to your mind any special significance about it?

A Yes.

Q Tell us what it is? A It is a box that, after my arrest --

MR. WOTT: I object to that. He is asked about that

100-50000

CASE 1200

particular box, as to anything that enables him to identify it.

BY MR. SPELDMAN:

Q Well, is there anything about that box that shows you that you did anything with it? A Yes.

Q And was the box, when you made disposition of it, full of cigars? A Yes, packed full of cigars. It was a box taken out of that lot of cigars that they found in my possession. After I got to my 29th street office I gave a box of those cigars to Mr. Doughitt.

Q When did you give them to him? A On the 4th day of August, when I unpacked those goods, to weed out things that I didn't think I wanted, and I condensed them to ^{four} ~~one~~ large boxes and a large hamper. I gave Mr. Doughitt that cigar box, when I was unpacking the goods, on that date.

BY THE COURT:

Q What is the first name of Mr. Doughitt? A John H. Doughitt. He was my landlord at the time, that is, he has a lease of the whole building. He runs a studio there.

BY MR. SPELDMAN:

Q And what is there about that box that enables you to say that you gave it to Mr. Doughitt? A Well, from the fact that I went up to Mr. Doughitt -- he lives upstairs when his family is in the country -- and I asked him if he remembered my giving him a box of cigars and he said he did, and I said,

"Have you got that box here, Mr. Doughitt?" And he said "Well, yes, it must be upstairs in my bureau drawer or somewhere, and I'll look it up." And I said, "Well, it's a very important matter to me, and I wish you would look it up," and he said "Well, I have got some of the wine left anyway."

I gave him some Rhine wine and whiskey, along with these cigars. And I said "Will you look it up?" And I had to call there several times. The man was busy, and I had to impress it upon his mind.

MR. NOTE: I object to that, and move to strike that out.

THE COURT: Yes, objection sustained. Strike that out.

BY MR. SPREIDMAN:

Q I asked you Mr. Witness, whether there was any mark on that box which enables you to say that it was the box that you gave to Mr. Doughitt? A Yes, sir.

Q Well, what is it? A "The word is X".

Q When did you make that? A I didn't make it at all. Mr. Doughitt made it to identify it, at my request.

Q Point out where that is? A There (indicating.)

BY THE COURT:

Q In other words, at the time Mr. Doughitt handed back that box to you, that was written by Mr. Doughitt? A Yes, sir.

BY MR. SPREIDMAN:

Q In other words, the inscription there is, "The word is X"?

A Yes, sir.

Q And when he wrote this upon the box, you took charge of the box? A Yes, sir.

Q The empty box? A Yes, sir.

Q It is in the same condition that it was when he gave it to you? A Yes, sir.

MR. VOTT: Will you ask him when he got it from Mr. Doughitt?

BY MR. SPELLMAN:

Q When did you get it from Mr. Doughitt? A About four or five weeks ago.

Q And brought it to my office, I believe? A Yes, I brought it down to Mr. Spellman's office, and left it there.

Q And it has been lying around my private office ever since; hasn't it? A Yes, sir.

Q Tell us please what was the next thing you did about this property. Now you say that at West 29th street you condensed these articles into four cases and a hamper?

A Four red boxes, red letter boxes, such as I have identified here, like the one I have identified here, and also a large wicket hamper, which had a lock on it, and that I got downstairs in the cellar in West 29th street. It belongs to a tenant in the building. I borrowed it to pack a lot of liquors, etc.

Q And what did you do with these four cases and the hamper, after having packed this stuff in them? A Why, I let them

remain there for at least ten days.

Q In West 29th street? A Yes, sir; just as I had nailed them up.

Q And what was next done with them? A I sent them by the expressman who was here over to my house, by the man that was on the stand here, this morning. That is, I sent out Knox to get an expressman to call there and get the four cases and the hamper, and deliver them at my house.

Q And then the testimony given by Mr. Aiello, this morning, as to an order that he received on August 13th, to take away four cases and a hamper, refers to his taking the cases and hamper from No. 2 West 29th street, to your house in Brooklyn? A Yes, I suppose so.

Q He testified that he got such an order this morning. Is that correct? A Yes, sir. Well, I sent Knox out, and I suppose that the expressman did it. I got the date afterwards from the expressman, from his books, as soon as I began looking up my evidence, I got the date from his book; in fact I didn't know where to look until I consulted with --

THE SPEERMAN: Now, you have answered, and you should not say anything more after you have answered.

THE COURT: Now, Mr. Ackron, will you please be just as brief as you can be in your answers. Just pay attention to the question, and answer it as briefly as possible. Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: Now, then, obey it. Whenever you can answer a question fairly by either yes or no, do so.

BY MR. SPELDMAN:

Q Now were those four cases and the hamper taken to your house in Reid avenue, Brooklyn? A Yes, sir.

Q And when were they brought there? A On the 13th of August.

Q How long did they remain in your house? A Until the 7th of September.

Q In the meantime had you done anything about looking up this man Cooper, from whom you had bought the place? A Why I --

MR. NOTT: I object to his transactions with Cooper after the date. I haven't objected to them before the date.

MR. SPELDMAN: I want to show the entire transaction if your Honor please.

THE COURT: I will allow him to answer yes or no now.

A Up to what time?

BY MR. SPELDMAN:

Q On August 3rd, when you received notice from the brewer that he was going to sell you out, next morning, up to September 7th, had you tried to communicate with this man Cooper?

A I don't believe I did, up to that date, but I did afterwards.

Q Had you done anything in connection with these cigars, had you tried to dispose of them, up to September 7th, and if so, what did you do?

A Not until after the 29th of August. I came back from the country, and I was down in Broad street, and tried to negotiate with a party there to take those cigars.

Q Was that party Mr. Fritz Lindinger?

A Yes, sir.

Q Where had you been in the country?

A Up to my mother's, in Campville, Connecticut.

CASE 1200

Q When did this negotiation take place with Mr Fritz Lindinger? A I couldn't exactly tell you the date, but it was within a day or two after I came back, and I came back on the 29th of August.

Q Did you try to sell Mr Lindinger these cigars? A Yes, sir.

Q Now, you have heard some of these operatives testify here, this morning. They have said that you got hold of these cigars, and took them over to Broad street? A Yes, sir.

Q I believe they said Harrington took them over to Broad street, in an express wagon, or buggy, that he got from a man named Tice, in Brooklyn? A Yes, he did so at my request.

Q And that was on the 7th of September, was it? A Yes, sir. And I went over on a train and met Harrington at Lindinger's. In fact, I got there ahead of him.

Lindinger hadn't come down, and, as soon as he arrived with the wagon, the bootblack helped him unload the wagon, take off these two cases and this paper box, and put them on the stoop of the warehouse, right next door to Lindinger's, where Lindinger stored his stuff, and he directed that they should be sent there, to 103 Broad street. I marked them myself.

Q Now there was some testimony given here about Harrington wearing a flap over his eye when he was driving, and

wearing it until he went back to Brooklyn. Now, do you know what the condition of his eyes was? A He was being treated by some doctor in 72d street. I didn't know the name of the doctor until he told me, this morning, in court.

MR. NOTT: I object to that, and move to strike that out, as hearsay.

THE COURT: Sustained. Strike it out.

MR. SPELLMAN: Exception.

BY MR. SPELLMAN:

Q (Question repeated.) A His eyes were bad.

MR. NOTT: I object to that, and move to strike that out, as a conclusion of the witness.

THE COURT: Motion granted.

BY THE COURT:

Q Well, you may say what you observed about his eyes?

A Well, he had a pair of smoked glasses, and he said--

MR. NOTT: I object.

THE COURT: Sustained.

BY MR. SPELLMAN:

Q Well, had you seen him wear that patch over his eye or eyes in the street? A Yes, sir.

Q Now what happened at Mr Lindinger's over there in Broad street? A Well, before Mr Lindinger came downstairs-- he lives upstairs--I went up to my office, and that afternoon late, I was notified--

MR. NOTT: I object to that, if the Court please.

THE COURT: Sustained.

BY MR. SPELLMAN:

Q Well, after you received some notification that afternoon what did you do? A I received notification late in the afternoon, to send and get those cigars. I received a notification, late in the afternoon to send and get those cigars.

Q And then what did you do? A The next morning--

Q Well, had you talked with Lindinger that afternoon?

A Not himself, no, sir.

Q Well, did you learn that Lindinger rejected those cigars? A Yes, sir.

Q When did you learn that? A Late in the afternoon.

BY MR. NOTT:

Q That was the 7th or 8th? A Late in the afternoon of September 7th.

BY MR. SPELLMAN:

Q And then did you learn why he rejected them?

MR. NOTT: I object to that.

MR. SPELLMAN: I will withdraw it. It isn't material.

BY MR. SPELLMAN:

Q And what did you do then? A I saw Knox on the 8th, the next day, and asked him if he would get an expressman to go down to Engel's, 102 Broad street, which is directly opposite to Lindinger's place, and get those three boxes and

bring them up to my office; that Lindinger didn't want them.

Q Then were the goods taken from 102 Broad street to any place? A They were.

Q Where to? A To Knox's house.

Q Did you tell Knox to take them to his house? A No, sir.

Q Where did you tell Knox to take them to? A I told Knox to get an expressman and bring them to my office.

Q Where? A No. 2 West 29th street.

Q And he violated those instructions? A He couldn't get in, the place was locked up.

Q Ok, your place in West 29th street was locked up?

A Yes, sir.

Q And so he used his own judgment by taking them to his house? A He did; at least I found out afterwards.

Q Now afterwards were those goods taken to any other place? A Yes, sir.

Q When was that? A A man from Paterson was in my office, a man by the name of Simon. I owed this man \$50, and he wanted his money.

At the time that I got this \$50 I talked with him about the sale of a piano.

He said that he would buy a good instrument, if he could buy it cheap enough.

So when he came around for his \$50, I said, "Simon, I'll

sell you a good, new piano at the right price, and you can deduct your \$50 from the price that I will make on the piano."

And he said, "Where can I see one of these pianos?" And I said, "Down, at 14th street."

In the meantime, I had learned of Knox's house address, and learned that the cigars were down to his house, through this expressman.

Q Which expressman? A That was on the stand here this morning. At 29th street and Sixth avenue, on coming from my office to take the Sixth avenue car down to 14th street, when we went to the warerooms, I was right in this expressman's corner, and I asked him where the cigars were taken, and he said No. 2 West 13th street.

BY MR. NOTT:

Q Not No. 2? A No, No. 209. That was Knox's house number. I think about three doors west of Seventh avenue.

BY MR. SPELLMAN:

Q You said East 13th street. Did you mean West? A West I mean. The piano warerooms is in 14th street, between Fifth and Sixth avenue.

I said to Simon that I would go to Knox's house first, asked and/~~ask~~ him to come over with me, until I saw about some goods that belonged to me, and that I wanted to get them.

And so Simon came over with me, and stopped outside.

In passing the corner of Seventh avenue and 14th street,

I saw one of Schleicher's trucks.

Q As was testified to by the detectives this morning?

A Yes, sir. And the driver I knew--I know all the drivers of his trucks--and I asked the driver how long he was going to remain there, and he said they were moving a piano from one floor to another.

And I said, "Well, I've got some stuff here that I probably would like you to put on and cart for me," and I said, "Where are you going from here?" And he said, "Right back to the store. How long will you be?" And I said, "I'll go in and find out."

And I went in Knox's house, and found the cigars, and sent Mr Harrington around the corner to get the driver with the truck, to put the cigars on.

And the driver was still in the house, and so I jumped on the truck myself, and drove the truck around to Knox's house.

And the driver came out, and saw me going away with the truck and says, "Wait, wait a minute. Where are you going?" And I said, "I am just going to drive around the corner."

And, finally, the driver came around to Knox's house, and he and Mr Harrington put the cardboard box, the trunk and the cases on the truck, and it was driven around to Schleicher's, and I had them unload it and put inside of the store door.

I wanted them taken up to 29th street, to my office, but

they said they were busy, and couldn't spare the truck any longer.

And so I put them in the place, and unpacked the boxes and the trunk, which I borrowed, by the way, from Mr Knox. I opened some of the boxes in his place, and put some of the cigars in it in the trunk.

Q Now when did you get to Schleicher's place? A In the neighborhood of half past one.

Q Now I understand that some of these cases were unpacked, you say? A Yes.

Q And I believe the detectives say that they found two of the cases in the cellar? A They were all unpacked by myself.

Q Then these two emptied cases had contained cigars, before they came to Schleicher's? A Yes, sir.

Q And what did you do with the cigars when you took them out? A I put them up against the back of the piano in the show window, to prevent them falling over. There is four big show windows there, and a a pinao in each of them.

