

Q He endorsed the first 150 shares, you mean? A The time I came with 100 he endorsed it.

Q Did he endorse it all? A Yes sir.

Q He endorsed 350 shares of Acme Coal?(No answer)

BY THE COURT:

Q Did he do that at your request? A He asked me where to sign, and I showed him.

Q Why did he have to sign? A Because the stock is no good to anybody, you know, in case he calls me over the phone to sell it.

Q That is what I wanted to get at and make it plain to the jury. It could not be sold until he endorsed it in blank?

A No sir, exactly.

Q But if he wanted to keep it it wouldn't make any difference whether he endorsed it or not? A If he keeps it for himself?

Q He didn't have to endorse it unless he wanted to sell it?

A No sir.

BY MR. ISQUITA:

Q Did Mr. Cullen tell you he wanted you to hold this stock for him as an investment, or to place it on the market as a speculation? A He didn't give me no specific instructions at all.

Q What did he tell you? A He said, hold that for me and I will let you know when you come up. I came up to his office every day.

Q Now did you hold, how long did you hold on to that stock

CASE # 3083

before Mr. Cullen made any inquiry about it? A I really don't know; quite a while.

Q I show you this letter, People's exhibit 12, dated January 11th, and ask you whether you received this letter from Mr.

Cullen? A Yes sir, I remember this letter.

Q Was that the first letter you ever got from Mr. Cullen?

A Yes sir; I told him to go ahead and investigate it.

Q You heard him testify this morning that he had written you a letter about three weeks before this. Did you receive any letter prior to this one? A I don't think so because I had most of my conversations with Mr. Cullen right at his office.

Q Was there any conversation between you and Mr. Cullen in which Cullen stated to you that he doubted whether you were carrying out the instructions in accordance with his letters with reference to this stock? A No sir.

Q Never? A No sir.

Q Was there at any time any conversation between you and Cullen with reference to the loan of this stock from Cullen to you? A Well, I didn't suggest the loan at all; I didn't say anything.

Q What was the conversation? A I only told Cullen of the trouble with Miller, I made an error by filling in a confirmation instead of "bought" -- I had to do everything myself, the typewriting, and I made a slip. I showed him the New York Stock Exchange transaction between 11 and 12 o'clock there was only 500 shares sold -- I mean bought -- and that was my trans-

CASE #3083

action, of the same concern, and I showed him the books, 500 shares, Texas Pacific Railroad I bought, actually bought the stock, and I sent a confirmation to Miller, but I gave my confirmation over the telephone as bought, and it dropped 17 points. I did not know what to do. Mr. Miller said, well, I got you. I said, you, you did, I don't know how, I says, I think you better give me a check for \$1500. I says, I had to make good. He said, no, you give me a check for \$4,000. I didn't know what he was talking about.

Q Come to the point where you and Cullen had a conversation. A What?

Q Come to the point where you and Cullen had a conversation-- between you and Cullen. A That is what I told Cullen.

Q Come to what took place between you and Cullen. A He says that is a dirty trick, and I says, what am I going to do. The man has got it in black and white and I will have to make good. He says, I am very sorry for you. I said, that don't do me any good, I got to make good, I haven't got the money, I have got a few dollars, the man has black and white on me, he would not take my word, he would not take the word of the New York Stock Exchange. There is nothing left for me to do but pay it. My attorney says it is a civil case and I paid the money except one fifth ^{check} that I haven't paid yet.

Q What did Cullen say to you? A He said to me, listen, Krause, he says, you know you have that loss. You know I don't need that stock, he says, go ahead and use it, and I says, why,

CASE #3083

I says, I don't need that stock, I says, it is so small an amount. I would rather not. He said, it's all right. Give it back to me any time you wish. I said, if you feel that way toward me I certainly appreciate it. I will be under obligation to you as long as I live. And he and several other people helped me out.

Q How did they help you out? A By giving me stock, loaned me their stock.

Q Go ahead and tell us what he said. A He said, go ahead. Keep it. Any time you got it give it back to me.

Q There wasn't any specific time fixed? A No sir. I told him the whole story at the Marlborough Hotel.

Q Were you to return that specific stock or its equivalent? A I told him, I says, listen, I says, I don't need to do it, I would like to make it good somehow, and he says, its all right, he says, I am not afraid of you.

BY THE COURT:

Q I don't understand that? A He loaned me the stock.

Q When did he lend you the stock? A When I told him the story about the Miller case.

Q That is when you were at lunch? A Yes sir, that is what he said about loaning me the stock. He loaned me the stock and after I received it I said, Cullen, I don't know when I can give it back to you, you know my loss, and he said, that's all right. I says, I will tell you what I will do --

Q Was there any specific time set when you were supposed

CASE #3083

to pay this back? A Absolutely not, because I could not make any specific time.

Q You could not make any specific time? A No sir, I said to him, I think I can make good about June 1st.

Q Were you to return to Cullen that self-same specific stock you received from him?

MR. WHALEN: I object to that.

THE COURT: Let him state what was said about the return of the stock.

THE WITNESS: He said, you know Acme has gone down. Get the Middle States Oil.

Q Was there anything said about the return of the stock, about the return of that specific stock? A No sir.

BY THE COURT:

Q What was the date of that conversation? A That was around April, I believe, or March, the latter part of March I believe when we had it.

Q Was that after you were supposed to buy this Middle States Oil? A Well, I really don't know, your Honor, I felt that Mr. Cullen and I were friends and I really didn't pay much attention to it.

Q You didn't pay attention to that? A Well, I will tell you, we just were friends.

BY MR. ISQUITA:

Q You reported on March 10th that you sold Acme and bought Middle States? A Yes sir.

CASE # 3083

Q Now was this the conversation in which he offered to lend you this stock before or after? A Before.

Q Before? A Yes sir. I think the Middle States conversation was before that.

Q You think before that? A Yes sir.

BY THE COURT:

Q Now we have that plain that the stock he loaned to you was the Acme? A Yes sir.

Q Because you had that? A Yes sir.

Q And you hadn't sold it? A Yes sir.

BY MR. ISQUITA:

Q Was there the same disposition of the Meridian Oil Stock as there was of the Acme Coal?

MR. WHALEN: I object to that.

THE COURT: Let him state what was said.

BY MR. ISQUITA:

Q What was said in this conversation between you and Cullen with regard to the loan of the stock. Was there any mention made of whether or not you were to give only --

MR. WHALEN: I object to that question on the ground that it is leading and suggestive.

BY THE COURT:

Q Was the Meridian Oil stock mentioned, or only Acme Coal, as included in the loan? A The whole entire thing.

BY MR. ISQUITA:

Q Did you at that time have this stock in your possession,

CASE #3083

both the Meridian and the Acme? A Yes sir.

Q So in this conversation he left the entire stock in your possession at that time — the stock belonging to Cullen?

Objected to.

A Yes sir.

BY THE COURT:

Q That is all the stock was with you? A Yes sir.

Q Before that you had asked him to endorse it in blank so that it could be sold? A I didn't ask him at all.

Q Didn't you say that he endorsed it in blank at your suggestion? A I said I will show you where to endorse that. I said write your name right there on the back.

Q You asked Cullen to endorse it? A No sir, I did not ask him to endorse it; he asked me.

Q When he gave it to you to keep for him he voluntarily endorsed it in blank? A I gave him the certificate and he says, where shall I endorse this, and I said, here, and I showed him the line where to endorse it.

BY MR. ISQUITA:

Q How long have you been in the stock business, Mr. Krause?

A On and off since I am —

Q About how many years? A About 20 years, or more than that.

Q 20 years? A Yes sir.

Q Now from your experience with stock brokers, is it customary for clients to endorse over the stock immediately upon its

CASE #3083

L 37
receipt by them?

118

Objected to. Question allowed.

A Yes sir.

Q In accordance with such custom Mr. Cullen endorsed this stock? A Yes sir.

Q So that when this conversation was had between you and Cullen, in the early part of October, with regard to the loan of the stock to you, all prior transactions between you and Cullen were wiped out?

Objected to. Objection sustained.

THE COURT: That is stating a conclusion.

Exception.

Q Was this conversation between you and Cullen and the agreement then entered into to take the place of all prior transactions as between you and Cullen?

Objected to. Objection sustained.

THE COURT: It is perfectly apparent what he says. The effect of it was that prior to that Cullen told him to hold this stock for his benefit, and he says that on the same day, after March 10th, — and he says that on some day before March 10th, Cullen told him that he would lend him the stock to do as he saw fit with it to get him out of this trouble. That is correct, isn't it?

THE WITNESS: Yes sir.

BY THE COURT:

Q Now what I want to know is, if he told you that before

2097
CASE #3083

March 10th, why on March 10th did he order you to sell that stock which you say he gave you -- if he had given it to you to do with as you saw fit? A He told me it might go lower.

Q Did he turn it over to you? A Yes sir. But sometimes people change their mind, your Honor.

Q You think he changed his mind? A I don't know.

Q Anyway it was after that that he told you to sell it?

A Yes sir.

Q And you did sell it? A Yes sir.

Q Who did you sell it to? A Cummings and Company.

BY THE COURT:

Q This confirmation does not give the name? A No sir, it doesn't give the name.

Q Isn't it customary for these confirmations to give the name of the party you sell to, or buy from? A No sir, because I had the confirmation from the man.

Q Isn't it the custom to give the customer the name of the man you buy/or sell? A No sir, not on the Curb.

Q On that day, March 10th, you did sell that stock? A Yes sir.

Q To Cummings & Company? A Yes sir.

BY MR. ISQUITA:

Q Now will you explain what the conversation was at the time you and Cullen came to this arrangement of the 50 shares of Middle States Oil?

MR. WHALEN: I object to the form of the question and

CASE #3083

ask that the witness be asked to state the conversation.

THE COURT: Yes. You can direct his attention to any particular conversation. Before we skip over this matter in April, let us get clearly this matter of March 10th.

BY THE COURT:

Q Now at the time that he ordered you to sell that stock, did he order you to buy 27 shares of Middle States Oil?

A Yes sir.

Q Did you buy it? A Yes sir, I did.

Q From whom? A Well, I believe it was Joseph F. Marshall.

Q At the price set out in this? A Yes sir.

Q What was to be done with that? A To be delivered to him.

Q I thought he had given you the stock? A Yes sir, he gave it to me.

Q Then did he take that back? A No sir, he told me — I told him I bought it and I sent him the confirmation and I told him that, listen, you know I am in trouble, and he said, go ahead and keep it.