Q One of the detectives said that the shade was drawn on one of the windows, so as to hide from view what was in that window. Was that so? A That' isn't so. There is no shades on the show windows, and never has been since Mr Schleicher has had the building.

Q He says that there were no window shades down on any but one window? A There is no shades on any of the windows of the store front.

Q Well, at any rate, if they were on the windows, they were not down? A No, sir.

1

Q Now how many cigars did you have in that window?

A All that there were.

Q In the window? A All right up in the window, except what I had repacked into Knox's trunk and this paper box.

Q And how many did the trunk and the paper box contain?

A There was 1800 in that box and I had tied it up myself, and I had forgotten how many was in the trunk. But I locked the trunk and put this box on top of it, and set it right on the floor, within three feet of the window.

Q Now Mr. Ackron, are you able to tell positively how many cigars were in your possession, exceptly how many, of these La Barossa cigars? This paper will refresh your recollection; will it not (indicating a paper)? A Yes.

Q Well, tell us how many there were?

MR. JUST: Well, I object to that unless we know what it is he is refreshing his recollection from.

THE COURT: Sustained.

BY MR. SPELMAN:

Q Where did you get this paper? A It is a list that I made out myself.

Q That you made out yourself? A Yes, sir, I got the list from the Property Clerk, at Police Headquarters, and it contains all but eight or ten boxes of cigars, twenty-fives and fifties in a box, altogether about 375 cigars.

CASE 1280

Q And that represents all that there were of the cigars, outside of those that the Property Clerk has, except 375 cigars? Do you say that there were eight or ten ~~ix~~ boxes of fifties and twenty-fives? A Yes, sir.

Q Then about 300 cigars represent all -- A 300 to 350 cigars.

Q Yes, represent all of those cigars that you got, outside of what the Property Clerk has? A Yes, sir.

Q That came into your possession in any way whatever, of the La Barossa cigars that were stolen? A Yes, sir.

Q Now then tell us by looking at that list how many cigars there were?

P. NOTT: I object. He isn't telling us from his own recollection.

MR. SPREIDMAN: I will offer the paper in evidence. Look at it please Mr. Nott.

MR. NOTT: I will look at it. Oh, yes I will allow you to use it.

BY MR. SPREIDMAN:

Q Now, from the list, just give me the number?

A 7239 cigars.

Q Now, you haven't added to those cigars the few cigars that you took, the 300? A Yes, sir.

Q And that would make it, therefore, 7539 cigars that came into your possession? A Yes, sir.

Q And not one cigar more? No, nothing more whatever.

Q I show you this exhibit, Defendant's Exhibit E and ask you if that is a correct representation of Schleicher's establishment?

MR. NOTT: It is conceded that it is, if your Honor please.

MR. SPELLMAN: Then I will withdraw the question.

BY MR. SPELLMAN:

Q Now tell us in which of those windows were the cigars?

A In the east window of the west store, as marked (indicating).

Q As marked, you mean by the X mark which appears in there, and which has been identified by the detectives here, this morning? A Yes, sir.

Q Had you made any inquiry about the revenue stamps, from any revenue officer? A Why I did, after I received word from Mr. Lindinger that he wouldn't have them, owing to the fact that they were not stamped; and that made me commence to think that I ought to dig up some stamps and I was going to --

MR. NOTT: I object to what he was going to do.

A (Answer continued) I intended to --

MR. NOTT: I object.

THE COURT: No, I will not allow it.

BY MR. SPELLMAN:

Q Now how long had you been in Schleicher's place before you were arrested? A Possibly two hours or so hours and a half.

Q Now, concerning this place at 110 John street, you had some dealings in connection with the lease that was taken to those premises? A I had no dealings with the lease at all, no, sir.

Q Well, what was done in connection with those premises as far as you know? A A man that I had a contract with hired the place.

Q Do you mean a written contract? A Yes, sir.

Q Have you the written contract? A Yes, sir.

Q Where is it? A In my pocket.

Q You produce this paper, purporting to be signed by John H. Blake? A Yes, sir.

Q In whose handwriting is the name, John H. Blake? A John H. Blake's.

Q Well, was John H. Blake Mr. Knox, who was produced here yesterday and to-day? A No, sir.

Q It wasn't signed by Knox? A No, sir; it was signed by Mr. Blake himself.

Q And the name Charles E. Ackron, the signature there, is that your signature? A Yes, sir.

Q And the name of George N. Veritzan, signed as a witness, did you see that signed? A Yes, sir.

Q By whom? A By the Notary Public.

Q Mr. Veritzan? A Yes, sir. That's the man that acknowledged our signatures.

Q And you saw him sign his name as Notary Public, did you?

A Yes, sir.

MR. SPELMAN: I offer this paper in evidence.

MR. NOTT: I object to it, if the Court please, on the ground that it is a contract between the defendant and somebody else, entirely immaterial here.

MR. SPELMAN: Will your Honor hear me on that?

THE COURT: Well, I will allow him to testify, in a general way, as to the leasing of the premises in question, but I will not allow the paper in evidence.

MR. SPELMAN: Exception.

(It is marked Defendant's Exhibit I for identification.)

THE COURT: I will allow you to show by this witness-- this witness may state briefly, orally, his purpose in hiring those premises, but an agreement between himself and somebody else regarding a certain purpose is not material here..

BY MR. SPELMAN:

Q What was the purpose of leasing those premises in John street, Mr. Ackron? For the purpose of carrying on a business.

Q What kind of a business? A Artificial rubber.

Q And who was to carry on the business? A John H. Blake and myself, as equal partners.

Q And what was Blake to do as a partner? A He was to

promote the proposition, market it.

Q How did you get to know Mr. Blake? A He came into my office and made himself known, and presented a card, a business card bearing the name of Blake, from a party whom I had met in Boston, but no relation, although of the same name, but no relation.

Q And who hired the loft? A Mr. Blake agreed to hire a suitable office.

MR. NOTT: Now I ask to have that stricken out, as not responsive.

THE COURT: Strike it out. Answer the question.

BY MR. SPELMAN:

Q What did Mr. Blake agree to do in regard to that proposition? A He agreed to furnish \$10,000 and deposit it in a bank, subject to our joint signatures, to carry on the business in consideration of one-half interest in my formula, or secret process of manufacturing artificial rubber.

Q And this office was hired by whom? A By Mr. Knox.

Q And whom did he represent?

MR. NOTT: Well, I object to that, as calling for a conclusion, if the Court please.

BY MR. SPELMAN:

Q Who told Mr. Knox to hire the premises, if you know?

A Mr. Blake.

7 255
Q Was he on Mr. Blake's end of it in the transaction?

A Yes, sir.

MR. NOTT: Well, I object to that, if the court please.

THE COURT: Well, I will allow it to stand.

BY MR. SPELLMAN:

Q Mr. Ackron, what secret formula was that, and what was it supposed to accomplish?

MR. NOTT: Well, I object to that, what it was supposed to accomplish.

THE COURT: Yes, sustained.

MR. SPELLMAN: Then I will withdraw it in that form.

BY MR. SPELLMAN:

Q You speak of a secret formula that you and Blake had got together to develop, and which he contributed \$10,000 toward the development of?

A Yes, sir. It was a formula that a former step father of mine had perfected, for the purpose of coating textiles, in other words, waterproofing textiles.

Q And what is the name of your father? A George Archbold.

Q And was he a professional man? A Yes, sir.

Q If so, what profession? A He was Chief Chemist of the War Department of the United States at Washington, D.C.

Q And how long had he been Chief Chemist of the War Department? A During Benjamin F. Tracy's administration there.

Q Well, how many years? A I couldn't tell you that.

Q How long ago did your mother marry again? A In 1880.

Q And have you known of him since 1880?

MR. NOTT: I object to it as immaterial, irrelevant and incompetent.

THE COURT: Sustained.

MR. SPELLMAN: Exception.

BY MR. SPELLMAN:

Q Beside being the Chief Chemist of the War Department, do you know of any other work that he was engaged in?

MR. NOTT: I object to that as immaterial, if the Court please.

THE COURT: Sustained.

MR. SPELLMAN: Exception.

BY MR. SPELLMAN:

Q When did you first come into possession of this

formula? A If I am permitted to refer to a power of attorney.

BY THE COURT:

Q Well now it was prior to the time of the alleged leasing of the lofts, 110 John street? If that is so, it is sufficient. A (No answer)

MR. SPELLMAN: No, I think it is important to have the date, your Honor, and I want to follow it up with transactions that he has had in regard to this formula, not only in regard to this loft, but with many people, and in many places, to show that the transaction was legitimate in this matter.

THE COURT: Well, I will not allow that.

BY MR. SPELLMAN:

Q When did you first become possessed of, come into possession of this formula? Give us the date, please, Mr. Ackron, and hustle it along, if you can. Can you give us the date? A Yes, sir, I can. It was on the 20th of November, 1907.

Q How did you come into possession of it?

MR. NOTT: I object to that, as immaterial.

THE COURT: Sustained.

MR. SPELLMAN: Exception.

BY MR. SPELLMAN:

Q Was it through a power of attorney that you got from

some one or how?

MR. NOTT: I object to that.

THE COURT: Sustained.

MR. SPELLMAN: Exception.

BY MR. SPELLMAN:

Q When did your step father die? A September 16th, 1907.

THE COURT: How is that material, Mr. Spellman?

MR. SPELLMAN: Why, your Honor, I want to show a course of dealings here, so as to satisfy the jury as to whether the loft was hired for the purpose of robbing the cigar factory, four doors away, or for the purpose of carrying on an enterprise that had been carried on, in various places, and with different persons, for several years before.

THE COURT: Proceed.

BY MR. SPELLMAN:

Q Now, since you became possessed of that formula, this artificial rubber proposition, have you seen people in regard to it, and tried to negotiate a sale of it, or promoted as a business proposition? A Yes, sir.

Q Whom have you seen in reference to it?

MR. NOTT: Objected to.

BY MR. SPELLMAN:

Q Now, tell us what you did in regard to negotiations

INDEX

261

PAGE 1260

that you had in regard to the formula?

MR. NOTT: Objected to.

MR. SPELIMAN: Question withdrawn.

BY MR. SPELIMAN:

Q Tell us what negotiations you had with various parties touching this formula?

MR. NOTT: Well, I object to that.

THE COURT: Sustained. This witness claims that he was engaged in a certain business, before the beginning of August, 1910?

MR. SPELIMAN: Yes, sir.

THE COURT: And that it was in connection with that business that he made a certain arrangement with a person by the name of Blake, and that, in conjunction with Blake, he became the lessee of part of the premises at 110 John street. I think that is all that is material in this case. You want to explain how this witness, this defendant, became a part occupant of a loft at 110 John street?

MR. SPELIMAN: Yes, sir.

THE COURT: Now he may give a brief general explanation, but the details are immaterial.

MR. SPELIMAN: Very well, your Honor. I take an exception.

THE COURT: Because it will unduly lengthen the case.

Q 52

CASE 1260

MR. SPELLMAN: And I object, and take an exception to the Court's ruling, limiting the amount of proof that may be put in.

THE COURT: You may show what I have indicated.

MR. SPELLMAN: I want to show generally what he did, what he did since he became possessed of this formula.

THE COURT: Well you may do that briefly by him.

BY MR. SPELLMAN:

Q Now tell us briefly what you have done in relation to the formula? A I have figured with at least a dozen different capitalists on the proposition to promote the compound known to us as an artificial rubber.

Q Give us the names of a few of those men in a hurry?

MR. NOTT: That I object to if your Honor please.

THE COURT: Sustained.

MR. SPELLMAN: Exception.

BY MR. SPELLMAN:

Q Did you have any contracts with any of them, or form of contracts? A Only verbally, outside of this one particular contract with Blake.

Q In other words, up to the time you got the Blake contract, you had nothing definitely arranged with these people with whom you had been negotiating? A I had several contracts drawn and submitted to me, but they were never signed by me.

Q You never came to any fixed terms with anybody? A No, sir.

Q And among others whom you negotiated with, were some prominent merchants in this city? A Yes. And, for the first two years after the doctor died, I devoted about two-thirds of my time to the rubber proposition.

Q Trying to get people interested in it? A Yes, sir.

Q Now Mr Ackron, tell us, after a lease was taken--
after the premises were taken at 110 John street, there were
repairs made? A Yes, sir.

Q Some work was done? A Yes, sir.

Q In the shape of kalsomining and painting? A Yes, sir;
papared and kalsomined all the way through, cleaned up.

Q Now this ladder that was spoken of to-day, was it
borrowed by the painter? A I couldn't tell you whether
he borrowed it. I know that he used it.

Q And afterward that ladder was repainted? A Yes, sir.
It was smeared up with paint, and it was suggested that he had
better paint up that ladder for those people, before he returned
it.

Q Now do you know anything about the fire that oc-
curred at the La Varossa factory? A I never knew anything
about it at the time.

Q When did you first hear of it? A I should judge
it was about the middle of September, the fore part of Sep-
tember.

Q The fore part of September? A Yes, sir.

Q Before or after your arrest? A After my arrest.

BY MR. SPELLMAN:

Q After the arrest? A Yes, sir.

Q I see. Now, after the place was painted up and kal-

somined and fixed up, did you remove any property down there?

A Yes, sir.

Q Where did the property come from, Mr Ackron? A From No. 2 West 29th street.

Q And what was moved down? A There were five chairs, two long counters, a railing, a mahogany railing, with a gate, one long seven foot standing desk, with a big roll, a high stool, and one oak desk, and all those cases belonging to the hat protector business, and a rack containing two rolls of manila paper, which isn't here.

Q Now you say all those cases. ~~(indicating)~~ I wish you would tell us how many cases there were. You may stand up and count them? A And that barrel (indicating). That case there was among that lot of goods (indicating).

Q Well, that case is one of the cases produced by the District Attorney, this morning. The other case? A Yes.

Q That is, you have identified one as having the red letters on it, "American Beauty Cigarettes"? And this is the other case (indicating)? A Yes, sir.

Q Now there are seven cases which you have produced in the court room this afternoon? A Yes, sir.

Q And there is a barrel there which you produced this afternoon? A Yes, sir.

Q And this other case of the District Attorney's, that he produced this morning? A Yes, sir.

Q Now those cases are the ones that you brought down to 110 John street? A Yes, sir.

Q What was in those cases when you brought them down?

A The same as they contain now, "Helen Hat Protectors", and the dies, and everything belonging to them.

Q Well, who was the expressman that moved this stuff down for you? A A man by the name of Foster.

Q A man by the name of Foster? A Yes, sir; at least that is the boss expressman.

Q And who was the assistant that did the work? A McCauley, and Driscoll.

Q Now have you subpoenaed McCauley and Driscoll? A Yes, sir.

Q For to-day? A I subpoenaed them for to-day. I suppose they are outside now. I don't know.

Q Now, these "Helen Hat Protectors", a sample of which we have here, marked in evidence, how did you come into possession of those? A I bought the entire business, the large desk and the dies, and printed matter and everything that is belonging to them. It is a sort of mail order business.

Q From whom did you buy this business? A I bought it from the Herbert Building Company.

Q Was it owned by Mr Doughitt? A No, by Mr Houghton. He was the president of the Herbert Building Company.

BY THE COURT:

4

Q He is the person who introduced Cooper to you?

A Yes, sir. He was in the office. He had offices right at No. 2.

BY MR. SPELLMAN:

Q Now the colored man who was on the stand said that, when he helped Mr Harrington to move these things out of the building at 110 John street, he found some iron ~~in~~ tools, or something of the kind? A Those are the dies.

Q Are those the dies from which are cast these "Helen Hat Protectors"? A Yes, sir.

Q These are the irons, of some kind or the other, that the colored man referred to this morning, which he saw in one of the cases? A Yes, sir.

Q Now let me ask you what are these (indicating)? A Those are steel dies, for manufacturing those hat protectors.

Q For cutting out the "Helen Hat Protectors"? A Yes, sir; that is a portion of them.

Q Did you do any mail order business down there while you were in 110 John street? A No, sir.

Q Did you do any business at all in respect to this secret process while you were there? A No, sir.

Q What was the cause of that, Mr Ackron? A The man Blake didn't fulfil his contract.

Q In what respect? A Didn't furnish the money.

Q And as the result of that the thing went by default?

A He had thirty days from the signing of the contract to materialize, which he didn't do, and I went away to the country.

Q What do you mean by materialize? A That is to produce an amount of money mentioned in the contract, \$10,000.

Q And, having failed to do that, the proposition went by default? A Yes, sir.

Q And you had no one else to take his place? A No, sir.

Q And then had you any use for those premises, when the thing didn't continue? A No, sir.

Q Now when did you move from 110 John street, from the loft there? A I don't know what date the stuff was moved out there, but it was the latter part of the month. I went away, on the 19th of August.

Q Where did you go? A I went to my mother's.

Q Where? A Campville, Connecticut.

Q And how long did you stay there? A Until the 29th. I went away Friday the 10th, and came back Monday, the 29th.

Q And when you came back had your goods been moved out?

A My roll top desk was over at my house. Those cases were in the cellar.

Q In the cellar where? A In my house, 123 Reid avenue. At my request, they were moved.

03127
CASE 123

Q Some testimony was given here this morning about your furnishing to the tenants upstairs some keys of the lock downstairs or some new lock that you substituted? A Yes, sir.

Q What was the reason of substituting the lock, Mr Ackron? A The expressman, the boss expressman, Mr Foster, came over to my place in 29th street to look over the counters and other stuff that I wanted to move down, and I wanted him to make a price on them, and he said that he could get down with them until late that day--it was August 5th--and he wanted to know what kind of building it was, and, well, I said it was occupied for manufactures, I didn't know what, but we had the first floor, that is, up on the first flight--

MR. NOTT: Now I object to the conversation with Foster. He is asked why he got the key or lock.

THE COURT: Yes, sustained.

BY MR. SPELLMAN:

Q Well, you got the key, as I understand it now, because your expressman didn't know what time in the evening he would reach there? A Yes, he said if he got down there at all that evening, it would be late. It was on Friday, and I said he must be there that day, as I was going away the next morning.

Q Well, had you a key for the lock on the outer door at that time? A No, sir.

Q One had not been furnished to you by the landlord?

A No, sir. And I went upstairs and tried to make arrangements to get his key, and the tenant on the next floor above said that he wanted it back that night.

Q That was the gentleman who was on the stand, to-day?

A Yes. And I said that I would get one made. And the lock didn't work very good, and I happened to have two padlocks of my own. One was a small, six lever lock, and it worked hard on a big staple, and that was the reason for changing the first lock that I put on to the second lock.

Q Well then you put on the small lock, and gave the tenants their keys? A Yes, sir. I asked the man on the top floor if he had any objection to taking a key to the new lock, as ~~as~~ I wasn't able to get a key for the old lock.

Q For the old lock? A Yes, sir.

Q And then, after this new lock was put on, the staples were so wide -- A The staple was round, and the little six lever lock would go on, if you held it in just one position, but you couldn't put it on unless you got it in that one position.

Q Did you know that you were absolutely entitled to a key of that lock, whether it was an old one or new one?

A I called up the office of the agent, and used the tele-

2

phone on the floor above our office floor.

Q Well, just a moment. Did you know at that time that as a tenant you were entitled to open that door with a key, and lock it, if you were the last one going out at night?

A Yes, I learned it, that day.

Q Did you know that these cigars, at the time you took them from the premises in East 21st street, which you say you purchased from this man Cooper, were stolen? A No, sir.

Q Or any other property which you took from that place?

A No, sir.

Q In taking that property, had you any intent to criminally receive stolen goods? A No, sir.

Q In taking this property from 21st street, or in ever possessing it, had you any intention of committing the crime of larceny? A No, sir.

Q Mr. Ackron, you have here some samples of some textiles or other fabrics or articles which have been treated by this process of artificial rubber? A Yes, sir.

Q Please produce them. A Here they are (indicating).

Q Is there any article here that you can find that was made by your step father, in his lifetime?

MR. NOTT: Now I object to that. How does he know that?

MR. SPEELMAN: Well we will find out if he knows it, if that is the point of the objection.

MR. NOTT: And I object, because it is entirely immaterial, irrelevant and incompetent whether some pieces of cloth produced here were made by his step father.

THE COURT: I do not see that it is material.

MR. SPELLMAN: Then I won't put it that way.

BY MR. SPELLMAN:

Q Mr Ackron, you have handed me some articles?

A Yes, sir.

Q What are they? A They are samples of textiles coated by the compound that I have named, and which is in my possession and control, some coated by myself, and some that was done at the factory in Red Bank, by Dr. Archbold, before his death.

Q Dr. Archbold being your late step father? A Yes, sir.

Q Now which were the ones you did? Pick them all out?

MR. NOTT: Now I object to this, as immaterial, if the Court please.

MR. SPELLMAN: I want to ^{and} say to the jury, /your Honor, that I shall not pursue the subject any further than to separate those that he did from the others.

THE COURT: Well, I will allow that.

THE WITNESS: There is some without any backing (indicating).

BY MR. SPELLMAN:

Q Now don't make any comment whatever, but just separate

CASE 1260

4
those that you have done from any others there, and be con-²⁷³
tent with half a loaf, because the Court may not permit you
to do any more than that. What are you handing me now, Mr.
Ackron? A I am handing you hospital sheetings.

MR. NOTT: Oh, I object to that, if your Honor
please.

MR. SPELLMAN: Why, it will just take a moment, and
then I am through, your Honor.

THE COURT: Well, I will allow it.

BY MR. SPELLMAN:

Q Go right on. A White silks for balloon coverings.

Q For balloon coverings? A Yes. There are different
weights of textiles that I did myself.

THE COURT: Well now that is the answer.

BY MR. SPELLMAN:

Q Now all these that you hand me are articles, textiles
or otherwise that were treated by you personally? A Yes, sir.
And that is a bottle of the stuff, in liquid form, and that is
the hard, solid form (indicating).

MR. NOTT: I object to that, if your Honor please.

THE COURT: Yes, sustained.

MR. SPELLMAN: Now I offer these in evidence, if
your Honor please.

MR. NOTT: Objected to as immaterial, irrelevant

CASE 1260

and incompetent.

MR. SPELLMAN: Will your Honor hear me on that?

THE COURT: I think I know the purpose for which you offer them, Mr. Spellman.

MR. SPELLMAN: Yes, sir; for the purpose of showing a legitimate reason for being in 110 John street.

MR. NOTT: I object to it.

MR. SPELLMAN: The jury are asked to believe that nine foot walls were ascended in the way that the young detective ascended them, in order to steal these cigars.

CASE 1200

THE COURT: I understand your contention. I will not receive them.

MR. SPELLMAN: Exception.

BY MR. SPELLMAN:

Q What are these two articles, Mr. Ackron, which I show you?

MR. NOTT: Objected to.

MR. SPELLMAN: Your Honor, the stenographer having just marked the textiles that were treated with this process as Defendant's exhibit J for identification, I now, for the purpose of preserving the record in its integrity, offer them in evidence.

MR. NOTT: I object.

THE COURT: I will not receive them.

MR. SPELLMAN: I take an exception.

BY MR. SPELLMAN:

Q Now, you handed me a hard substance, in circular shape, and I ask you if the substance has any connection with the secret process of Dr. Archbold?

MR. NOTT: Objected to.

THE COURT: Sustained.

MR. SPELLMAN: Exception.

BY MR. SPELLMAN:

Q You have produced a bottle containing some heavy liquids and I ask you if that bottle has any connection with the secret process of Dr. Archbold?

MR. NOTT: That I object to, on the same ground.

THE COURT: Sustained.

MR. SPELLMAN: Exception.

THE COURT: I take it that it is not a matter of contention in this case whether there was or was not a secret process, or whether he was or was not the owner of it?

MR. SPELLMAN: I see, your Honor. Well, I have done the best I could. That is all with this witness.

CROSS EXAMINATION BY MR. NOTT:

Q Mr. Ackron, how old are you? A Fifty years old.

Q How many times have you been convicted of crime?

A Three or four times.

Q Is that all? A All that I can recall.

Q Well, what was the first time you were convicted?

A In the winter of 1884-5.

Q Now was that in the State of New Jersey? A Yes, sir.

Q And you served three years in the State Prison at Trenton? A Yes, sir.

Q On a conviction of the crime of conspiracy? A Yes, sir.

Q And when was the next time you were convicted? 1894 or 1895.

Q Of what? A General Sessions.

Q Of what crime? A I understood it was forgery in the third degree. I really don't know what they got it down to.

0021
1260
FBI

The case was tried so quick that I didn't know what it was for.

Q I see. You were young and inexperienced then?

MR. SPELIMAN: I object to that.

THE COURT: Sustained.

BY MR. NOTT:

Q Well is that the conviction for which you were subsequently pardoned while serving sentence? A Yes, sir.

MR. SPELIMAN: Then the trial must have been a quick one.

MR. NOTT: I see.

BY MR. NOTT:

Q Now what was the next time you were convicted? A I don't remember the dates. I have made a note of them here, too.