Q When you bought this new stock he told you to keep that, too? A Yes sir.

Q Why did you write on the confirmation, will deliver to you at the earliest possible moment? A Because I sent it from my office, and then I saw him.

CASE #3083

Q What is that? A I seen Mr. Cullen.

Q If he had given you permission to keep that stock why did you write on this confirmation, will deliver to you at the earliest possible moment? A I didn't see Cullen before I bought this stock, and I sent the confirmation from downtown because I was sick.

Q When he asked you to sell the Acme, didn't he tell you that the Middle States would take the place of the Acme, and you could do as you liked with it? A Not at that time.

Q So you felt when you got the Middle States that he wanted it? A Yes sir.

Q You wrote and said you had it? A Yes sir, I would deliver at the earliest possible moment.

Q After that he told you again that you could keep it? A Yes sir, I told him I was still in trouble.

Q Where was it he told you that? A At the Marlborough Hotel.

Q At another luncheon? A No sir, the first luncheon was downstairs, I don't know the name of the place.

Q At the Marlborough he made a second agreement with you that you could keep that stock? A Yes sir; I made another agreement.

BY MR. ISQUITA:

Q Was that luncheon agreement in April? A Yes sir.

Q Around then? A Yes sir, around in April.

Q Did Cullen at that time ask you to put these things in

CASE #3083

writing? A I told I might drop this, I am in trouble, and I said, I would like for you to be protected, that is all. And he says, you better give it to me in writing, and I wrote it.

Q Was it in response to that request that you wrote this letter, the lengthy letter? A Yes sir, I wrote the long letter.

Q People's Exhibit 8? A Yes sir --- I don't know.

Q This long letter? A Yes sir.

Q Will you tell why you wrote this letter so lengthy, setting forth all this proposition? A Because I didn't know what was coming next.

BY THE COURT:

Q What did you do with the Middle States Oil stock? A I pledged it.

Q When did you pledge it? A I don't know the exact date, your Honor.

Q Give us the date as near as you can remember it, about when? A Well, maybe a couple of weeks later, a week or two, maybe ten days.

Q Maybe ten days after you got it? A Yes sir.

Q Do you remember the people you pledged it with? A I do not; I pledged several things.

Q How much did you get on it? A I think I got 12 something, I don't know what it was.

Q What is that? A \$12 or something, or \$11 and something.

Q \$355 worth of stock, you got 12 on? A No sir, \$12

CASE #3083

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Assurance.

123

Q You can't tell the jury who you put it up with? A I believe it was, I think I gave it to Cummings & Company.

BY MR. ISQUITA:

Q Was that the only transaction with the Middle States Oil that you had? (No answer)

BY THE COURT:

Q You didn't redeem that pledge? A No sir, they failed.

Q You never got the stock back, or gave it back to Mr. Cullen? A No sir.

BY MR. ISQUITA:

Q You purchased that stock after you had agreed with Cullen to give him 50 shares of Middle States Oil stock in June? A Yes sir.

Q Is that right? A Yes sir.

Q At the time you agreed with Cullen to give him 50 shares of Middle States Oil in June did he tell you that you could do with the stock as you wanted to? A Yes sir, I told him all my circumstances. I was very friendly with him and he noticed my circumstances.

Q What was the conversation? A I told him that I got hit right and left.

Q What did he say? A He was sorry for me. He says, go ahead then, I will let you hold that longer.

Q Did he tell you that you could sell this stock? A He gave it to me, not as a gift but as a loan.

CASE #3083

MR. WHALEN: I object to that. I ask that the defendant be directed to state all that he knows of that conversation without any more leading questions.

THE COURT: You can bring it out when you come to cross examination.

BY MR. ISQUITA:

Q Were you to give Mr. Cullen any premium for the permission on his part to you of using those 27 shares of Middle States Oil as you pleased? A I would not call it a premium; I told him, I will give you 50 shares.

Q That is 23 shares more than he gave you? A Yes sir.

Q What did you tell him? A I told him I may be fixed so that 50 shares wouldn't hurt me at all.

Q What did he say to you then? A He said all right. I even told him I was over in Brooklyn, and they picked my pocket of \$600.

Q Now at that time when you entered into the new arrangement, when were you supposed to give him the 50 shares of Middle States Oil for the use of 27? A Up to June.

Q Did you and Cullen agree to wipe out all prior transactions?

MR. WHALEN: I object to that question.

THE COURT: Yes. Let him state what was said.

Q What was the conversation at that time with reference to the prior transaction? The Acme Coal and the Meridian Oil

CASE # 3083

L 125
transaction, and the 27 shares of Middle States Oil? A Well,
I told him, I says, you know that wipes out the entire thing
except the 27 shares of Middle States Oil and I will give you
50 shares for that.

Q Was he satisfied? A Yes, positively.

Q What did he say to you? A He says to me, that's all
right, that's all right.

Q He was satisfied? A Yes sir.

Q Do you recall distinctly that that was specifically spoken
about between you again? A Yes sir. I told him we got it in
blank, why, I says, things is coming so fast against me I might
be hit by an automobile, I says, and you might as well have
something in case I die.

Q I show you this check, dated November 15th, defendant's
exhibit D, and ask you what that check is for? A I really don't
remember the exact conversation, but he said he would like to
have \$25, and I said, sure.

Q Was that given as a cash dividend for Acme Coal? A No
sir.

Q Was there any cash dividend declared at that time of
Acme Coal? A Before he bought it?

Q Was there any cash dividend declared for Acme Coal at any
time between August and December, 1920? A I don't think so,
because there was a fight on.

Q Did you give him this check for a cash dividend on Acme
Coal? A No sir.

2094
CASE #3083

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126

Q You heard the complaining witness testify that this was given as a dividend of Acme Coal? A Yes sir.

correct,

Q That was not/ is that right? A No sir.

Q What were your relations with Mr. Cullen? A Very friendly.

Q Did you meet him frequently? A I met Mr. Cullen pretty near every day.

Q Did you go to Saks very often? A Every day.

Q At those visits did you see Mr. Cullen? A I would not say exactly every time I went there but nearly every time I went there.

Q Did you see him at any time after the luncheon at the Marlborough Hotel? A Yes sir.

Q Where? A Saks & Company, in the advertising department, I would call on Mr. Redmond.

Q Did you have any talks with Mr. Cullen? A Yes sir.

Q So that Mr. Cullen was mistaken when he said that he had not seen you or spoken to you after the luncheon at the Marlborough? A No sir, I seen him several times, except when I had the abscess on my head and I could not go out.

Q You did see him? A Yes sir.

Q Did you talk to him in June, 1921? A Yes sir.

Q Did you see him personally or on the telephone? A No sir, personally.

Q Where? A 34th street, corner of 6th avenue.

Q What date? A Just prior to -- maybe it was the 26th or

2095
CASE # 3083

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28th or 29th of May, around there.

127

Q That is before the 1st of June? A Yes sir.

Q Will you tell the Court and jury what conversation was had between you and he at that time in regard to the 50 shares of Middle States Oil stock? A I told him I was still broke.

Q What did he say? A He said he was sorry for me.

Q What else did he say? A Well, I told him that I cannot pay it. I said, Cullen I am awful sorry that I cannot give you that 50 shares right now, I says, but I am negotiating now for a proposition that I am going to arrange in New York City and very shortly I will make it good, and he says, all right, and he wishes me good luck on my new undertaking.

Q Did he again call on you? A No sir, he did not.

Q Did he demand the stock from you? A No sir, he did not.

Q Did he tell you how much longer you were to hold it?

A No sir, he did not.

Q Did he say you must give it back to him on the 1st of June?

A He says he likes to have it, but I told him, How can I get it, and I told him the circumstances. I told him that I don't like to break my word to him, but I said I can't help myself.

Q What did he say to you? A He said all right. We ain't going to fight over it.

Q What was the next you heard about this stock? A I said to Mr. Cullen, called him up, and I told him that I am not ready yet, and so he told me --

2096
CASE # 3083

Q When was this? A Maybe a week or two after or a couple of weeks after.

Q In the early part of June? A Yes sir, I told him that, I don't see my way clear yet, I am still negotiating with the people in Chicago, the Instant Heating Company of America.

Q What did he say to you? A I told him that I will -- as soon as I make a few sales I will turn that over to you, that 50 shares, and he said, well, I will tell you, it is out of my hands, I gave it to my lawyer, and I said, who is your lawyer, and he said Mr. Hall, in the Woolworth Building. So I went up to Mr. Hall, and said, can't we settle that matter, I said, I wished I could, I said, I would be only too glad to get rid of it, get it off my shoulders, and he says, you know that it is \$950, and I said I think you are mistaken, and he says, I will tell you what you do, give me \$300, and a note for \$600.

Q Did Cullen after June 1st at any time ask you for the 50 shares of Middle States Oil? A After June?

Q Yes. A Well, he asked me just before Mr. Hall gave me the summons.

Q He asked you for the 50 shares? A Yes sir.

Q He never asked you for 27 shares? A No sir, 50 shares which I believe he is entitled to.

Q Now this letter of April 4th, setting forth the terms of this conversation, was that considered between you and Cullen

2097
CASE #3083

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as an agreement?

129

Objected to. Objection sustained.

Q What was this letter of April 4th, 1921, considered by you and Cullen?

Objected to. Objection sustained.

THE COURT: The letter speaks for itself.

Q Now leaving this Cullen matter for a while we come to the Brown matter.

THE COURT: I think we will take an adjournment before we go into that.

(At this point the Court admonished the jury, calling their attention to section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until tomorrow, Friday morning, January 13, 1922, at 10:30 o'clock.)

2098
CASE # 3083

PEOPLE vs. KRAUSE.

New York, January 13, 1922.

(TRIAL CONTINUED.)

JOSEPH J. KRAUSE, the defendant resumes the stand.

DIRECT EXAMINATION CONTINUED BY MR. ISQUITA:

Q Mr. Krause you bought 100 shares of Acme Coal for Mr. Cullen on October 19, 1920, didn't you? A I did.

Q You also bought 100 shares of Acme Coal on November 23rd? A Yes, sir.

Q So that you complied with the orders of Mr. Cullen for both those transactions? A Yes, sir, I did.

Q So that you had in your possession up to the time of the conversation between you and Cullen, before March 10th, all of this stock consisting of 336 shares of Meridian Oil and 350 shares of Acme Coal, is that right? A Yes, sir.