Q Well, I didn't ask you the date. Pay attention to the question. I asked you what was the next crime of which you were convicted? A I think it was assault.

Q And where were you convicted of that? A Special Sessions, Brooklyn.

Q And what did you serve for that? A I was fined \$25.

Q How much? A \$25.

Q What was the next time you were convicted? A For assault.

Q Where was that? A In Brooklyn.

Q In what court? A Special Sessions.

Q What punishment did you receive then? A Ninety days

in the Penitentiary.

Q In the Penitentiary? A Yes, sir.

Q What was the next time you were convicted? A In connection with Mr. Robinson, who employed me on Columbus avenue.

Q Well, what was the crime of which you were convicted then? A Conspiracy.

Q That is the second time you were convicted of a conspiracy?

MR. SPELLMAN: Objected to, may it please the Court. It will speak for itself.

THE COURT: Overruled.

MR. SPELLMAN: Exception.

A Yes.

BY MR. NOTT:

Q Now where were you convicted of conspiracy? A In the Special Sessions in this county.

Q And what punishment did you receive then? A Three months.

Q In the Penitentiary? A Yes, sir.

Q Do you remember any other convictions? A I don't recall any other.

Q Have you ever been convicted outside of the state, except the time in New Jersey? A Never in my life was I arrested, outside --

BY MR. SPELLMAN:

Q No. Were you ever convicted outside of this State, ex-

cept the one time in New Jersey? A No, sir; and never was even arrested.

BY MR. NOTT:

Q You don't recall any other convictions in this State? Are you certain that there were no others? A I am not certain. There might have been an assault.

Q I see. Now what has been your business in the last ten years? A Cafe and restaurant.

Q Yes. And you know that business pretty well, from the top to the bottom, don't you? A Well, there are some branches of it that I don't quite understand.

Q Well, you have kept cafes and restaurants of all sorts, large and small; haven't you? A Yes.

Q And some with hotel licenses? A Yes, sir.

Q And some with only restaurant licenses? A I never had one with a restaurant license only.

Q Well, some with licenses to sell on the premises, as hotels? A Yes.

Q And you have kept them both in town and in the suburbs? A Yes, sir.

Q And in your opinion you know the hotel and cafe business pretty well, don't you? A No, I don't.

Q You have been in it ten or twelve years, and you have kept cafes and restaurants in what is commonly known as the Tenderloin section of this town; haven't you? A I have two places there, yes.

Q And you have said already that you have kept them also in suburban places as well? A yes, sir.

Q And don't you think that you know that business yet? A No. I don't.

CASE 12600

Q I see. Now this office that you had on 29th street, what business if any were you conducting at that office?

A General brokerage.

Q What do you mean by general brokerage? A Buying and selling anything, real estate.

Q Anything that came along, you would buy or sell?

A Oh, no, not anything that came along.

Q Well, what would you buy and sell? ~~anything~~ A Anything that I could handle in reason, with impunity.

Q With what? What was the last part of the answer?

A (No answer.)

(It is repeated by the stenographer.)

Q Well, tell us some of the articles which you handled with impunity? A I bought several pianos.

Q Yes? A And sold them at a profit.

Q Yes? A I bought iceboxes, Morillard refrigerators.

Q You don't call that brokerage business, do you, buying and selling refrigerators? A And I have bought houses and unimproved property and saloons and cafes.

Q How many saloons have you bought? A Within the past ten years?

Q Yes. A How many saloons?

Q Yes. A And how many I have fitted up? Is that what you want to know?

Q How many have you bought? A Five or six.

CASE 221200

Q And did you fit any of them up? A Yes, sir.

Q How many did you fit up? A Four.

Q Now did you have a room of your own in the office in 29th street or only deskroom? A Deskroom.

Q In Mr Houghton's office? A No, it was Mr Doughitt's art gallery.

Q And he is the man to whom you gave the cigars? A Yes, sir.

Q And you retained your office there, after you got this other office on John street; is that correct? A Yes, sir.

Q And you had it in September? A Well, I didn't have any desk there then.

Q Well, you had deskroom there and an office? A Well, I didn't pay any rent after that.

Q After what? A After the first of August.

Q After the first of August? A Yes, sir.

Q Weren't you there all the time, or frequently, after the first of August? A I had been there every day pretty much, for the past month.

Q And that's where you moved the stuff from that you say you took from Cooper's saloon? A Yes.

Q Although you had no office there? A I have no office there now; no, sir.

Q And you had no stuff when you moved that stuff there? A Yes, I had.

Q I understood you to say that you had no office there, and paid no rent there, after August first? A No, but I had keys for there. I had the office there for the purpose of meeting people uptown, and receiving mail, but I paid no rent for the office.

Q Now, when did you first meet Knox? A That I couldn't tell you.

Q Well, how long after you met him was it that you leased the premises in John street, or Blake leased them, as you say, on John street? I don't ask for the exact date?

A It was previous to me signing a contract with this man Blake.

Q Well, how long previous to that was it? That's what I asked you? A I couldn't tell you.

Q Was it a week or a month previous to the contract with Blake that you met Knox? A I think it was in the neighborhood of three or four weeks.

Q And do you remember where you met him? A Yes.

Q Where? A At No. 2 West 29th street, my office.

Q Who introduced you to him? A Mr Blake.

Q Mr Blake introduced you? A Yes.

Q Are you sure of that? A Yes, sir.

62-12000
PAGE 282

ER MR. NOTT:

Q Now, what did you say? A I won't be positive whether he introduced me or not.

Q Isn't it a fact that you met Knox before Blake? A No, sir.

Q Didn't you tell Knox that you would get him a job? A I did not.

Q Did you ever employ Knox? A I told Knox afterwards that I would give him a job.

Q After what? A After this rubber business proposition fell through.

Q Now, did you go or did you not go up to rent the premises? A I did not.

Q You did not? Then, who did? A I suppose that Mr. Blake went down there.

Q Did Knox report to you that he could rent the premises at 110 John Street? A He came back and said that he had two or three places that he had looked at, and, when he said that, I took it for granted that he went, Blake and himself.

Q Did you know that Knox was signing the lease in the name of Blake? A Not until after it was done.

Q Weren't you present when Knox was told to go down, or didn't you tell Knox to go down and sign the lease? A I don't remember whether I did or not.

Q Will you swear that you did not? A No, I can't.

0021200
CASE 1200

swear that I did not.

Q Now, at this time that that lease was taken, the obligated you to rent the premises for nine months? A Not myself, no, sir.

Q Well, Blake? A Yes.

Q Yes. And then who put up that money? A Blake.

Q Cash? A Yes, sir.

Q Did you see him? A No, sir.

Q How do you know he did? A I was told so by Knox.

Q And, at that time, had you any factory for carrying on this process? A There is a factory now --

Q Did you have a factory then? A I don't control it, no, sir.

Q Who controls it? A C. E. Conover people.

Q It isn't your factory? A No, sir.

Q Is Conover manufacturing this process? A Yes, sir.

Q What did you engage the premises at 110 John Street for? A For offices.

Q For what purpose? A To carry on the manufacture of rubber.

Q You were not going to manufafutre it there? A No, sir.

Q What was this place for? What was the office for?

A The contract will speak for itself.

Q I ask you. Will you kindly answer for what purposes thos premises were to be used?

MR. SPELLMAN: I would like to put one preliminary question to show the incompetency of that question. I object to it, to the question, upon the ground that it has already been testified to what each party was to do. It is in evidence, and it is evident by the written agreement.

THE COURT: Objection overruled.

MR. SPELLMAN: Exception.

BY MR. NOTT:

Q How long have you known this co-defendant of yours?

A Oh, probably 20 years -- 25 years.

Q Did you ever serve in prison with him? A No, sir.

Q How many different names have you known him under, or heard him go by?

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

THE COURT: I will allow it.

MR. SPELLMAN: Exception.

BY MR. NOTT:

Q Under how many names have you known him by, or heard him called by?

MR. SPELLMAN: I object to it on behalf of the defendant Harrington, whose counsel is not here; on the ground that it tends to the prejudice of the co-defendant in this trial and that such evidence is prejudicial to

PAGE 1200

the defendant Harrington.

THE COURT: I will receive it as against Ackron, and not as regards the defendant Harrington.

MR. SPELLMAN: Exception.

Q Go on, please answer the question? A If you will repeat the question.

(The question is repeated by the stenographer.)

A Why more -- I never heard him go but by one name.

Q What was that? A Harrington.

Q You are sure of that? A Outside of the time he came to our house, and you know --

Q What name did you know him under then? A John C. May.

Q Have you ever known him by any other name? A No, sir.

Q Are you sure? A No, sir.

Q At the time you took him into your house and also associated him with you at your office, you knew he had been previously convicted? A Yes, sir.

Q How many times?

MR. SPELLMAN: I object, may it please your Honor as tending to the prejudice of the defendant Harrington; and although your Honor may instruct the jury that it is not of record as against Harrington, still, I contend that it should not be received. I object to it on the ground that it is irrelevant, incompetent and immaterial.

CASE 1260

THE COURT: I understand that the indictment charges as respects the defendant Harrington that he was previously convicted. I think I will sustain the objection.

Q Was Harrington in your employ? A No, sir.

Q Did you pay him money? A No, sir.

Q Well, what was he doing for a living? A He was living at our house, gratis.

Q And what else was he doing? A Nothing.

Q What was he doing over at your office? A I used him in my office, and used him at my home.

Q And then you did employ him at your office. Did you or did you not employ him? A He received no compensation.

Q Did you employ him. I am asking about whether you employed him or not; did you? A He did work, yes, sir, odd jobs, came to my office every day.

Q What was the nature of his employment? A Nothing outside of chores around the house and errand boy at the office.

Q In what business did you employ him? A My own business that I was conducting.

Q What business were you conducting at that time?

A Brokerage business.

Q Buying and selling these properties? A Yes, sir.

Q You paid him no money? A I gave him small amounts.

Q Did you or did you not pay him? A No specific

salary; no, sir. No specific salary.

Q He was there only with you to do whatever you told him? A Yes, sir.

Q Now, how long did you know Cooper? A I never saw him but the day before the 2nd of August.

Q So, when you bought this saloon of Cooper, you bought it from a man who was a total stranger to you? A Yes, sir.

Q Did you meet the man from whom Cooper had bought the property? A I did.

Q What was his name? A I can't recall his name; Salan or Sallow, some such name.

Q When did you meet him? A I think I met him the evening of the 3rd of August.

Q And you never met him before? A No, sir.

Q So both these parties at the time you bought the stock in the saloon were strangers to you, at the time you bought the saloon? A Yes, sir.

Q And you agreed to pay \$1,000? A Yes, sir.

Q And assume certain mortgages? A Yes, sir.

MR. SPELLMAN: Not assume. I would suggest that he use subject to mortgages.

BY MR. NOTT:

Q Subject to those mortgages? A Yes, sir.

Q This contract, as I understand this bill of sale was signed on the morning of August 3rd? A Yes, sir.

Q Before that had you gone to the premises? A Yes, sir.

Q Had you examined the stock? A No, sir.

Q Well, what were you buying then? A I was buying the good will and stocks and fixtures, subject to the mortgages.

Q I see. And paying a thousand dollars? A Yes, sir.

Q And doing that from strangers? Is that right, from two strangers? A Yes, sir.

Q And you tell this jury that you never examined the stock you were buying? A I did not.

Q You did not examine it? A No.

Q Have you got that bill of sale?

MR. SPELLMAN: Yes, sir.

Q You just took the guarantee of a stranger that there was stock there worth \$550? A Guaranteeing that amount, yes, sir.

Q You took the guarantee of this stranger? A Yes, sir.

Q He didn't give you any security? A That note. I gave him that note and that would be security.

Q Did you take any security? A Nothing outside of the guarantee.

Q It says \$550 inclusive also of license and lease?

A Not inclusive.

Q Well, that does say inclusive. Look at it? A The license is owned by the brewers.

Q It says inclusive of license and lease; doesn't it?

A He doesn't own a ~~license~~ license.

Q Will you look at that bill of sale, which you took, and see what it says?

MR. SPELLMAN: I object to the bill of sale.

THE COURT: Allowed.

MR. SPELLMAN: Exception.

Q Will you look at it. Now, the last line is written there. It says that; don't it?

MR. SPELLMAN: I concede it says it. If that will save time.

Q Can't you read it and tell us? A That is what it says there.

Q Now, and in your name, there was a mortgage given for \$2360. and a second mortgage of \$3639? A Yes, sir.

Q And do you tell this jury, that knowing of those mortgages were there ahead of you, that you never examined that stock to see what it was? A I walked in the barroom, and could see everything, and, if it had not been all there, I would not have put anything in the saloon. I could see the bottles were all full.

Q Were the bottles all full? A Yes, sir, all.

Q They were full. Do you tell the jury that you didn't know what stock you were buying? A I never went in the cellar, and never in the back end of the store. I just simply took it for granted it was a good proposition.

EXHIBIT 1280

Q How long had you been in the saloon business and cafe business then? A How long?

Q Yes? A In that one place?

Q In the business? A 20 years.

Q 20 years. Now, I ask the jury to notice back of here, the words "schedule" and "bill of sale" are scratched out. Did you ever see a bill of sale which didn't give a schedule? A Yes, sir.

Q By the vendor of the property? A Yes, sir.

Q You have taken them before? A Yes, sir.

Q You never required the vendor to put the schedule of his property on the bill of sale? A Yes. I paid \$33,000 for a place, and never looked at it, and paid it down, cash.

Q But you looked at the stock? A I never did.

Q You never looked at the stock? A Yes, sir, I did, in a way.

Q Where was that place; is that the Tivoli? A Oh, no.

Q Where was that place, the place for which you paid \$33,000? A In Brooklyn.

Q Whereabouts? A 604 to 614 Jamaica Avenue.

Q What is the name? A 604 to 614 Jamaica Avenue, Akrons Casino. Here is a picture of it.

Q Kindly sit down and answer the questions. Anyhow, when you bought this saloon from a stranger there was no schedule of stock that you bought there at all? A Simply it

CASE 1260

speaks for itself, the stock and fixtures.

Q There was no schedule. The word schedule is scratched out? A No schedule was given in the bill of sale.

BY THE COURT:

Q Yes or no? A I don't remember.

BY MR. NOTT:

Q Now, you understood that the first mortgage there was a broker's mortgage? A Yes, sir.

Q What did you think that broker's mortgage was on?

A On the fixtures.

Q What else? A On the license and lease.

Q Anything else? A No, sir.

Q Did you think it was on any of the stock? A I knew it was not.

MR. SPELLMAN: I object. He cannot give a mortgage on the stock, may it please the Court.

THE COURT: I will sustain the objection.

BY MR. NOTT:

Q What was the second mortgage on? A The man that sold to Cooper took back a second mortgage to secure the payment of his notes.

Q And what was the second mortgage on? A On the stock.

Q And on what else? A On the fixtures, also.

Q On the stock did you say? A No, sir.

Q Did you see that mortgage? A No, sir.

CASE 1200

Q How do you know it was ^{not} on the stock? A Because you can't mortgage stock.

Q Can you give a bill of sale for stock? A Yes, sir.

Q Are you sure this was not a bill of sale? A Which?

THE COURT: Referring now to what was given to the man from whom Cooper bought.

BY MR. NOTT:

Q Was not that a bill of sale? A I do not know. I cannot tell you what he gave the other man. He was to pay up \$100 a month, and that was secured by the second mortgage on the place.

Q You understood then there was a mortgage, the two mortgages aggregating \$6,000, simply on the license, fixtures and lease? A Yes, sir.

Q How long had the lease to run? A The lease, I believe, had four years to run, and there was \$1800 cash deposit paid up there on the license, to secure the payment of rent.

Q Did you see the lease? A No, sir.

Q How do you know how long it had to run? A I was informed.

Q By whom? A By Cooper.

Q And you took his word for it? A I went to the brewery and talked matters over.

Q Did you talk the whole thing over? A I did not. I went to the brewery and got some information from them.

Q Did they tell you how long the lease had to run? A I don't remember just now.

Q You don't remember whether you learned that or not? A I did learn it.

Q But you don't remember from whom? A No, sir.

Q Now, why did you sit up all night cleaning that stuff up out of that place, before the Marshall took possession in the morning? A I did not close up until 12:30.

Q I did not ask you that. I asked you why you sat up all night cleaning out that place and packing the stuff before the Marshall came? A I did not clean it out.

Q You took everything out, even the toilet paper? A I took a big box of it, yes.

Q What did you sit up all night cleaning out that place? A I never did. I packed my possessions that night. I stayed there until one or a quarter of one, I think it was after half past twelve when I closed up, and I thought it was pretty near time to go and see about my possessions. The sale was at nine o'clock, and I thought it pretty near time to pack up what belonged to me.

Q Why did you want to do it at night? A I don't know.

Q Why did you sit up all night packing up? A It took me half of the night.

Q Why did you wait until next day. That was before the marshall came? A Before the marshall came. He was to be there

CASE 1200

at nine o'clock. My stuff didn't go out that morning.

Q Isn't it a fact that you sat up all night? A No, sir.

Q Why did you sit up that night packing that stuff up?

A To have it in readiness to ship to my house the next morning.

BY THE COURT:

Q Why did you pack at night. Why didn't you wait until after the marshall came. Was there any reason that you had for doing the packing before the marshall came? A Well, yes, there was a reason. The fact of the matter is I was not obliged to sit up all night, but it did take me more than half the night to do the packing.

Q why did you want to do the packing of the stuff that night instead of waiting until eight or nine o'clock in the morning? A Unfortunately, the time that I proposed to spend there during the night --

Q Why could you pack the next morning? A Because I saw fit to pack it there during the night.

BY MR. NOTT:

Q Why did you see fit to do it in the night time? A To have it in readiness to move it on the truck in the morning.

Q When, after the sale? A Yes, after the sale, after.

Q How did you have to sit up all night packing stuff that you could not move out until after 11 o'clock in the morning? A I will explain. One of the reasons is that I had discharged the drunken barkeeper, who would not give me a set

CASE 1260

of keys which he had. I made mention of that fact to the 296
officer who came along on the beat on that post, and he asked
me if I intended to move anything that night, and I said, no,
I am going to stay and pack up my belongings. There was two
or three sets of keys to this ~~store~~ store door, and I said if
any of my stock is here I bought it, and I want to protect it,
and I was going to pack it so as to take it away in the morning.

Q Was Harrington with you? A No, sir.

Q Was Knox with you? A Yes, sir.

Q Knox was not working with you there? A No, sir.

Q How did he happen to be working there with you? A I
asked him down to the place to give me a hand.

Q Well, what did he do? A To help me at the place.

Q Doing what? A To run the place.

Q Is he a bartender? A No, sir, a bookkeeper.

Q What did you have Knox there that night for? A To
help me pack up the stuff.

Q What time did you get him there? A In the afternoon
he came in the office, just about the time I bought the place.

Q Did you then tell him that you wanted him to come down
and pack up? A I didn't tell him, because he didn't know.

Q Did you ask him to come there for the purpose of pack-
ing up? A No, sir, I did not.

Q What did you ask him to come there for? A I asked
him to take a look in at the new place I bought.

Q That is all you asked him? A At that time, yes.

Q He came down in the afternoon? A He came down in the afternoon.

Q When did you first learn that the place was to be sold the next morning? A At three thirty in the afternoon.

Q You never paid any money for this property you bought?
A I paid the equivalent to money

Q That is your not? A Not my note, no, sir.

Q What did you pay for this property? A What did I pay for the property?

Q yes? A It was put up; lots put up for it.

Q What did you give in exchange for the property? A A four months note.

Q No money? A No money.

Q Well, you said something about a mortgage? A Yes, sir.

Q You didn't give the mortgage, did you? A A real estate mortgage -- a mortgage of 20 lots, that is a mortgage on 20 lots.

Q Did you deliver a mortgage? A Yes, sir.

Q Are you sure of that? A Yes, sir.

Q You gave Cooper a mortgage; is that what you mean?

A Yes, sir; that is, Mr. May did upon executing the bill of sale before the notary public. I was not there.

Q You say that some paper was delivered to Cooper? A Yes, sir.

Q Was this bill of sale run to May for? A Why did it run to May?

A Yes? A Simply because the mortgage was recorded in his name.

Q Why did you have May take title to the property, instead of having it in your own name? A I intended to transfer it to my wife in a day or so after that was signed.

Q Why did you have to have May take title to the property? A There was no other reason except that the mortgage was recorded in his name.

Q What mortgage? A The mortgage on the lots.

Q You held a mortgage on certain lots? A Mr. May did, in certain names.

Q Who else did it belong to? A Mr. Lackey.

Q Mr. Lackey? A Yes, sir.

Q How do you spell it? A L-a-c-k-e-y.

Q And you held a mortgage on it? A I did not.

Q Who held the mortgage on it? A I got Mr. May to hold it.

Q Who advanced the money in return for the mortgage?

A The lots belonged to Mr. Lackey, and then fell to Mr. Doughitt.

Q The same Mr. Doughitt.

Q Who owned the lots. You say that the mortgage was given as collateral security that you held on certain lots?

A I did not hold it.

EXHIBIT
1260

CASE 1260

Q That May held? A I borrowed it for the purpose.

Q From whom? A Mr. Doughitt.

Q Did Doughitt own the mortgage? A He controlled that.

Q Did Doughitt own the mortgage? A He controls that.

BY THE COURT:

Q Either yes or no, or you don't know. A I don't know,
as a matter of fact.

BY MR. NOTT:

Q Do you know who owned the property, Lackey? A I
show
could/you the deed --

THE COURT: One moment.

BY MR. NOTT:

Q Where were the lots located? A At Iselip.

Q And in whose name did the title stand on those lots?

A I don't remember the full name.

Q Do you know the man's name? A Lackey, I think.

Q Was there a mortgage on that property? A There was
none up to the time that the mortgage was made to Mr. May.

Q Who made the mortgage to May? A I could not tell you.

Q Was the mortgage made upon the land, on the property?

A I suppose so.

Q And it was made to May? A Yes, sir.

Q What did May advance in return for the mortgage? A I
don't think anything at all.

Q How did Lackey come to give May a mortgage on the lots?

A I don't know whether Lackey did.

Q Do you know whether any mortgage whatever was given?

A I am sure that it was.

Q Where did you first see the mortgage? A I had it recorded.

Q I did not ask you that. I asked where did you first see it? A At 29th Street.

Q Who produced it? A I could not just tell you. I don't remember.

Q You mean to say that you gave this paper, this amount as collateral security for the note, and cannot tell the jury anything about what was given in return for the mortgage?

A I knew that Mr. Cooper knew something about it. I did not.

Q Does Cooper know anything more about the mortgage than you? A I think he does.

Q You gave it as collateral, and do not know anything more? A I asked him if he would accept it as collateral, and asked him if he would accept my note for four months, and asked me if I could get an endorsement, and I said I did not know if I could get it endorsed. As he was obliged to leave town quickly he said, you can possibly use the first mortgage as collateral. I said I will make inquiries to see if I can get use of it.

Q Who gave you this mortgage, this paper? A Mr. Doughitt.

Q Do you know where he got it from? A I do not.

Q Did you ask him where he got it from? A I got --

Q Did you ask where he got it from? A I suppose he treated it.

Q I ask you if you asked him where he got it from?

A I never asked. I closed a deal for \$200,000 worth of property --

Q Did you or May give any value for that mortgage? A I did not, or May did not.

Q And he was around there, and you were using him as an errand boy? A He was around there, yes, working for me.

Q Did you tell him to make the mortgage to May? A Yes, sir.

Q Why did you tell him to do that? A Simply because I could not hold title to anything, just the way I am suggesting.

Q Why not?

MR. SHELLMAN: Objected to as immaterial, irrelevant and incompetent -- I withdraw the objection.

Q Why not? A Simply because I am forced through bankruptcy, others were bringing me up through bankruptcy proceedings

Q I see. So you had Mr. Harrington as the valuable man who owned the mortgage. Is that right? A Yes, sir.

Q So that you exchanged this piece of paper that you call a mortgage and your note, unendorsed, for that property? A I did not. I put it up to secure payment, the note.

0021200
CASE 1200

Q And in return for that note, you got this business?

A Yes, sir.

Q Now, what time did you move that property out from Cooper's? A From the 21st Street place?

Q Yes? A I could not tell you the exact hour. I should judge it was 12 o'clock in the forenoon.

Q Do you remember what expressman they used? A Yes, sir.

Q Who? A From the Ben Hur stables, in East 25th Street.

Q Did you order it? A No, sir.

Q Who did? A Mr. Flannery.

Q I understand that one of those boxes came down from Cooper's place? A Not from uptown.

Q Did you state that the one marked in red ink came down from Cooper's? A Yes, sir.

Q And when you took it to the 29th Street place what was in it? A Cigars.

Q What was in it when it was taken down to John Street?

A I did not take that red box down.

Q Did you state that the box in red ink went down to John Street? A No, sir.

Q Now if -- now, think, Did you? A Yes, the big box, the big square one went from 29th Street to John Street. This is the large box. That is not the one with the red ink on.