Q Now you testified yesterday that you had a conversation before March 10th, 1921 that you were to retain title to that stock? A Yes, sir.

Q Where was that conversation and about when? A About between the 4th and 7th, downstairs, I don't know the name of the restaurant, right next to Saks & Company.

Q About between the 4th and 7th of March? A Yes, sir.

Q Now in accordance with that conversation did you have the right--

MR. WHALEN: I object to that.

CASE #3083

MR. ISQUITA: I will finish the question.

Q (Question repeated as follows) In accordance with that conversation did you have the right to dispose of that stock the way you pleased?

MR. WHALEN: I object to the question as calling for a conclusion.

THE COURT: yes. The conversation has been stated and it is for the jury whether he did get the right or not.

Q Will you again state the conversation between you and Cullen at that luncheon?

THE COURT: Now what occasion is this. He said there were two. One before he bought the Middle States Oil and one after.

MR. ISQUITA: This is the one in March between March 4th and 7th.

A For the Acme Coal and the Dun petroleum--

Q The first luncheon? A Yes, sir.

Q Will you state the conversation?

THE COURT: Why go over it again if he has stated it once.

Q I want to refresh his memory.

THE COURT: Be brief.

Q What did he say? A Why we had a little lunch together.

THE COURT: You weren't asked about the lunch.

CASE #3083

What did he state and what did you state. Give the conversation. A I told him he was in business--

Q Come to the conversation. A That I had the stock and everything and he asked me how I am fixed, and I said "bad". If you want it you can have it. I said, "I appreciate that Mr. Cullen, that will help me out a little bit." He says, "all right." That was about all; ~~xxx~~ we talked on several other matters then but I really cannot remember what it was.

BY MR. ISQUITA:

Q Did he tell you at that conversation that you could do with that stock what you pleased? A Well he voluntarily made me a loan of it. I understood that it was just as if he meant to loan it to me.

MR. WHALEN: I object to that.

THE COURT: State what he said, the words in which he told you you could do with it as you pleased.

THE WITNESS: I told him I was broke, that I had not recuperated and he says, when I told him about this stock, he said, "That's all right, Joe, you can keep it." I said, "I don't know when I can return it." He said "That's all right, you ain't going to run away from New York", and I said, "No, that is not my intention."

BY MR. ISQUITA:

Q After that you bought 27 shares of Middle states Oil? A 30 shares.

CASE #3083

Q 27 shares? A Yes, sir.

Q When was the next time or rather the next luncheon that you had with Cullen, and what was said then. Where was it held and what time. What was the date of the next luncheon and where and what was said? A I think it was around March.

Q March what about? A Around March or the beginning of April.

Q The end of March or the beginning of April? A Yes.

Q Where was that luncheon? A At the Marlborough.

Q What if any conversation was had there with regard to the 27 shares of Middle States Oil. What was said between you in regard to the 27 shares of Middle States Oil. Stick to that luncheon at the Marlborough? A I told him I got the stock and then he asked me how I came out with the Middle States. I told him I am in bad circumstances.

Q What did he say to you? A He said to me "Do you want it?" I said, "Why I don't know what to say", I said, "if you lend it to me it will be a help to me", and he says, "all right." So he says, "Here", he says, "when do you think you can pay it back", and I said, "Well, if my negotiations are such that I am contemplating now with the Instant Heating Company of American, then I can give that back to you," I said, "50 shares of Middle States Oil by June 1st."

Q Did he agree to take the 50 shares of Middle States Oil

CASE #3083

June 1st? A Yes, sir.

Q Did he tell you at that conversation you could do with that stock as you pleased, with the 27 shares? A Yes, sir.

Q There was not at any time any inquiry or any conversation between you and Cullen or any inquiry from Cullen of yourself as to whether or not you purchased this stock, was there? A No, sir.

Q But he at all times knew you had purchased this stock?

MR. WHALEN: I object to that.

Q Did he at all times as far as you know?

MR. WHALEN: I object to the form of the question.

MR. ISQUITA: I withdraw it.

Q Did he ever tell you that he had been knowing that you had purchased that stock? A There was no conversation about it.

Q Did you tell him you had purchased the stock? A I don't think I did because he never asked me. I showed him more than 27 shares of Middle States Oil; I had several certificates with me.

Q Do you know from any conversation between you and Cullen whether Cullen knew you had the stock? A Yes, sir.

MR. WHALEN: I object to that question also.

THE COURT: Objection sustained. He forwarded him a bought memorandum saying that he bought the stock and would deliver it as soon as possible.

Exception.

2103
CASE # 3083

BY MR. ISQUITA:

Q In the conversation between you and Cullen, in the last conversation between you and Cullen there was not any mention made of the Acme Coal or Meridian Oil, was there?

A No, sir.

Q He only demanded the Middle States Oil stock? A That is all.

Q Now leaving the Cullen case for awhile and coming to the Brown matter. When was the first time that you met Dr. Brown? A Around June.

Q Where? A Around June.

Q Talk up loud? A Around June.

Q In June? A Yes, sir.

Q What year? A In 1920.

Q Where was that? A In his office.

Q Did you at that time sell him any stock? A I took an order to Callaghan & Company.

Q You took an order? A Yes, sir.

Q Of what? A Of 100 shares of Acme Coal.

Q Did he tell you at that time that he owned any other stock besides what he purchased from you? A Yes, sir.

Q Did you take that order in your own name or as agent of Eugene J. Callaghan & Company? (No answer.)

Q From whom did he purchase this stock, off you or as salesman for Eugene J. Callaghan & Company? A Yes, sir, as salesman for Eugene J. Callaghan & Company.

2104
CASE #3083

Q So that you were in no way interested in this transaction other than as a salesman? A Yes, sir.

Q How many shares did he purchase from you? A 100 shares.

Q Did he subsequently purchase any more stock from you? A No, sir.

Q Did you deliver those 100 shares of stock to Dr. Brown? A I don't know whether I did or whether it was sent to him by messenger.

Q You knew he got it? A Yes, sir, because he thanked me for it.

Q Did you ever receive from Dr. Brown 300 shares of Acme Coal? A I received 100 shares and an order on I. Miller & Co.

Q What were you to do with those 300 shares? A To sell them.

Q Then do what? A Buy 400 shares of Fay Petroleum.

Q Now at the time you got this 100 shares of Acme Coal and the order for 200 shares of Acme Coal what was the value? A 5/8.

Q Wait a minute -- what was that stock sold for at the time you took it? A 62 1/2 a hundred.

Q What is that? A I mean \$62.50 a hundred.

Q So that 300 shares of Acme Coal brought \$187? A Yes, sir, and 50 cents.

Q Is that right? A Yes, sir.

CASE #3083

Q At the time that Dr. Brown gave you an order for 400 shares of Fay Petroleum was that stock already on the market? A The Acme Coal or the Fay?

Q The Fay petroleum? A No, sir, that was supposed to be-- that was to be dealt in on the 7th of March.

Q So that he had it at presubscription price? A Yes, sir, presubscription price.

Q What was the par value of that stock before it was listed on the market? A \$1.

Q What was the price that you sold it to Dr. Brown for? A \$1.

Q So that you sold it to him--

MR. WHALEN: I object to these questions as to what was bought and sold. I ask that the conversation be given.

THE COURT: I will allow him to state what the purchase price was.

BY MR. ISQUITA:

Q So that you received an order from Dr. Brown for 400 shares of Fay petroleum and \$10 per share making \$400? A Yes.

MR. WHALEN: I object to that.

THE COURT: A written or verbal order.

THE WITNESS: I think it was a written order, your Honor.

THE COURT: I sustain the objection.

BY MR. ISQUITA:

CASE # 3083

Q Did you have any conversation with Dr. Brown at the time he placed the order with you for 400 shares of Fay petroleum with regard to the price that he was to pay for it?

A Yes, sir, I showed that to him in black and white.

Q Well never mind what you showed him. Just tell us what he said to you and what you said to him with regard to the price? A Well I called on Dr. Brown -- it was a little before 12 o'clock, and he says, "Come on downstairs."

Q Never mind all that extra stuff tell us the actual conversation between you and Dr. Brown with relation to the price? A I showed him the price was \$1 a share, he says "All right I haven't got much money, but I will tell you what I will do, I will give you 300 shares, you sell, and I will take 400 shares". He asked me how many shares "can I get for that." And I said if you buy it on margin, I believe I can get you 400 shares, and he said "buy 400 shares of Meridian."

Q So that he gave you the equivalent of not quite \$300 of Acme Coal? A No, sir, Acme Coal was not a dollar a share; Acme Coal was 62 1/2 cents.

Q So that he gave you \$187.50 worth of stock? A Yes, sir, \$187.50 less \$12 and \$4 I paid to Miller & Company.

Q That made \$175.50? A Yes, sir, \$171.

Q So that was at the time you sold it worth \$171.50-- the balance? A Yes, sir.

Q Did he know that that stock only brought that much

CASE #3083

money? A I sent him a confirmation; I even told him before the confirmation arrived because I called at his office.

Q You spoke to Dr. Brown yourself? A Yes, sir.

Q You told him those 300 shares of Some only brought \$171.50? A Yes, sir, he said to me "I am lucky, "because there was a fight on.

Q Did you send him at the same time a confirmation for the 400 shares of Fay? A I did.

Q For how much money? A \$400.

Q Plus the commission? A Yes, sir.

Q \$16? A No, sir, I don't think I charged him that much.

Q Well it was some commission? A Well it was a friend of mine and I didn't want to charge him so much. We had lunch together.

Q So that there was a difference of \$228.50 that he still owed you? A Well, I did not figure the \$4 I paid to Miller, I think he owed me \$224.50.

Q Which he still owes you? A Yes, sir.

Q That stock was to be delivered to him when he pays that money? A Yes, sir, exactly.

Q You are still ready, able and willing to deliver this stock to him provided he pays you this deficit? A Any minute.

Q Was there any conversation between you and Dr. Brown concerning a marginal account? A Yes, sir.

CASE #3083

Q Of this Pay? A I told him I needed some more money.

Q What did he say? A He said he hasn't got any.

Q At any time after that did Mr. Brown's attorney Mr. Jackson write to you in regard to the delivery of this stock?

A Yes, sir.

Q Was that by registered letter? A Registered mail.

Q Have you got the letter here? A No, sir, I have not. I have lost all my books and literature.

Q I show you this copy of a letter June 24th 1921, and ask you whether that is a copy of a letter that you sent to Mr. Jackson, Mr. Brown's attorney? A That is the letter I sent to Jackson.