Q Is that the one that came from Cooper's? A No, sir.

MR. SPELLMAN: He is now inquiring about Exhibit 8.

BY MR. NOTT:

Q How many boxes did you move up from Cooper's, as you saw, from Cooper's to the 29th Street place? A There must have been 12 or 15, possibly more. I really could not tell you. There was a lot of empty boxes thrown in the back yard after I discarded them and repacked them.

Q Just at this time you had gone into these premises on John Street; is that correct? A That was the day after.

Q What? A That was just the day after I had these things moved.

Q The lease is dated July 28th, isn't it? A I do not know what the lease is dated.

Q Isn't it a fact that you had been down there looking about before you moved in? A Yes, sir.

Q That was the first of August, wasn't it? A Along about the last of July or the very first part of August, yes, sir.

Q And you had been down there several times? A yes, sir.

Q And had you noticed that La Varossa Cigar Factory right next store? A No, sir.

Q You never saw that? A I never saw that until I got taken.

Q You never knew it until the time you were arrested that there was such a name? A No, sir.

Q How long were you in that place altogether? A Half a dozen times.

Q You never saw that place at all? A No, sir.

Q You never saw that sign in great big letters, the whole side of the building (indicating)? A I didn't go down that far.

Q Did you notice that sign there at all? A No, sir.

Q So when you saw all these La Varossa cigars in your place on the 29th, you did not think that that was an co-incident? A I never even noticed the name.

Q You did not notice the name of the make or brand?

A No, sir.

Q How long did you try to sell the cigars before you were locked up? A I never tried to sell them.

Q Did you try to sell them to Lindinger? A Yes, sir.

Q How long had you been trying to sell them before you noticed the brand? A How long did I try to sell them?

Q yes? A I don't quite understand, your Honor. I don't understand the question.

BY MR. NOTT:

Q You did try to sell those cigars to several people?

A No, sir, not to several people, no, sir.

Q You tried to sell them to Lindinger, yes or no? A Yes, sir.

Q Did you testify that you didn't notice the brand or

their make? A I never notice the brand, no. I know they were cigars. I saw the names on the box they were packed in.

Q How long had you been in the cafe and saloon business?

A How long?

Q Yes? A 20 years.

Q And you tried to sell 7,000 cigars without knowing the name or brands on them? A I didn't say that. Now, counsellor, those cigars were packed up, and I went to Mr. Lindinger on some other business, and I said, by the way, I have a lot of cigars and I will make the price right, if you care to buy them.

Q And you tell this jury that you didn't know the brands and make? A I did. He asked me what brand they were, and I said I don't know.

Q Did you say you didn't know? A I don't remember. I think I said I didn't know. I know I didn't know the brand at that time.

Q You had been in the cafe and saloon business about 20 years, and had 7,000 cigars to sell, and you wanted to sell them without knowing the brand or make? A No, sir, I didn't.

THE COURT: Yes or no.

A No.

BY MR. NOTT:

Q When did you get this extra pad lock that you say was in your possession? A On the 5th of August.

Q You bought it on that day? A I did not buy it. I had it. I had two pad locks in my desk.

Q When did you get them? A I could not tell you how often I had them, four or five years.

Q In your desk at 29th street? A They were in my desk at 29th Street.

Q How did that saloon of Cooper's lock? A With a Yale lock.

Q First you put on one of these pad locks, and that did not work smoothly, so you took it off; is that right? A It did not go on the big staples.

Q It didn't work, and you took it off and put on another one? A Yes, sir.

Q Did you give the keys of the first lock to both of those tenants? A Yes, sir.

Q Did you take those keys back and give them keys to the second one? A I told Mr. Harrington to do that.

Q You gave instructions to that effect? A Yes, sir.

Q So at the time that the second pad lock went on there you had in your possession another pad lock which would lock the doors, and none of the tenants had any keys to that?

A Yes, they did have keys. All were supplied with keys.

Q You say that you took back the keys of the first one, and gave them keys to the second one; is that correct? A He did.

Q So you had two pad locks and the tenants there had the keys for one; is that correct? A I had two pad locks belonging to myself. There was a pad lock on the door when we went there.

Q And that you had taken off because it was no good?
A No, because it got out of order.

Q And you had taken it off because you had no key for it? A Well, more because it was out of order.

Q Did you try it? A Yes, sir, I borrowed the key from the next door tenant.

Q Did any of the other tenants complain of it? A No, sir.

Q Did you hear one of the tenants say that he could not see anything the matter with it? A I heard one of the men say I gave him a key.

Q Did you hear them complain of it? A Yes, sir, they did complain of it.

Q Did you hear him testify on the chair, on the stand here, that he saw nothing the matter with the first pad lock. Did you hear him say that in this court room? A I did hear him say that.

Q What I want made clear is, you gave him the key to the first pad lock and that did not work, and then you took it back again and gave him other keys? A That was simply to fit the second lock.

CASE 1200

Q You got your keys back? A Yes.

Q Then you gave him the second pad lock and the keys to the second one; is that right? A Yes, sir.

Q So you had in your possession the first pad lock and they did not have keys to that? A That is right.

Q You wanted the pad lock to the outer door so that you could get in there? A That was for that one particular day on the 5th, that we moved down. It was late when the expressman got there, when he got to my office.

THE COURT: Make direct answers to the questions, and it will expedite the trial of the case, and if you desire to explain anything you will have an opportunity to explain on your direct examination, by your own counsel. If you don't understand the question, say so.

BY MR. NOTT:

Q Did you give them the first pad lock on the 5th?

A Yes, sir.

Q And the second on the 5th? A No, sir.

Q Didn't what? A No, sir.

Q When did you give them the second? A It was on -- oh, I don't know. A few days after that.

Q On the 7th? A No.

Q On the 6th? A No, sir.

Q Didn't you give the first on the 4th and the second on the 5th? A No, sir.

100-1260
7
5
0

CASE 1260

mQ Or the 6th? A No, sir.

Q When was that expressman going down there, on the 5th?

A The 5th.

Q Didn't you just tell the jury that you wanted it for that oee occasion? A We were entitled to a jey.

Q Didn't you tell the jury, or did you not, that you only wanted that pad lock for that one occasion? A Yes, sir.

Q And that occasion had passed? A Yes.

Q And that you did get another pad lock after that?

A I had it.

Q And you changed it around? A Yes, sir. That was no trouble whatever.

Q Yet the occasion had passed, and you told the jury that you wanted it for one occasion; is that correct?

MR. SPEELMAN: Objected to as thoroughly immaterial, irrelevant and incompetent to the issues in this case, whether he had a dozen pad locks on there and gave the tenants keys. It makes not difference in this matter at all.

THE COURT: Allowed.

MR. SPELLMAN: Exception.

Q After the occasion had passed that you wanted it for, still you got another pad lock; is that it, yes or no? A I did not get one. I had one.

Q You gave it to the tenant after that occasion had

CASE 1260

passed? A I did not give it. The old man gave it.

Q All right. The old man did it, at your orders? A Yes, sir.

BY THE COURT:

Q When you say the old man, you mean the defendant Harrington? A Yes, sir.

BY MR. NOTT:

Q What was Harrington doing for you? A The same as at my home.

Q What was he doing there? A Chores around there.

Q Tell us the chores or what he did? A He was sweeping up around there, and taking charge of the place.

Q There was business done there, was there? A No, we expected to do some.

Q What was K Mox doing there? A The same thing.

Q There were three of them down there? A I was not there.

Q You were down there some of the time? A Half a dozen times.

Q During the month there, did you do any business at all?
A I did not try to.

Q Did you? A No, sir.

THE COURT: Strike out the last answer.

Q What did you ship down this stuff for, these dies there; why didn't you keep them up in 29th street? A Be-

cause I didn't pay any more rent there and I ^{expected} ~~wanted~~ to carry that business on.

Q You still kept an office there? A I went there, yes, sir, and received my mail, and made appointments --

Q You sent all your stuff from there? A From my place, yes, except the stuff which I sent to my house, and the rest I left until the 13th of August, in John Street. I sent all the rest down to the John Street place.

Q Now, why did you send this stuff which you got from the saloon over to your house? A Simply because there was a lot of liquors.

Q Why did you send them to your house? A To use them for my family.

Q Did you intend to use 7,000 cigars for your family?
A No, sir, to sell those.

Q What did you send them to your house for? A Because I had no other safe place to keep them.

Q Why didn't you send them to John Street? A I didn't want to send them there.

Q Why not? A I had no place to lock them up in, outside of two little rooms.

Q Did you send all those dies to John Street? A I did.

Q Weren't they worth as much as the cigars? A Yes.

Q Why didn't you send those cigars there? A Because there was no safe place to keep them.

Q Can you give any reason why you did not send 7,000 cigars there when you say you sent other things there? A Not \$7,000, --

Q I mean cigars. So you say you were in the brokerage business there in Brooklyn?

MR. SPELLMAN: Objected to.

THE COURT: Objection sustained.

Q Isn't it a fact that you sent those dies down there so people would place them in some of those boxes? A The question again?

Q (Question repeated)? A Not at all.

Q Did you hear the colored man testify that he was made to take boxes out of that first box, and that two of them were open and the rest closed? A I heard him testify.

Q Is that true? A No, it was not true.

Q Have you ever had any trouble with that man? A Never any trouble, but I had a conversation with him.

Q Do you know any reason why he should testify falsely against you? A The man and I --

Q Do you, or do you not? A No, sir.

Q You say they were all open, do you? A Just as they went from 29th Street.

Q Were they all open in that way? A Just exactly the way they were sent down.

Q What was in the big boxes when you sent them out?

A Some of those hat protectors and tin boxes, which were delivered to the cigarette man who occupies 2 West 29th Street. They were in the hallway. He had some tin boxes that he used for cigarettes, and they were sent down with that load of stuff by mistake --

Q What was in there when you took it out, in John Street?

A Tin boxes.

Q What did you do with them? A Some of them were in there, and some of them --

Q What was in the big box? A Odd things.

Q The one with the cigarette boxes and the red ink on it? A Sent from where?

Q You testified that one of the boxes that you took from Cooper's, you sent to John Street, did you not? A I did not.

Q Did the box with the red ink mark on it go down there? A No, sir, never.

Q Where did it go, to your house? A Yes, sir.

Q Did either of those two boxes that was found at Schleicher's go down to John Street? A Yes, sir, that is one of them.

Q What was in the box? A A great many cigarettes tin boxes.

Q Empty? A Empty cigarette boxes.

Q What did you cart empty cigarette boxes down there for? A I did not care for them. There was a few card boards

over the top of that box, and the empty tin boxes were in the box in the hallway where the stuff was at 29th Street, and they were taken by the expressman loading the truck, by mistake, and after --

Q So one of the boxes came from 29th Street?

MR. SPELLMAN: May the witness be permitted to finish his answer.

BY MR. NOTT:

Q You had finished, hadn't you? A I don't know what the last question was now.

Q If you remember the question it will help a great deal. He was interrupted by the counsel.

THE COURT: I think he said it was taken by mistake. We will proceed more slowly.

BY MR. NOTT:

Q Therefore, one of the boxes that you moved to John Street had nothing in it but a lot of empty tin cigarette boxes, is that right? A That the expressman moved, yes, sir.

Q That your expressman moved, and you paid him for?

A Yes, sir.

Q What was in that box when you moved it out? A Tin boxes, just as it was there.

Q Why did you take the trouble and expense of moving a box over from John Street, over to your house in Brooklyn, that had nothing in it but empty cigarette boxes? A They had some

CASE 1260

card boards, and they were sent there. Until I went to the house and investigated and discovered, I did not know what was in the box.

Q You told the jury that you did not know what was in John Street? A I did not. I wanted this --

Q You had a negro porter send it there? A I did not.

Q You employed a porter? A No, sir.

Q Who did? A Oh, the old gentleman.

Q You told him to have the stuff that was at the John Street place taken to your house in Brooklyn? A I did.

Q You did not know what was in the case? A I supposed all the hat protectors.

Q You never stopped to look? A I never did.

Q How many days did you have this ladder in the place? A I never had it at all.

Q Did you borrow it? A No.

Q Didn't you see it in the place? A I saw it when the painters were using it.

Q Well, Harrington did borrow it then? A He did not borrow it.

Q He did not? A He told me he did not. The painters borrowed it, and he returned it.

Q Did you hear Mr. Buskin say that Harrington came and got it? A I did, yes.

Q How many ladders were in the premises? A I saw it

while the painters were there.

Q How long was it there? A I do not know.

Q What were you doing on Sunday, the 7th of August?

A I was up in Campville, in Connecticut.

Q Are you sure of that? A Yes, I took my daughter up.

Q Are you sure you were up in Campville on Sunday?