Q In response to that registered letter? A Yes, sir.

MR. ISQUITA: I call upon the District Attorney to produce the original of that.

THE COURT: The letter was not to the District Attorney.

MR. ISQUITA: It was to Mr. Brown's attorney. I offer this in evidence.

MR. WHALEN: I object to that on the ground that it is a letter to a third party.

THE COURT: No foundation has been laid as yet for introducing secondary evidence, and if it is objected to I will sustain the objection.

Exception.

Q Did you write this letter yourself? A I dictated the

CASE #3083

letter.

Q Did you see it written on the typewriter? A I signed the letter.

Q You signed the letter? A Yes, sir.

Q Were you there when it was written? A Yes, sir.

Q Did you mail it yourself? A I certainly mailed it.

Q Did you have any conversation with Dr. Brown afterwards in which he mentioned this letter? A I think I called him up.

Q After you had written this letter? A Yes, sir.

Q Did he say he heard from his attorney in regard to this letter? A He said, I should talk to Mr. Jackson, and I said what is the matter with you, I says, "You know you owe me money", and he says, "I don't owe you anything", and he says "you do."

Q Is that set forth in this letter?

MR. WHALEN: I object to that. I ask that no leading questions be asked now.

Q Are those things that you just said set forth in the contents of this letter?

Objected to. Objection sustained.

Q What are the contents of this letter in so far as it relates to the conversation between you and Dr. Brown?

MR. WHALEN: I object to that.

THE COURT: You cannot prove the contents of a written instrument in that way.

Q Will you state what the conversation was between you

CASE #3083

and Mr. Brown on or about the 25th or 26th of June, 1921. Did you first have a conversation with Dr. Brown on June 25th or 26th, 1921? A I believe I did after the receipt of the letter from his attorney.

Q Did you recognize Dr. Brown's voice? A Yes, sir.

Q Did you talk to him? A Yes, sir.

Q In that conversation what was said what did you say to him and what did he say to you? A Well, I told him I received a letter from Mr. Jackson, and I said I don't understand what kind of a letter that is, if you expect me to make you a present of this, I am not in business for charity to be delivering stock to you without you paying the debit balance.

Q How much was the debit balance at that time? A With Dr. Brown? Q Yes.

A \$224.50 plus \$4 that I paid Miller.

Q Did you ever send him a statement or ask him for that money? A Yes, sir.

Q Did he ever pay it to you? A No, sir; he never answered my letter.

Q Did you ever advise him that if he would pay this money to you you would deliver the Fay Petroleum? A I did.

Q Was this transaction between you and Dr. Brown for the turn over of 300 shares of Acme Coal for 400 shares of Fay petroleum purely a marginal turn over? A Yes, sir.

Q It wasn't a fully paid up purchase of stock, was it?

CASE #3083

A No, sir.

Q You are quite positive that Dr. Brown bought this stock on margin and was to pay you an additional \$224.50 before the stock was delivered? A Yes, sir.

Q Now you testified yesterday that you were in the stock business for 20 years, is that right? A Well on and off I am in the business.

Q From your experience as a stock broker is it customary for a broker to deliver stock purchased on margin before the full amount is paid up? A No, sir; never.

Q Does such broker take up or buy such stock and retain it in his possession until it is paid for or does he go and buy it at any time it is paid for? A He buys it and he can pledge it.

Q Did you buy 400 shares of Fay petroleum at the time this was ordered? A I bought over \$6,000--

Q You have 400 shares of Fay Petroleum, haven't you? A Yes, sir.

Q You can and are ready and able and willing to turn over 400 shares of Fay Petroleum to Dr. Brown if he pays you this balance, aren't you? A In 12 hours.

Q Now I show you people's Exhibit 3 which is one of your confirmations, and ask you whether in accordance with the words on the bottom of that you could pledge, dispose of or deal with the marginal stock at will?

MR. WHALEN: I object to that.

CASE #3083

THE COURT: Objection sustained.

MR. WHALEN: The paper speaks for itself.

MR. ISQUITA: I take an exception.

Q Do you remember the time that Dr. Brown testified in the Magistrates' Court? A Yes, sir.

Q Do you remember the testimony clearly? A I believe I do.

Q Do you remember him testifying or do you remember Dr. Brown testifying in your presence and hearing at that time that this stock was purchased on margin? A Yes, sir, two or three of them, Mr. Jackson as well as Dr. Brown.

THE COURT: What stock are you referring to?

THE WITNESS: The Fay petroleum. The attorney cross examined himself.

BY MR. ISQUITA:

Q Now going back to Cullen again. After that relationship which you say was entered into at the Marlborough Hotel, as evidenced by People's Exhibit 9, you still are willing to turn over 50 shares of Middle States Oil, are you? A Yes, sir, I am.

BY THE COURT:

Q Have you got it to turn over? A Not now, your Honor.

BY MR. ISQUITA:

Q How long will it take you to get 50 shares of Middle States Oil? A Not very long.

Q 24 hours? A No, sir, longer than that.

Q Well about how long? A A few days.

CASE #3083

Q What is that, two days? A No, sir a few days.

Q From your understanding of this agreement or this relationship about the turn over of the 50 shares of Middle States Oil would that close the relationship between you and Cullen?

Objected to. Objection sustained. Exception.

MR. WHALEN: It is immaterial what this witness's understanding of the situation is.

BY MR. ISQUITA:

Q Was this relationship between you and Cullen agreed upon between both of you as a civil and contractual relationship at the time you had lunch with him?

MR. WHALEN: I object to that as calling for a conclusion.

Objection sustained. Exception.

CROSS EXAMINATION BY MR. WHALEN:

Q You haven't got any shares of stock of Middle states Oil now? A Yes, sir.

Q You are willing to make any promises to give it later?
A I believe I can deliver it.

Q You believe you can? A Yes, sir.

Q You told Mr. Cullen several times you believed you could deliver it, couldn't you? A I don,t know; I only told him once.

Q What is that? A I only told him that once.

Q When in the letter? A In the letter and twice was

CASE #3083

in the Magistrate's Court.

Q Didn't you also testify you promised him in the Marlborough that you would deliver it to him? A That is the time he gave me the loan.

Q Yesterday you testified the first conversation you have with Mr. Cullen at lunch was at the Marlborough, and that the second conversation was in a restaurant near Saks?

MR. ISQUITA: I object to that if your Honor please.

A The first one was in the restaurant.

THE COURT: Ask him what he did say.

Q What conversation did you have first, at the Marlborough?

A In that little restaurant.

Q That was the first conversation? A Yes, sir.

Q In a little restaurant near Sak's? A Yes, sir.

Q That was between the 4th and 7th of March or the 8th? A Yes, sir.

Q The second conversation that was around the end of March in the Marlborough Hotel? A Yes, sir.

Q This first conversation was before you had purchased any Middle States Oil? A Yes, sir.

Q Had you at that time in your possession 350 shares of Acme Coal and 336 shares of Meridian Oil? A I believe I had more than that.

Q You had more than that of each of those stocks?

A Yes, sir.

Q Then you sold them on March 10th? A No, sir, before that.

CASE # 3083

Q Didn't your confirmation say that you sold them on March 10th? A I don't remember exactly whether that was before -- that confirmation was sent after.

Q Your confirmation is sent within 24 hours, isn't it? A Well, yes.

Q Now, I show you people's Exhibit 5. That is in your handwriting, isn't it? A Yes, sir.

Q That is a confirmation for the sale of 350 shares of Acme Coal and 336 of Meridian Oil? A Yes, sir.

Q When did you sell this? A It must have been some one or two days before.

Q Either the 8th or 9th of March? A Something like that because I got the confirmation from downtown.

Q You say that Mr. Cullen told you you could use this for your own purposes? A He gave me a loan.

Q He gave you a loan? A Yes, sir.

Q Why did you send him People's Exhibit 6? A Well, when I put down on the bottom, "deliver as soon as possible"--

Q Why did you send him that? A That he would have something to show, I told him, "In case I die he got something."

Q Didn't he tell you to buy Middle States Oil with the proceeds of the sale of the other stock? A Yes, sir.

Q Is that what you call a loan? A He gave me, he loaned me of his own accord.

Q Did he tell you to keep the Middle States Oil? A Yes.

CASE #3083

Q Didn't you testify a little while ago that before the end of March he told you to keep the Middle States Oil?

A Well, yes, before -- I met him in the Marlborough Hotel; he told me I could have it.

Q Then he told you? A Yes, sir.

Q At the Marlborough to keep the Middle States Oil?

A I seen that man every day.

BY THE COURT:

Q When did he first tell you you could keep the Middle States Oil? A He told me right along I could keep anything he gave me.

Q Didn't you say yesterday that he told you that at lunch? A To keep it?

Q Didn't you say yesterday that the time he told you to keep it was at lunch at the Marlborough? A Well, he gave me a final answer then I suppose.

Q Now you say he told you that before? A Yes, sir, I seen that man before.

Q When did he first tell you? A Up in Sak's I suppose.

Q When? A Between those dates, your Honor, I can't remember those dates.

BY MR. WHALEN:

Q He told you more than once you are to keep the Middle States Oil stock? A Yes, sir.

Q Didn't you say that at the luncheon at the Marlborough at the end of March or the beginning of April you told him

CASE #3083

about this Miller loss? A Well he knew about it.

Q Didn't you say you told him? A Yes, sir, I told him in detail.

Q Didn't you state that was the reason why you asked him to let you keep that Middle States Oil? A I did not ask him. It would be very unethical in the stock business to ask a man for his stock.

Q But take it without asking him? A No, sir; he loaned it to me personally.

Q Will you please explain why you wrote these words on this confirmation date, March 10th, 1921, "Will deliver to you at the earliest possible moment". A Yes, sir.

Q Why did you write that on there? A So he could have something. I wrote him a letter at the same time.

Q He told you to keep the stock, did he? A Yes, sir.

Q Yet you were going to deliver to him any way?

A What is that?

Q Repeated. You were going to deliver it to him any way at the earliest possible moment? A Knowing if the man insisted on it I have to.

Q But you never did? A I have loaned more than that; he never asked for it.

Q Now these shares of stock of the Acme Coal and the Meridian Oil you bought 350 shares of Acme Coal, did you not, for Mr. Cullen? A Yes, sir.

Q The first 100 shares while you were working for Cal-

CASE #3083

laghan? A The first 50 shares.

Q While you were working for Callaghan? A Yes, sir.

Q And the next was 100 shares while you were working for Callaghan? A Yes, sir.

Q That was in the form of a certificate in Mr. Cullen's name, wasn't it? A I don't know.

Q Didn't you say you got him to endorse it? A Well, I delivered it; it was sent to him by Callaghan & Company.

Q Didn't you take it up to Cullen? A No, sir, he had it.

Q But you saw it in his possession? A No, sir, he had it in his possession in the bank.

Q Where was it when he signed his name on the back?

A In Saks' & Company.

Q Saks? A Yes, sir.

Q Then you saw it there, didn't you? A Yes, sir.

Q Now you testified you bought later another hundred shares and brought in a certificate and had him endorse it, didn't you? A Yes, sir.

Q Was that endorsed at Saks also? A Yes, sir.

Q Then another hundred lot? A Also in Saks.

Q In November? A Yes, sir.

Q You brought him the certificates? A Yes, sir.

Q So you had three separate certificates of stock in the Acme Coal Company all made out to Cullen's name? A No, sir, they were Street certificates, certificates dealt in on the Street.

CASE #3083

Q Were they made out in Mr. Cullen's name? A No, sir.

Q Why did he have to endorse them? A I think they were two made out for Mr. Cullen.

Q Two? A yes, sir.

Q He endorsed those two? A Yes, sir.

Q He did not endorse the others? A Only put the name down, Cullen, I forget his initials, Edward P. Cullen.

Q He signed them? A He didn't sign all Edward P. Cullen; they were signed already.

Q What do you mean they were signed already? A Well they are blank.

Q Did he sign them? A His own name is in them.

Q He signed his name in them? A Yes, sir.

Q But the first two -- were in his -- A Were in his name.

Q Regular certificates? A Yes, sir, Edward P. Cullen.

Q In his name? A Yes, sir.

Q As a matter of fact he never saw the other certificates, did he? A Oh, yes.

Q Well were the other certificates in his name? A No, sir, they were Street certificates, Mr. District Attorney.

Q They are not transferred them on the books of the company? A We deal with them on the street.

BY THE COURT:

Q Were they transferred on the books of the company?

A No, sir they were not.

CASE #3083

BY MR. WHALEN:

Q Were the first two? A Yes, sir.

Q Those 150 shares were transferred to his name on the books of the company? A Yes, sir.

Q But the others never were? A No, sir.

Q As a matter of fact isn't it true that you never put the two certificates or any other certificates in his name at all? A In his personal name, no, sir.

Q You never put any certificates? A No, sir, except the 150 shares.

Q The 150 shares were the only ones that were in his name? A Yes, sir.

Q They were the only ones for which he endorsed the certificate? A Yes, sir.

Q That is true? A Yes, sir.

Q Then you were mistaken when you said yesterday Mr. Cullen endorsed all the certificates? A Yes, sir; I believe there were three certificates, 50 shares each, I believe they were made out by Callaghan & Company transferred from somebody else; I don't know the names.

Q The only certificates made out to Cullen's name endorsed by Mr. Cullen were those that he bought through you? A Yes, sir.

Q While you were at Callaghan's? A Yes, sir, while I was at Callaghan's.

Q And the other certificates or shares of stock --
A He put his name in.
A He put his name in

2121
CASE #3083

Q Were never endorsed by him? A He put his name in, in the blank space.

Q Now Mr. Krause, you testified yesterday that Mr. Cullen met you first in June, 1920, and said he would like to invest in Acme Coal, is that right? A That he would like to invest? When I was talking to Mr. Redmond he said, "You got something good". So I gave him a circular.

Q He said he wanted to invest in Acme Coal? A He bought 50 shares.

Q That is what you said yesterday? A Yes, sir, that is what I said yesterday.

Q He paid for them in full?

THE COURT: He has already stated that several times. All those stock was paid for in full.

THE WITNESS: All the stock was paid for, yes, your Honor.

BY MR. WHALEN:

Q You said I believe that you sold the stock mentioned in people's Exhibit 5, 350 shares of Acme Coal and 336 shares of Meridian Oil to Cummings? A Yes, sir, Cummings & Co.

Q Cummings & Company? A Through Cummings & Company.

Q Well to whom did you sell them? A Well, I told you I don't personally sell myself, I have traded down there.

Q Do you know to whom they were sold? A No, sir, I did not know of the party, you can never tell who it was sold to.

CASE #3083

Q To whom did you deliver these stocks? A I think a runner Jesse Pomerance.

Q Who is he? A He is a runner, a trader.

Q For whom? A For several houses. I think he is with Strong & Company or Cummings and Reilly and Rodney.

Q Then you don't know whether you sold it to Cummings or somebody else? A That is impossible for me to tell, because I am not a member of the New York Curb Association and I have to pay a brokerage fee to the broker.

Q You merely deliver the stock? A I act as agent.

Q You deliver these shares of stock to Jesse Pomerance and he paid you for them? A No, sir, I got a check from, I think, Cummings.

Q Now when did you get that check? A Several days later because I didn't go down every day, I done most of my business, I had to do everything myself.

Q But you remember you got a check from Cummings?
A Yes, sir, generally I did.

Q Do you remember the amount of the check? A I do not.

Q Have you got any record in your book shwing the receipt of that money? A I have lost all the books; they were taken from me; I don't know where they were; I lost several of my letters.

THE COURT: How did you lose them?

THE WITNESS: When I had trouble with that Miller

CASE # 3083

case the place where I was the man tried to get more money out of me; everybody was after money from me and he thought he could get some more out of me and I gave him a check for \$106, and he demanded more money, and he closed the office on me; he told me he would not open up the door; that I should send somebody else up there. I sent a little fellow up and most of my papers were missing.

Q How did he close the office? A He changed the lock.

Q He was the landlord? A Yes, sir.

BY MR. WHALEN:

Q From whom did you purchase the 27 shares of Middle States Oil? A I believe of Marshall.

Q Who? A Marshall & Company.

Q What is the full name? A Joseph Marshall.

Q A broker? A Yes, sir.

Q Did you pay for those 27 shares? A I did.

Q At that time? A I believe, yes, sir, I think I gave him a check for \$600 that day, \$546 and something.

BY THE COURT:

Q I thought you said you pledged it with Cummings, the Middle States Oil? A I said, your Honor, I don't know, I think I did, because I gave him 100 shares of Farrell Coal and Middle States and several other things I gave him. I tried to keep my head above water.

BY MR. WHALEN:

CASE #3083

Q You testified that between the 4th and 7th of March you met Cullen in a restaurant near Saks, and that he said to you, "If you want it you can have it".

A "Not if you want it, but if you need it."

Q You could have it? A Yes, sir.

Q And yet on March 10th you sent People's Exhibit 6 stating that you would deliver the stock at the earliest possible moment? A Yes, sir, I wrote the letter as a promise to him.

Q Now when was it that you had this loss through Miller that you have mentioned? A I don't know the exact date; it was a little before that time.

Q When? A I really don't know, I have a record some place.

Q What month was it? A I don't know when it was-- when the Texas Pacific Railroad went up 17 points in one day.

Q You say that you had this conversation with reference to the Middle States Oil with Mr. Cullen at the end of March or early in April, is that right? A Yes, sir; I did.

Q Was it before or after you wrote this letter, people's Exhibit 8? A Before.

Q Before you wrote that letter? A Yes, sir., just a couple of days before I stat in the letter-- I made the suggestion.

Q Then you wrote to him as follows: "Dear Mr. Cullen you have a right to be angry with me, I agree with you. "

2125

CASE #3083

MR. ISQUITA: I object to that. The letter speaks for itself.

THE COURT: Yes, it has been read once.

Q I understood you to say that the letter you wrote to him so as to make the arrangement in black and white?

A Yes, sir, in case anything should happen.

Q Was there anything in the letter that says that?
(No answer.)

THE COURT: Anything in the letter that says Cullen had offered to let you take this stock?

THE WITNESS: No, sir, I told him I am willing to put it as strong as I possibly can so that he can hold me if anything should happen to me while he can or should get some money from my estate.

BY MR. WHALEN:

Q Why did you say in the letter as follows: "So please Mr. Cullen give this your serious thought and consideration and let me know. The 50 shares you get no matter what way you decide". A That is what I told him.

Q "Let me hear from you. I will demonstrate it for you, and you can decide for yourself.
Don't ruin me as you are not a man that is revengeful." What were you asking him to decide? A Because I heard a rumor that they are going to go after me.

Q What were you asking him to decide when you wrote to him in that way? A I called him up and I told him about that Instant Heating, I want to make him the financial secretary,

CASE #3083

and told him whatever I make on it I will split Fifty-Fifty with him. I believe I put it in that letter, and I will give him that.

THE COURT: That is another part of the letter.

He is asking you what you meant by the part he just read.

THE WITNESS: I don't know.

Q Up to that time you hadn't done anything wrong at all? A What do you mean wrong?

Q You hadn't done anything wrong? A No, sir, never done anything wrong in my life, your Honor.

Q He allowed you to take this stock? A Yes, sir.

Q What did you mean by asking him or saying not to be angry and not to ruin you and asking for forgiveness and so forth? A I didn't ask for any forgiveness.

MR. ISQUITA: There is nothing in that letter or at least in the portion brought out by the District Attorney so far that shows any intent to do anything wrong.

THE COURT: I didn't say there was.

MR. ISQUITA: It shows the attitude on the part of the witness when he wrote this letter. The District Attorney is asking him to say what he meant, whether he was asking forgiveness.

THE COURT: He read a portion of the letter.

Objection overruled! Exception.

CASE #3083

BY THE COURT:

Q You say there that he has a right to be angry with you. What gave him a right to be angry with you? A Well, I don't know.

Q Wellwhy did you say it? A I don't know, I told your Honor that I translated that from German into English, because I only took up my English in this country since I am here, I learned English so I was not--

Q You say in your letter you are not making any excuses to defend "myself." You say you hadn't done anything wrong? A No, sir.

Q When you say "You could ruin me". What did you mean by that? A I told you, your Honor.

MR. ISQUITA: I again object to that question on the ground that there is nothing shown here that this defendant has done anything wrong.

THE COURT: I did not say there was. I am asking him what he meant in this letter. That is a plain question.

MR. ISQUITA: I think before such a question is asked it should be shown why he wrote that letter.

THE COURT: That is what I am asking him, to state why he did. Why did you say in this letter, "I am not making any excuses to defend myself".