A Yes, sir.

Q Were you in the premises on Saturday, in 110 John Street? A No, sir.

Q And what time did you leave on Saturday? A The 1:02 train.

Q How do you fix the date as August 6th? A Because my daughter was not to go up on the end of the week, and I intended to go with her, and on account of buying the cafe and all that, why, we could not go until Saturday.

Q You fix the date in that way? A Yes, sir, and I received a letter with \$7, from my sister. I received a letter which was sent from Bridgeport, Connecticut, to come up.

Q Do you remember the date of that? A Yes, and there was a telegram. The date of the telegram was the 28th day of July.

Q And you went up with your daughter on Saturday? A On Saturday, August 6th.

Q When did you come back? A On Monday night, the 8th.

1260
PAGE 1260

Q And did Harrington go with you? A No, sir.

Q Did Knox go with you? A No, sir.

Q on Monday, where did you go? A On Monday night I came home.

Q Did you go to John Street on Monday? A No, sir.

Q On Tuesday? A No, sir.

Q What? A No, sir.

Q Did you go there on Wednesday? A I do not remember whether I did or not.

Q Did you hear about the fire? A No, sir.

Q You never heard a word about it? A Not until after my arrest.

Q Now, on the day that you moved these cigars over to Lindinger's place -- you moved them in how many boxes? A That paper -- three boxes.

Q The paper box and two wooden boxes? A That large wooden box on the rail (indicating), by the box with the red letters on it.

MR. SPELLMAN: The red letter box is marked Exhibit H.

BY MR. NOTT:

Q Did you tell the other witness, Mr. Swartout, that you wanted the key to have some shelving put up? A I might have.

Q Did you have any selving put up? A I did not.

Q But the time that you took the cigars over to Lindinger's

did you notice that they had no revenue stamps on them? A I knew there was something missing --

Q I did not ask you that. Will you please answer the question? A No, I did not.

Q How many of the boxes had you looked at? A I had opened several.

Q What? A I opened several.

Q Can't ^{you} give us a straight answer. I asked you how many you looked at? A I looked at mostly all of them.

Q You had been in the saloon and cafe business for 20 years? A Yes.

Q And you didn't know they did not have revenue stamps on them? A No, sir.

Q You never noticed that at all? A No, I did not.

Q Up to the time that you took them to Lindinger, although you had seen them, you did not know that they had no revenue stamps on them? A I knew it, yes.

Q Did you know. Why didn't you say so. Which is it, yes or no? A I say I saw them, but they had none of those stamps on them.

Q Did you think it was peculiar that you came into possessions of 7,000 cigars with no stamps? A I thought it a peculiar thing that there was 7,000 in the stock room there.

Q Did I ask you that? Can't you answer the question?

A What is the question?

CASE 1260

Q (Question repeated) A yes, I did.

Q And you at once tried to sell them to Lindinger? A I have already stated that I did.

Q Had Cooper told you that he had the 7,000 cigars?

A He never mentioned it, but Cooper did not say anything how much of any one particular thing was in stock.

Q And weren't you enough interested when you bought this saloon to ask him that? A It looked cheap.

Q Were you, or were you not? A Certainly I was.

Q Did you ask him? A How many cigars he owned? The stock was guaranteed.

Q Did you ask him how much liquor he had? A No.

Q Did you ask him what kind of brands of cigars he was guaranteeing? A No.

Q Did you ask him what kind of liquor he was carrying?
A No.

Q Well, you did say that you got the stock without paying any money. You got it by giving the note. That is what you did? A I did.

Q You got the stock, didn't you, that afternoon? A I bought the place and took possession.

Q And you cleared it out during the night? A I did not.

Q You cleared it out during the night, isn't that the fact? A I cleared it out at 11 o'clock.

Q And you never paid a cent for it? A The equivalent

of it --

Q Have you ever paid a cent for it? A It is not due yet.

Q Have you paid a cent for it? A Not in money.

Q Of course, you will pay the note when it is due?

A I have been trying to look to Mr. Cooper, so as to --

Q If you see Cooper you will pay him, won't you? A I don't think I will.

MR. NOTT: I don't think you will either.

BY MR. NOTT:

Q I want to ask you a few questions about the trunk, that you say that was Knox's trunk? A Yes, sir.

Q You presented that trunk to Knox then? A Yes, sir.

Q Isn't it a fact that just two or three days before you got that trunk, you took those cigars, you gave Knox an order for that trunk, on a trunk dealer in Sixth Avenue?

A I think so, yes.

Q You first provided him with the trunk, and then you used his trunk to pack the cigars, is not that right? A I did not.

Q You gave an order on which he got the trunk? A I gave an order for the trunk, yes.

Q He did not pay for it? A I gave him an order, to be charged to my account, for the trunk.

Q Did you pay for the trunk?

CASE 121860

MR. SPELLMAN: Objected to.

THE COURT: Objection sustained.

Q Well, then, it was really you who bought the trunk. You gave him an order for the purchase of the trunk? A I made him a present of it.

Q Of the trunk? A Yes, sir.

Q And then you bought the trunk back? A I paid for it with my own money.

Q What did you do with the cigars? A We had the cigars in his house, and I just took the trunk and packed them in there.

Q That is the only reason that you can give? A No, I will give the reason.

Q I asked you for it? A I was going to take those cigars to my office, and I wanted them under lock and key, put under lock and key.

Q What office? A The 29th Street office.

Q Did you say you had given that up? A The day I sent Knox after the expressman and told him to bring --

Q Didn't you say you had given up the 29th street office? A I didn't; it was paid for until the 20th of August.

Q Didn't you -- A No.

Q Wait until you hear what I have got to say? A I know what you are going to say.

MR. SPELLMAN: Give him a chance. He said he got his

mail there, and other things.

BY MR. NOTT:

Q Didn't you tell us a few minutes ago that you had sent all of your stuff out of your office at 29th Street and couldn't keep them there? A No.

Q Why did you send the stuff out of there? A Because the rent was paid at 110 John Street, and that was my headquarters after being at 29th street.

Q Why did you send the other stuff over to your house? A Because it wanted it protected.

Q Couldn't you protect it at 29th Street? A No, sir.

Q Why did you send it over to your house? A I wanted it locked up. After I learned from Lindinger that there were no revenue stamps on it, I wanted it locked up, and I wanted it taken to my house, and I ordered two more trunks and put them in there, under lock and key, and I went to the revenue Department to see about the stamps.

Q That is your reason for sending them to 29th Street-- to your house? A Yes, I just told you that.

Q You said a moment ago that after you learned from Lindinger about the revenue stamps, you did not want --

A That is just the reason exactly. I did not want anyone to know about it.

Q You had taken them out of the cases before, and you knew about the revenue stamps? A Yes, sir.

CASE 1260

Q Then you took them to Knox's house? A I did not.

Q Knox had them. You found them there? A Yes.

Q And you put them into this trunk that Knox had gotten from you? A I gave him a present of the trunk.

Q And you put the cigars in that trunk? A Yes, sir.

Q Now, why did you put them in the trunk? A I simply stated that I wanted them under lock and key, and I sent them to 29th Street.

Q Couldn't you put them in the box again? A I could not. I could if I wanted to, but I did not feel disposed to.

Q Why didn't you?

MR. SPELLMAN: I submit he has answered the question.

Q Why didn't you. You said there were in the box. Why didn't you ship them in the box without putting them in the trunk? A I was intending to buy two more trunks, which I ordered. I sent this man up to the trunk store where Knox had bought his trunk, upon my order, to buy two more trunks.

Q Why did you want any trunk for? A Because I wanted to put them under lock and key.

Q That is the only reason? A Yes.

Q Why did you take them to Schleicher's? A Because I saw the trunk on the corner of 7th Avenue and 13th street, and I asked -- I was going there on other business, on a piano proposition and walked two or three blocks, going to the street.

Q Why didn't you keep them at Schleicher's? A Because I put them in the trunk and sent them to 29th Street.

Q You thought they would be safer in your house in Brooklyn? A Yes, sir.

Q And then you sent after two trunks? A I sent him up--

Q Sent whom? A Mr. Harrington.

Q Did the trunks come? A They did not. I was arrested.

Q Did they come after you were arrested? A I do not think they did.

Q Have you paid for those trunks?

MR. SPELLMAN: Objected to.

THE COURT: Objection sustained.

Q Now, I ask you again why did you want to send this property back to 29th Street?

MR. SPELLMAN: Objected to.

Q Isn't it a fact that you stated you took it away from 29th Street because you could not pay your office rent there?

MR. SPELLMAN: Objected to. He stated that he had paid his rent there, and received his mail there.

BY MR. NOTT:

Q Didn't you say that was the reason you took the stuff out of there?

MR. SPELLMAN:

Objected to as having been already answered.

THE COURT: I will allow it.

A No, sir.

Q You never said that? A No, sir.

Q You say that you had happened to drop into this store because Simon was going to buy a piano; were you; is that right;

MR. SPELLMAN: Objected to.

MR. NOTT: He said that.

A I did not happen to drop there. I went there, counsellor, to show Mr. Simon a piano. He wanted to buy a piano.

Q Did you buy it? A Not that one particular piano.

Q He was to buy a piano of you, and you had not bought any piano; is that it? A I could pick him out one, and sell it.

Q You got it at a discount? A I got it at cost price.

Q And sold it to him at an advance? A Yes, sir.

Q Where did Mr. Simon live? A Paterson.

Q He was going to buy this piano of you, and ship it to Paterson? A I expected him to do that.

Q How long were you there with him? A Oh, possibly two hours.

Q How many pianos did you examine with him? A I attended to the cigar proposition first.

Q How many pianos did you examine? A Not any.

Q Yet you were there two hours? A He looked over them with a salesman, but not with me.

Q You did not examine any pianos? A No, sir.

Q And that took you two hours? A No.

Q What were you doing. Did you tell anybody in the store that you brought Simon in to buy a piano? A Yes, sir.

Q Who did you tell that to? A One of the salesmen.

Q Do you remember his name? A I don't remember.

Q How many of the cigars did you give to Simon altogether? A Give to Simon?

Q Yes? A Not any.

Q Didn't Simon have some of those cigars? A Not a one.

Q Sure of that? A Not a one.

Q Sure of that? A I am quite positive.

Q How many did you give to Knox? A Oh, possibly eight or ten boxes.

Q Eight or ten boxes? A Yes.

Q And when Knox got those boxes you knew it to be a fact, in the saloon did you not, that he hid them? A I did not know anything about that.

Q Were you employing Knox in September? A When he came to the office.

Q were you, or were you not? A I did not employ him. I had a little store down at Huntington, the other side of Huntington, where I took him to install him to run it, and I had tenants whom I could not make just the right deal with, and there was nothing for Knox to do, and he went around prospecting with me, expecting, to get into something.

Q What did he do with the cigars? A Nothing whatever.

Q Why were they sent to his house? A Bedause after he got the expressman from 29th Street he come down to Broad Street to get them, the expressman brought them to 29th street, and went to the office and said that there was a couple of cases there.

Q Where did you expect the expressman to deliver them at? A 2 West 29th Street. That was my orders that I gave to Knox.

Q Did you tell Knox to go and get an expressman? A I told him on the 8th, but he did not come until the 9th.

Q Did you tell him to do it under the name of Cole?

A No.

Q Do you know Knox's handwriting? A I don't know as I could identify it.

Q I show you a paper and ask you to look at it and state if that is not Knox's handwriting? A I am not so familiar. I would not be surprised if it was.

Q Will you answer the question. Is that, to the best of your knowledge, Knox's handwriting or not? A I do not know.

The paper was thereupon marked People's Exhibit XI for identification.

Q You say you did not tell him to use any name of H. J. Cole?

MR. SPELLMAN: I object to it. That question was already answered.

THE COURT: I will allow him to answer.

A I can't recall whether I did, counsellor. I possibly may have did it.

Q If you did, why did you? A Simply, if I did, it was because of Lindinger's telling me about the cigars not being stamped with the revenue stamps. I did not want anybody to know I had them in my possession without stamps.

Q You never heard before about the effect of revenue stamps. You did not know there was anything wrong about that?

A I never did.

Q Didn't you know it was wrong to have the stamps issued and put them on? A I knew there was a penalty.

Q Didn't anybody ever tell you that before you took them to Lindinger? A I did not know that until Lindinger told me.

Q You didn't know a thing about it? A Yes, I did, I knew a little.

Q What did you know? A I knew about the penalty. But I thought anybody could buy stamps and put them on. I found out afterwards they could not, and I was going down to the Revenue Department, just to see what I could do with those cigars. I didn't want to lose them. I bought them.