THE WITNESS: Well I never was in trouble before in my life, and they told me they will arrest you and put

CASE #3083

you in jail and all that stuff, and I never was inside and I got scared; that is all.

Q You say, "You know I am not running away."

A That is what they told me if I skipped the country that they will bring me back.

Q GThis letter was written after the time you had lunch with him to make clear what your relations were? A No, sir, it isn't that.

Q You said that yesterday didn't you? A I told him I was going to make a strong case if I should die he has got something to come back.

BY MR. WHALEN:

Q You say this letter was written after yhat luncheon?

A The very next day.

Q Now why did you say in this letter, "I am going to make you a proposition, and I beg you to take a chance with me and do not condemn me in anger. I will deliver you on June 1st, 1921 50 shares of Middle States Oil?" Why did you say "I make a proposition to you"?

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

The witness has already answered it several times.

Exception.

A I told him-- he told me he would lend me the stock, and I said, "Listen", I said, "I don't want nothing for nothing, I will give you 50 shares and I will give you that in black and white."

CASE #3083

Q You don't say in your letter, "This is in confirmation of your talk." A Yes, sir; that is what I told him.

Q Do you say that in the letter? A I showed it to you before.

Q Show me where it says that in the letter?

MR. ISQUITA: He testified before that that was not in the letter.

THE WITNESS: I told him I am going to make it so strong, he can have everything in black and white, I mean my trouble, if I could get out of it I would have written anything.

Q Now did you in reply to that letter receive this letter from Mr. Cullen, People's Exhibit 9, dated April 4th?

A Yes, sir.

Q Now, can you fix the time when you say you lost this money through Miller? A Impossible; if I would look it up I can tell you.

Q Have you anything here with which you could refresh your memory? A No, sir; there is a record in the New York Stock Exchange.

Q When was it you first told Mr. Cullen about the loss you had suffered through Miller? A He heard about it.

Q Repeated. A I told him on that day when we had lunch.

Q What lunch? A In the Marlborough.

Q That was the second lunch? A Yes, sir; but he heard it in Saks, in fact everybody knew it.

CASE #3083

Q That was before the end of March? A Everybody knew it in the whole building.

Q Now are you positive you bought 27 shares of Middle States Oil on March 9th? A I bought 30 shares.

Q Did you ever put the certificate in Mr. Cullen's name? A No, sir, I did not.

Q You never did? A No, sir.

Q Did you sell the Middle States Oil again? A I pledged it or rather lost it, the whole thing; they took it away.

Q What did you do with the 27 shares of Middle States Oil? A They took it away from me.

Q What did you do with it? A I didn't do anything.

Q Did you have it in your possession? A I had over 200 shares.

Q In your possession? A Yes, sir.

Q What did you do with it? A I lost it.

Q How did you lose it? A Closed my account out.

Q Where? A I have several places.

Q Then you had all this pledged? A Yes, sir.

Q Did you have those 27 shares in your possession, the 27 shares of Middle States Oil in your possession on the 9th or 10th of March, 1921? A Yes, sir, I guess so, yes, sir.

Q Did you or didn't you? A I think I did.

Q The afterwards you pledged them with whom? A Well I don't know. If you would have been in my trouble, Mr. Dis-

CASE #3083

trict Attorney, you would not know today where you stood yourself.

Q You don't know whether you had those shares or not?

A I do know I had more than that; I had 200 shares.

Q But you had them all lumped together? A I had, different people loaned me their stock.

Q You did not put them in the name of Cullen? A No, sir.

THE COURT: He has said that already.

THE WITNESS: I just started in business with \$500

I did everything myself, I worked day and night and I lost four thousand dollars by doing it.

wrote

Q Now then after you ~~gave~~ wrote the letter of April 2nd to Mr. Cullen and he replied to you by letter of April 4th you wrote this letter of April 5th, didn't you? A Yes, sir.

Q Exhibit 9? A Yes, sir.

Q What do you mean in this letter when you say "I thank you -- I know you are a man that can read between the lines."

A I thank him, and I told him -- that is an old proverb.

MR. ISQUITA: I object to that as calling for an opinion.

THE COURT: I don't see that that requires any explanation.

BY MR. WHALEN:

Q Well then it is a fact that you never bought any shares of Middle States Oil in the name of Edward P. Cullen?

A I bought the Middle States Oil right on the market; they don't

CASE #3083

come in Cullen's name or anybody else's name. I have to have them transferred.

Q Did you have any shares of it?

THE COURT: He has already stated several times that he bought the stock as ordered, and then under his agreement with Cullen he pledged it.

BY THE THIRD JUROR:

Q This stock that you bought Mr. Krause you did not carry it yourself, did you, it was carried by people for you?

A What stock?

Q The stocks belonging to customers? A I had several accounts.

Q You did not carry them yourself? A Some of them I bought outright because I made an eighth on it, because I could not get no commission from the New York Stock Exchange.

Q What I mean is this: Did you keep the stock that was paid for outright separately from the ones that were bought on margin? A I delivered that outright stock--

Q You did not deliver that to Cullen? A The outright stock-- that was not in his name.

Q You did not deliver it to him? A I showed it to him.
BY THE COURT:

Q You did not deliver it to him? A Well he loaned it to me; he gave it right back to me.

BY THE THIRD JUROR:

Q The stock that you paid for was not delivered to him

CASE #3083

when you bought it? A Yes, sir.

Q Any of that that Cullen paid for? A Yes, sir, that stock was delivered to him.

Q He got that? A Yes, sir.

BY THE COURT:

Q When did you deliver it to him? A They were sent to him.

Q The Middle States Oil you say on your confirmation "I will deliver as soon as possible." A I showed him the stock.

Q Did you ever show him that stock? A Yes, sir; I showed him more than that.

Q Did you show him that Middle States Oil? A I showed him over 200 Middle States Oil; that was another day.

BY THE THIRD JUROR:

Q That stock of the other Oil Company,-- not the Middle States -- was a bearer's certificate. The stock you said Cullen signed was a Bearer's certificate? A There were two certificates or three, and I pledged it; then there was the Street certificate.

Q They were Bearer's certificates? A Yes, sir.

Q Anybody could use them, couldn't they? A Yes, sir; but I had his name put in.

Q Were you signing his name? A That is in case anything should go wrong, to show that I delivered the stock to him.

Q You never delivered it? A Yes, sir; he loaned it to me.

CASE #3083

Q At the time he signed his name? A Yes, sir, he loaned me anyway \$50 shares.

Q At the time he signed that he loaned it to you?
A Yes, sir.

BY THE COURT:

Q That was back in October? A That was when I delivered it to him.

Q He made you this loan in October? A He gave it back to me.

BY THE THIRD JUROR:

Q Otherwise you did not deliver it to him. You simply asked him to sign, and he gave it back to you? A Yes, sir; he gave all the certificates to me.

BY THE SIXTH JUROR:

Q Why was the Middle States Oil transferred to him, you got 28 shares of Middle States Oil? A 27.

Q Why wasn't it transferred to Mr. Cullen's account?
A You mean why didn't I deliver it to him?

Q Why didn't you transfer it over to his name?
A Because I just got it; I just received it. Mr. Cullen could not sign his name; he could not sign for that stock; that was a Street certificate, a trader's certificate.

BY THE COURT:

Q What the juror wants to know is this: You got the Middle States Oil stock, as you testified here ten days before you pledged it? A yes, sir.

CASE #3083

Q He wants to know why you didn't have it transferred to Mr. Cullen's name in the meantime? A Well that was not necessary; it is not necessary to transfer it to his name because he loaned it to me.

Q Didn't you do it because of this loan you speak of?
A Yes, sir.

Q Now one question about the Brown transaction. Did you say you bought 400 shares of the Fay Oil? A Yes, sir.

Q Is that correct? A Yes, sir.

Q At \$1 a share? A Yes, sir.

Q That made 400? A Yes, sir.

Q You say you bought that on margin? A He bought it on margin.

Q Well, he had pledged as margin the proceeds of 300 Acme Coal? A Yes, sir.

Q That was two hundred and odd dollars? A \$173.

Q What per cent of margin would that be? A A little less than half; but the stock originally dropped down to two cents.

Q So that on the date it was issued it could have been bought for the price covered by the Acme Coal? A No, sir, he didn't buy that that day; he bought it on the subscription price.

BY THE THIRD JUROR:

Q That Acme Coal stock you first bought for Cullen-- was that carried in your account downtown with your broker?

CASE #3083

A No, sir. I gave the order into Callaghan.

Q Did they deliver the stock to you or did they keep it at Callaghan's? A No, sir, the stock was kept at Callaghan's.

Q In your account? A No, sir, I didn't have anything to do I was employed by Callaghan & Company.

Q That was the first lot bought through you? A Yes.

Q Where was that stock kept? A In Callaghan's.

Q That was kept in Callaghan's? A Yes, sir.

Q That was in your account? A No, sir, in Mr. Cullen's account.

Q You had an account with Callaghan in the name of Cullen?

A No, sir, I was a salesman and he had his account there.

Q When he bought it through you? A I bought it out-right on the Street.

Q You bought the stock yourself? A Yes, sir.

Q It was not downtown in Wall Street? A At that time yes, sir.

Q This stock that Mr. Cullen bought through you as broker and not as salesman was delivered to you,-- you received that stock? A Yes, sir.

Q You kept it in your possession at all times? A Yes.

Q It was never downtown to your personal account in Wall Street? A No, sir.

Q You had brokers down there who had an account with you? A Yes, sir.

CASE #3083

Q And that stock was never down there? (No answer.)

BY THE COURT:

Q You kept it for safe keeping. You didn't put it up for your own account downtown? A No, sir; I didn't need it then.

BY MR. ISQUITA:

Q When you said before in answer to Mr. Whalen's question that Mr. Cullen put his name on the back of those certificates of stock which were Street certificates you meant by that that Mr. Cullen wrote his name on the stamped or printed space which said that those certificates belonging to him are to be turned over to somebody else; is that what you mean he wrote on the back of the certificates? A Yes, sir.

Q Where he put his name, that was his signature, is that what you mean? A It was just there he wrote the name in a certain space.

Q Where he was supposed to sign? A No, sir, just as he signed that stock would have been transferred to Mr. Cullen if he would not have made the loan to me.

BY A JUROR:

Q Did you refer to that yesterday as an endorsement, that Mr. Cullen asked where to endorse the stock and you simply showed him how to endorse it. You said yesterday that Mr. Cullen asked you where to endorse it? A When I brought the stock to Mr. Cullen he asked me "Where shall I sign."

Q The two one hundre d share lots he bought from you

CASE #3083

personally? A No, sir, he only put his name on there.

Q You did not refer to that as an endorsement? A No, sir, that is not an endorsement, that is to show in case he did not -- that is to show that I did not transfer it over.

BY MR. ISQUITA:

Q When somebody buys stock from you you haven't got the stock at the time in your possession, have you? A No, sir, not all the time.

Q You deal through what they call a middle man of a trader on broad street, don't you? A Yes, sir.

Q These traders, these different traders have employees or runners on the Street? A Yes, sir.

Q Is it customary for an agent or a broker like yourself to deal with these runners instead of directly with the concern? A Yes, sir, but with most of them--

Q Just yes or no? A Yes, sir.

Q Not only is it customary, but is it the usual procedure to deal with a runner instead of with the concern direct? (No answer.)

Q Is that the usual procedure, is that done every day? A Yes, sir.

Q So that when you say that you sold the Acme Coal and the Meridian Oil through somebody by the name of Pomerance who was a runner you sold it not to Pomerance but to the concern that he represented? A Yes, sir, and he makes the delivery the next day.

CASE #3083

Q Did you know at the time you delivered this stock to Pomerance that he was a runner for Cummings & Company? A Yes,

Q Had you had dealings with Cummings & Company through this runner before? A Yes, sir.

Q When you gave Pomerance your stock was it supposed to be given to you ^{pay} to Cummings & Company? A Yes, sir.

Q When you say you got a check afterwards from Cummings & Company for such stock, do you mean that Pomerance had sold or disposed of it for Cummings & Company and Cummings & Company had then reimbursed you for whatever that stock was worth? A Yes, sir.

Q You say that you pledged the Middle States Oil stock with Cummings & Company? A I pledged the Middle States Oil with several people.

Q Did you pledge the Middle States Oil with Cummings? A Yes, sir.

Q Did you pledge this Cullen Middle States Oil with Cummings? A I believe it was in the lot.

Q Is Cummings & Company still in business? A To my sorrow they are not.

Q Did they go into bankruptcy? A That is what I heard.

Q Was your stock amongst a lot of other stock in the possession of Cummings & Company at the time that they went in to bankruptcy? A Yes, sir.

Q Now did you at any time during your ^{entire} relations with Cullen or with Brown intend to defraud them or either of them

CASE #3083

of this stock? A I never defrauded any one.

Q Was there at any time any conversation between Cullen or Brown and yourself with regard to your defrauding either of them of their stock? A I don't know what you mean.

Q Was there at any time a conversation between you and Brown or between you and Cullen which would lead you to believe that they thought you were intending to defraud them of the stock?

Objected to. Objection sustained. Exception

Q Did you testify before that at no time did Cullen ever tell you or have any conversation with you that you were running his account improperly-- is that right? A No.

Q Did you at any time have any conversation either with Cullen or Brown in which they said to you that you were defrauding them of their stock?

THE COURT: I have already sustained the objection to that question.

Exception.

Q Did this Miller incident take place before March 10th 1921? A Yes, sir.

Q It did take place after November 23rd, 1920? A Yes.

Q So it took place between the time of the last purchase by Cullen from you of that Acme Coal and before the conversation in which Cullen said you could use this stock at will? A Yes, sir.

CASE # 3083

Q How much money did you have to pay back to Miller through this loss?

Objected to. Objection sustained.

Q Was that Miller loss the first loss which you had sustained while you were in business?

Objected to; objection sustained; exception.

Q Now Mr. Krause, did you go to school in this country?

A I did not.

Q Are you thoroughly familiar with and easily conversant with the English language? A In conversing?

Q I mean are you what we would term a brilliant English scholar? A I am not.

Q You got just enough English to get along on? A Exactly.

Q When you write a letter you write it as you go along? A yes, translate it.

Q You understand how to read and write German, do you? A yes, sir, German, English and French.

Q Now when you write a German letter do you use the superlatives to a great extent? A I don't know what you mean.

Q I mean do you use the limits of exclamation at all times when you write a German letter? A I make it as explicit as I possibly can.

Q And as strong as possible? A Yes, sir.

Q When you write an English letter you write it the same way you write German, is that right? A I think I do;

CASE #3083

I see that now.

Q If you write a German letter using the strongest possible language you write an English letter the same way, don't you? A Yes, sir.

Q All of your letters exhibited here are written in very strong language, aren't they?

O bjected to. Objection sustained.

THE COURT: They speak for themselves.

Q Now will you tell the Court and jury how you were situated both financially and mentally at the time you wrote that letter?

MR. WHALEN: I object to that.

THE COURT: I think he has already stated that he was in financial trouble.

THE WITNESS: I was in financial trouble and I was worried.

Q How worried were you, in much financial trouble?
A I was because I read that people could make charges against you no matter what it is.

Q Now in that conversation between you and Cullen downstairs near Saks did Cullen tell you to write this letter as strong as possible? A Yes, sir not as strong as I told him-- I would make it as strong as I possibly could.

Q Did he tell you that you should not mention anything about the conversation so that--

MR. WHALEN: I object to that as leading.

CASE #3083

THE COURT: Let him testify.

A I don't think there was anything said.

MR. ISQUITA: I will withdraw that question.

Q When his Honor asked you before whether all the terms and conditions that were spoken over at that luncheon downstairs were embodied in that letter you said they were. Did you understand the question thoroughly? A I don't know what you mean right now.

Q Did you understand his Honor before when he asked you about this letter, and you said yes, and you then said no?

A Yes, sir.

Q Did you understand his question thoroughly before you answered? A I don't think I did; I don't know what you mean.

Q Now I will ask you about this letter. When you wrote this letter to Cullen were you to put in it the facts that you had had in the conversation with Cullen?

Objected to. Objection sustained.

Q Did Cullen tell you at that time at this luncheon to put into this letter this --

MR. WHALEN: I object to the form of the question.

THE COURT: Why don't you ask him to say what Cullen told him.

MR. WHALEN: It is for the witness to testify and not for the lawyer.

BY MR. ISQUITA:

Q Did Cullen tell you what to write in that letter?

CASE # 3083

A We were talking together and he suggested --

Q He suggested you write a letter? A Yes, sir.

Q What did he say? A He said, "Well, give me something in writing", and I said, "all right".

Q That is all he said? A Yes, sir.

Q Something in writing? A Yes, sir.

Q Now is it a customary for a broker like yourself when he purchases stock for a client to actually put this stock into the client's name? A No, sir; sometimes they do but most of the time they don't.

THE COURT: It depends upon instructions?

A Yes, sir, exactly, you can't always get it from the transfer office.

BY MR. ISQUITA:

Q When you trade on the Curb do you have an account with the different traders? A Yes, I have.

Q Is that account in your name? A Yes, Joseph J. Krause.

Q When you purchase stock for clients do you purchase it in your name? A Yes, sir.

Q And then transfer it? A Yes, sir.

Q Isn't it customary to transfer stock into your client's name when the client permits you to retain his stock for his account? A No, sir.

Q You retain that stock in his name until he requests that it be turned over to him? A Yes, sir.

CASE #3083

Q Then you first send for it? A Yes, sir.

Q And that sometimes may be months? A It all depends on where the company is located.

Q Sometimes when a man asks you for his stock it isn't transferred for months? A No, sir, you give them a month's notice and then you transfer it.

Q So that if you bought this Cullen stock in your own name and he made this loan to you it would not have been necessary for you to transfer this stock into Cullen's name would it? A No, sir.

Q You could hold this stock in your own name, couldn't you? A Yes, sir.

Q Now getting back to Dr. Brown, you said before that the proceeds of the Acme Coal brought you \$187.50 and that was about enough to cover half of the margin for the Fay Petroleum, is that right? A Yes, sir.

Q Not half the margin but half the purchase price?

THE WITNESS: yes, sir; a little less.

BY MR. ISQUITA:

Q You still have Dr. Brown's account open, haven't you?

A He has already testified to that on the direct.

Q That stock has dropped to nothing is that it? A Well, the last date was last Monday, the 9th, a sale of 1,000 shares at 2 cents.

Q That margin would have been eaten up anyway wouldn't it? A Yes, sir.

CASE #3083

Q As a matter of fact Dr. Brown owes you more than the balance of the purchase price? A He owes me \$224.50.

Q That was the purchase price? A Yes, sir, and \$4.

Q Now he owes you more because that stock was sold out at less than that? A Yes, sir.

Q Doesn't he? A Yes, sir.

Q Is it also customary for brokers if a marginal account is not picked up within a specified time to close out such an account? A You give notice.

Q And the client loses his stock if he doesn't comply with such ten day notice? A Yes, sir, it is sold at public auction.

Q You testified before that you demanded from Dr. Brown the debit balance that he owed you?

THE COURT: Do not ask him what he testified to before. There is no use going over the case more than once.

BY MR. WHALEN:

Q Now isn't it just the other way, if you sold the Acme Coal for Dr. Brown and got a hundred and seventy one dollars proceeds that was sufficient margin for 400 shares of Fay oil? A Yes, sir.

Q Now the Fay oil has gone down to nothing, has it? A Yes, sir.

Q And that margin has been increasing all the time? A Well Dr. Brown was supposed to take it out.

2147
CASE #3083

Q That stock is worth nothing now. The Acme Coal stock went down you say? A The Acme Coal was sold.

Q Well, then the Fay Oil has been going down constantly, and the margin has been increasing in amount? A They have paid for it.

Q You paid \$171 for the Fay Oil worth \$400? A I bought 6,000 shares, subscribed for it.

Q 6,000 shares? A Yes, sir.

Q Did you actually buy the Fay Oil? A I subscribed for that and my people bought it.

Q Now just one more question I want to ask you about the first 150 shares of stock of Acme Coal that you bought from Mr. Cullen? A I didn't buy that stock from Mr. Cullen.

Q While you were at Callaghan's? A Mr. Callaghan bought that.

Q Well when did you sell it? A I don't know.

Q Didn't you sell that long before the talk you had with Mr. Cullen you had in March? A I don't know.

Q Didn't you? A I don't know. I told you I got from people in Saks & Company I got about 2,000 or 3,000 shares of Acme Coa.

Q Do you know when you sold that stock? A It must have been in that lot, you know at that time.

Q This first 150 shares were in Mr. Cullen's name, weren't they? A Yes, sir, there is a record of that.