Q When was it that you got to Knox's? A In his flat.

Q Up in his flat? A One flight up, yes.

Q That was in his apartment? A Yes.

Q Did you think they were safe there? A Why I did not know whether they were safe there or not.

Q When did it first occur to you how to ship them in the trunk? A His trunk stood there, and I asked him if it was empty, and if I could borrow it, and he said yes, and I said I will just put those few good cigars, the ones with 25 in the box, in that trunk, and lock it up and buy another trunk or two and put the balance in, so I could have them under lock and key and make arrangements for getting stamps for the cigars.

Q Which did you think were the good cigars? A The ones in the tin boxes.

MR. SPELLMAN: Objected to.

Q I thought you said you did not know the good ones. You said you could not tell anything about them? A I took it for granted that those cigars, with 25 in the box -- they are usually classed as good cigars.

Q You knew that much? A I took it for granted. I could see them in the show cases with the prices. They show them with a card or a price card on them.

Q When the officer came in, did you tell the officer that you had nothing to do with those cigars? A I did not.

Q What? A I did not.

MR. NOTT: I think that is all.

REDIRECT EXAMINATION BY MR. SPELLMAN:

Q Mr. Ackron, you say you did not examine all the stock in the place when you purchased the cafe and saloon and East 21st Street. Is that right? A I did not examine anything.

Q You say that from the appearance of things you thought you had a good thing? A Yes.

MR. NOTT: Objected to as leading, as mere repetition.

Q On what did you base your judgment that you had a good thing in paying a thousand dollars for the place? A The general appearance, the business that was being carried on while I was in there, the help employed, the number of help and the location.

Q And with your experience as an owner of saloons, and cafes, some in that district, you thought that was a proper price to pay? A I thought it was very cheap.

Q When he told you there were mortgages on these premises, aggregating \$6,000, did he say that you were to assume them, or did you pay, subject to the mortgages? A Subject to the mortgages.

Q Now, how much was taken in by you in the time between one o'clock P.M. and half past twelve the next morning while you were running the place?

MR. NOTT: Objected to.

THE COURT: Allowed.

A From one o'clock I took the machine, and set it back to zero.

BY THE COURT:

Q Just answer the question? A From one o'clock until half past eight I took in seventy nine dollars and some cents at the bar alone.

Q The place is still there; isn't it? A Yes, sir.

Q Is it being run now? A Yes, sir.

Q By whom, do you know? A McLoughlin and somebody else; I have been in there.

Q Have there been any improvements or alterations in those premises?

MR. NOTT: I object.

THE COURT: How is that material?

MR. SPELLMAN: I want to show that the business is still going on and that it is a prosperous saloon.

THE COURT: Nothing further along that line, counsel.

MR. SPELLMAN: Exception.

Q You say you bought a place in 604 Jamaica Avenue, Brooklyn, for which you paid \$34,000 -- A \$33,000.

Q When was this purchased? A I got the date here.

MR. NOTT: Is it material.

MR. SPELLMAN: You opened the door for it. You went into it.

THE COURT: I think I will exclude it. It cannot be of any service.

MR. SPELLMAN: Exception.

THE COURT: I don't see any point to the query. If there is, why press it.

BY MR. SPELLMAN:

Q What was your reason for not putting up shelving in 110 John Street? A Why, there was not carpenter available at the time that I was down there, and I had prolonged it from day to day, and I thought it could be put in anytime after I was in there, and, on the 19th of August -- the 17th of August, on the 17th of August I received a letter from Mr. Blake, in which he said he was not able, or would not be --

MR. NOTT: I object to the contents of the letter. Have you got the letter. Well, all right, I will withdraw my objection.

BY MR. SPELLMAN:

Q Go right ahead, Mr. Ackron? A On the 17th, I received a letter in which he stated he would not be able to carry out the contract, and I paid no more attention to the office, but went away on the 19th, and left instructions with the old man to take my stuff and belongings over to the house.

Q What efforts did you make to ascertain from the Department of Revenue concerning the stamps that were to be affixed on these boxes? A I did not have the time.

Q When did you first hear that revenue stamps were not placed on these boxes? A On the night of the 7th.

BY THE COURT:

Q Of September? A Yes, sir, September.

BY MR. SPELLMAN:

Q Now, concerning this mortgage of real estate, I want you to clear that up, Mr. Ackron. You say there was a mortgage which May had or Mr. Harrington, and that was given as security for this note of May's? A Yes, sir.

Q And that it was on 20 lots in Islip, or Central Islip, Long Island? A Yes, sir.

Q Now tell us, please, how May came into possession of this mortgage? A I got Mr. Doughitt to endorse to Mr. May that is, upon my say so, that is, upon those lots, for the purpose of negotiating for the business proposition --

BY MR. NOTT:

Q Upon the lots?

MR. SPELLMAN: I will get it out. I was not allowed to interrupt you as you are interrupting me.

BY MR. SPELLMAN:

Q Go right ahead, Mr. Ackron? A I also --

Q You got Mr. Doughitt to do what? A To trust Mr. May with these lots.

Q Now, what was the first thing was done in this process of trusting. Come right out with it? A The lots -- the

mortgage was made a matter of record, and paid for.

Q To start off, there was some land in Islip, Long Island? A Yes, and unencumbered.

Q Do you mean that the lots were first put in May's name? A Yes, sir.

Q In May's name? A Yes, sir.

Q Then May gave a deed to someone? A Yes, sir.

Q Of this lot? A Yes, sir.

MR. NOTT: I object. He is putting the answers in the mouth of the witness. He said before that Lackey owned the lots.

THE WITNESS: The original deed I say Mr. Lackey had before Mr. May did. There was a deed bearing the name of Lackey. I do not know. Of course, I could furnish the Court with a true copy of that mortgage, if given an opportunity. I think I could do so now between now and tomorrow morning, that is, tomorrow at noon.

BY MR. SPELLMAN:

Q Tell us the transaction as well as you can now about this land in Islip, Long Island. To your knowledge, did May have a deed of that land? A Yes, sir.

Q To your knowledge, did he give a deed to anyone? A Yes, sir.

Q If so, to whom? A I cannot just recall the other parties name. I think it was Meyers, or Meyer, or something

like that.

Q How did he get back a mortgage on this land and from whom? A I think that Meyers or Meyer signed the mortgage back to him.

Q That Meyers gave a mortgage back to this man after May gave him the deed? A I am not quite sure it was. I could enlighten all concerned if I could have an opportunity to get a copy of it.

Q Now, the mortgage ~~xxx~~ which May now has, and which he has given as sedurity, or the land he had before the mortgage, who was the real owner of that? A I could not tell you who the real owner was, but I know that Mr. Doughitt controls that property or it is controlled by him.

Q He controls the property and trusted him with a deed?
A Yes, sir, upon my say so.

Q And whether he owned it or had the use of it, you do not know, but he controlled it? A Yes, sir.

MR. NOTT: I object, as leading.

THE WITNESS: He controlled it.

Q And gave a deed to Mr. May? A Yes, sir.

Q So that Mr. May got it?

MR. NOTT: Why put it right in the mouth of the witness. I object.

THE COURT: sustained.

Ascertain, counsellor, between this and some

RECEIVED

1000

CASE 12300

reasonable time tomorrow what the facts were. Move it by somebody who knows.

MR. SPELLMAN: I shall, your Honor.

BY MR. SPELLMAN:

Q You say you can get a copy of the mortgage by tomorrow morning? A I can get it, I am quite sure, a copy or a duplicate.

Q It is just the same thing, isn't it? A Yes, a duplicate, I should judge, was a copy.

MR. SPELLMAN: Could we take an adjournment, your Honor. It is now twenty-five minutes past five.

THE COURT: Have you concluded.

MR. SPELLMAN: No, I want this mortgage, your Honor, if I can. I will have it by tomorrow.

THE COURT: Very well.

The Court thereupon admonished the jury in accordance with section 415 of the Code of Criminal Procedure and took an adjournment until tomorrow morning, Wednesday November 30th, 1910, at 10 o'clock A. M.

TRIAL RESUMED.

New York, November 30th, 1910.

MR. SPELLMAN: May it please the Court, after conferring with my partner, Senator Towne, on the subject, and a conference had with the defendants, I believe that I serve the interests of both defendants, whom I now represent, best, by offering in this case a plea, which the District Attorney has signified would be acceptable, if it is to the Court, of guilty of the crime of criminally receiving stolen property, as a first offense.

I believe your Honor will bear with me a moment in stating that I do so because of the difficulties which I saw in this case at the outset against these two unfortunate men.

THE COURT: I warn you, counsellor, not to say anything that will make it impossible, as matter of law, to accept the plea. I can only accept a plea on a distinct acknowledgment of guilt.

MR. SPELLMAN: I appreciate that, your Honor, and, for that reason, I shall not trespass. But I believe a few words ought to be said.

I believe that the jury might be justified, as human nature is constituted, in believing a man guilty where there is a previous record against him.

I regret extremely that my views on the subject were not adopted earlier, and the the Court would have been spared a great deal of time, and the public would have been spared a great deal of time that could have been devoted to other business by this Court.

I am glad that the defendants have now realized that the best course open to them is to submit a plea, and I am glad it has been accepted by the District Attorney, regardless of what the outcome may have been.

THE COURT: I think your technical motion is for leave to withdraw a juror, in order that the plea may be offered.

MR. SPELLMAN: Yes, sir. I now ask leave, if your Honor please, to withdraw a juror, and that the defendants be allowed to withdraw their plea of not guilty, and propose the plea of guilty of receiving stolen goods, as a first offense.

THE COURT: Mr. Nott, I will hear you on that.

MR. NOTT: The District Attorney, if the Court please, has no objection to their motion, and consents thereto.

(The defendants then withdrew their pleas of not guilty, and pleaded guilty to criminally receiving stolen property knowing the same to have been stolen, as a first offense.)

1000

CASE 1280

THE COURT: Are you ready for sentence, Mr. Spellman? Are the defendants ready for sentence.

MR. SPELLMAN: Yes, your Honor.

(The defendants are now arraigned for sentence.)

THE COURT: Charles Harrington and Charles E. Ackron, you were indicted for grand larceny in the first degree and criminally receiving stolen property, as second offenses.

A jury was empanelled to try you, and, during the progress of the trial, and after the completion by the People of their case, and after you, Charles E. Ackron, had taken the stand as a witness in your own behalf and in behalf of your co-defendant, your counsel, Mr. Spellman, made a motion for leave to withdraw a juror, in order that you might withdraw your pleas of not guilty, and in order that you might make application for leave to plead guilty to criminally receiving stolen property, as a first offense.

Your application was not opposed by Assistant District Attorney Nott, and was granted by the Court, and you are now before the Court for sentence under your pleas of guilty to criminally receiving stolen property knowing the same to have been stolen, as a first offense.

Your records have been far from good, and, in fact, the record of each one of you has been rather exceptionally bad. You have been before the criminal courts, and this is particularly true in your case, Harrington, a

great many times, charged with the commission of crime, and convicted of the commission of crime.

I think that you were well advised, both of you, in this case, to withdraw your pleas of not guilty.

I may also say that I think the District Attorney acted consistently and wisely in consenting to the reception of a plea by each of you of guilty to criminally receiving stolen property, knowing the same to have been stolen, as a first offense, because it was conceivable that the trial of this case, had it progressed, would have been a very protracted trial, with issues on the evidence almost necessarily confusing to a jury, and with the possibility that, despite the fact of your guilt, the trial might not have resulted in a verdict, but in a disagreement.

I sentence each of you to two years in State Prison.

MR. NOTT: I take it, if the Court please, that there will be no objection to restoring this property to the owners, the La Varrosa Cigar Company?

MR. SPELLMAN: I will say that we have no objection, unless Mr. Copper, who is now in the City, might make some claim to this property.

MR. NOTT: No, not at all. I have seen Mr. Cooper, and he says that, when he sold the place to Ackron,

CASE 1260

there was not a single La Varrosa cigar in the place, and that he had never had any there, and that he makes no claim whatever to these cigars.

MR. SPELLMAN: Then, of course, I have no objection to their return. We make no claim to them.

THE COURT: Very well. Then, they may be returned. Is there any possible objection to their return on the part of the Revenue Department, on account of their not being stamped?

MR. NOTT: I should think not, sir. They were not sold or delivered by the manufacturers, but were stolen from their place.

MR. SPELLMAN: Inasmuch as there has been an application made as to the property, if your Honor please, I would like to get this bag for Mr. Ackron. It was taken from his house, this leather bag, with two boxes of cigars, which they say belong to them.

MR. NOTT: There is no objection to the return of the bag.

THE COURT: Very well. Then it is so ordered.

CASE 1200