2148
CASE #3083

Q He endorsed them? A Yes, sir.

Q You sold them? A Yes, sir.

Q When did you sell them? (No answer.)

2
BY THE COURT:

Q Did you say you sold them a few days before the took place? A Yes, sir; I don't know the dates.

BY MR. WHALEN:

Q Isn't it a fact that you sold them in September and October, 1920, just after you got them? A No, sir.

Q It is not a fact? A No, sir, I sold, maybe, I don't know how many shares I sold, I don't know, I was dealing right along in Acme Coal.

Q You said you pledged this stock, this Middle States Oil stock about ten days after you bought it on March 9th? A I don't know.

Q Didn't you so testify yesterday? A A lot of stock I bought.

Q You didn't have this conversation until the end of March or early in April with Mr. Cullen? A I had a conversation with Mr. Cullen at his office every single day nearly.

Q But you testified that he told you in the conversation at the end of March or early in April about the loan of the Middle States Oil stock? A I don't know.

Q Didn't you so testify? A I don't know what you mean.

Q A conversation with him in the Marlborough? A Yes,

Q Wasn't that the end of March? A Yes, sir, around the

21149
CASE # 3083

first or something.

Q You had already pledged it? A No, sir, I had that stock.

Q Before you had the conversation? A I can't pledge any stock before one gives me authority or makes me a loan.

Q It wasn't correct then to say that you pledged the stock about ten days after you bought it?

Objected to.

A I don't know.

THE COURT: He said yesterday that his recollection was it was about ten days after.

MR. WHALEN: I asked him whether it was within a certain time.

THE COURT: I asked him about this same thing this morning, and he said this morning that he had other conversations with Mr. Cullen before the Marlborough luncheon, and in which he was authorized to pledge it.

THE WITNESS: In his office.

MR. ISQUITA: I renew the motion to strike out the testimony of Dr. Brown on the ground that from the testimony produced in both the people's case and the defense there is no similiarity whatever shown between the transaction of this defendant and Dr. Brown and the transaction between this defendant and Cullen.

Motion denied. Exception.

2150
CASE # 3083

HENRY O. SETTE, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he lives at 233 32nd street.)

DIRECT EXAMINATION BY MR. ISQUITA:

Q What is your occupation? A I am president of the First National Finance Corporation.

Q Offices where? A 116 Nassau street.

Q Was the defendant here employed by you? A Yes, sir.

Q In what capacity? A Salesman.

Q How long have you known the defendant? A I have known him between one and two months over three years.

Q Known him about thirty eight or forty months? A Yes, sir, he came to me in the latter part of November or the first part of December, 1918.

Q In all that time has he done business with you on and off? A On and off.

Q In what capacity do you employ him? A On a commission basis.

Q As salesman? A Yes, sir.

Q He was employed by you also was he?

MR. WHALEN: I object to that. I do not see the materiality of it.

THE COURT: I do not know what he is leading up to. Is this a character witness?

MR. ISQUITA: Yes, sir.

2151
CASE # 3083

Q Then come to the point.

BY MR. ISQUITA:

Q Do you know Mr. Krause intimately? A Yes, sir, I have known the man three years.

Q Will you tell the Court and jury what dealings you have had with him and what you know about him?

Objected to. Objection sustained. Exception.

Q Did you ever entrust this defendant with large sums of money?

MR. WHALEN: Objected to.

THE COURT: If you are going to prove good character there is a perfectly well recognized way to do it by showing what his reputation is in the community.

Q Do you know what this defendant's reputation is for the last three years? A Well personally I have always found him to be honest.

BY THE COURT:

Q Do you know what his reputation is? A His reputation is good.

BY MR. ISQUITA:

Q Amongst other people too? A It is good, I know so absolutely.

Q Do you know other people that had dealings with him? A Yes, sir.

Q From your knowledge and relationship with those other people did you hear ever any remarks made about this

2152

CASE # 3083

defendant? A No, sir.

Q Did anybody ever tell you or ever have any conversation with you with regard to this defendant's character or integrity not being what it ought to be? A No, sir; not that I know of.

Q But the various people with whom he has had business did they ever tell you anything against the defendant's character or reputation? A No, sir.

Q Did you loan this defendant money from time to time?

Objected to. Objection sustained.

CROSS EXAMINATION BY MR. WHALEN:

Q You are the president of the First National Finance Corporation? A Yes, sir.

Q 116 Nassau street? A Yes, sir.

Q Has that any connection with the First National Bank? A None whatsoever.

Q Is that a New York corporation? A A Delaware corporation.

Q How long in existence? A Possibly two years.

Q What is the business of the corporation? A Financing juvenile enterprises.

Q What is that? A Enterprises that are in their infancy.

Q A sort of a nursery for infant industries? A Furnishing capital for infant industries. At the present time we have a contract --

CASE #3083

Q Are you authorized to do business in New York State?

A Yes, sir.

Q Have you a certificate allowing you to do business in New York State? A I have beaause our lawyer takes care of all that.

Q You don't know whether you have or not? A No, I am not sure.

I R V I N G C O O N, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ISQUITA:

Q Where do you live? A 543 West 162nd street.

Q What is your occupation? A I am an appraiser of high art.

Q Do you know the defendant? A Yes, sir, I do.

Q How long? A About five years.

Q Do you know his reputation for honesty and veracity? A I do.

Q What is it? A As far as I have found he has always been honest with me.

Q Do you know other peope that have had dealings with him? A Yes, sir.

Q Did you ever hear anything derogatory or against this defendant's character, his honesty or veracity? A I never have.

Q Or his reputation? A No, sir, I never have.

CASE #3083

CROSS EXAMINATION BY MR. WHALEN:

Q Where are you in business? A 88 University Place.

Q Manhattan? A Yes, sir, greenwich Village.

Q You are an appraiser of high art. What do you mean by that? A Curios, antiques, pianos, musical instruments, and so forth.

Q You work for an auctioneer? A I am in business for myself.

BY MR. ISQUITA:

Q Did you ever loan money to this defendant? A I did.

Objected to. Objection sustained.

CHARLES J. SCULLY, a witness called on behalf of the defendant, being duly sworn, testified as follows:

(The witness states he lives at 546 80th street, Brooklyn.)

DIRECT EXAMINATION BY MR. ISQUITA:

Q What is your occupation? A I am special agent of the Department of Justice.

Q You had charge of the Red Squad during the war? A I did.

Q You still have charge? A Yes, sir.

Q How long have you known this defendant? A About a year.

Q Do you know the defendant's reputation for veracity and honesty? A As far as I know about this man he is all right; I know nothing against him.

CASE #3083

CROSS EXAMINATION BY MR. WHALEN:

Q Do you know anybody else that knows him? A No, sir-- yes, I do, Mr. Sette.

Q He is the only one you know? A Yes, sir, I know a man by the name of Zealander that knows him.

Q Did you ever discuss this defendant's reputation with those two men? A No, sir.

Q So that you don't know anything about his character or reputation except your own personal knowledge? A Yes.

Q Your own personal knowledge of dealings with Krause? A Yes, sir.

BY MR. ISQUITA:

Q Was he one of your operators? A No, sir.

Q He came into the department frequently did he not? A Yes, sir.

Q At various times Mr. Krause came with him? A I cannot recall whether Mr. krause ever came into the office with Mr. Zealander or not.

JESSE OBERDORSEER, a witness called on behalf of the defendant, being duly sworn, testified as follows:
(The witness states he lives at 2108 Harrison avenue, Bronx.)

DIRECT EXAMINATION BY MR. ISQUITA:

Q What is your occupation? A I am a hair goods salesman.

Q How long have you known this defendant? A About 7

CASE #3083

years.

Q Do you know other people that know him? A Yes, sir.

Q About how many? A About five or six.

Q In all the time that you knew this defendant what was his reputation for honesty and integrity? A I have always found him to be straightforward young fellow.

Q Did you ever have any conversation with any of the other people that know him or that you know with regard to anything that would be derogatory or injurious to this defendant's character or reputation? A None whatsoever.

Q How was he considered, how was his reputation and character considered by the other people and by yourself? A Unreproachable.

(No cross examination.)

SAMUEL SENATE, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ISQUITA:

Q Where do you live? A 1093 Kenmore Place, Brooklyn.

Q Your occupation? A A private detective.

Q Were you also a Deputy Sheriff in Bronx County?

A Yes, sir.

Q How long have you known this defendant? A About three or four years.

Q Do you know other people that know him? A Yes.

Q Have you had business dealings with him? A Some business dealings.

CASE #3083

Q In all the time that you know him or had dealings with him what has been his reputation and his character for honesty and veracity? A Well, I have always found him straight, honest and straightforward.

Q You have always found him to be all right? A Yes.

Q And other people that you know that he knows how did they find him as far as you know? A They found him all right.

Q Has anybody ever told you anything against this man's reputation or character? A No, sir.

(No cross examination.)

THE DEFENSE RESTS.

REBUTTAL.

EDWARD P. CULLEN, a witness for the People, recalled in rebuttal;

BY MR. WHALEN:

Q Mr. Cullen did you ever have any certificates of stock or certificates of any kind presented to you by Mr. Krause except the first certificate for 150 shares of Acme Coal? A No, sir, I did not.

Q Did he present any other papers to you of any kind with your signature on? A No, sir.

Q Did you ever have a conversation with Mr. Krause in a restaurant near Saks's? A Not that I remember of.

Q Do you know positively whether you did or not? A I do not.

CASE #3083

Q You did have a conversation with him at the Marlborough at lunch? A Yes, sir.

Q Now did you have any conversation with him relating to loaning him your stock at any time? A No, sir, none whatsoever.

Q You saw him every once in awhile, didn't you? A Yes.

Q About how often would you see him? A I should say up to the time in November, up to November why Mr. Krause came in very frequently.

Q Up to November, 1920? A Yes, sir, but after that I believe he came in about once a week.

Q Now did you ever have a conversation with Mr. Krause regarding the loan of your stock to him about the date of this letter, April 2nd? A No, sir, I did not.

Q Did you have any personal conversation with him relating to the contents of this letter, People's Exhibit 8? A No, sir.

CROSS EXAMINATION BY MR. ISQUITA:

Q You say that you did have luncheon with the defendant at the Marlborough, didn't you? A Yes, sir.

Q How many times before that did you see the defendant during each week?

THE COURT: I am not going to allow that to be gone into or the case will be re-opened. You will be held to cross examination on this rebuttal.

Q You did say you did not have lunch with the defend-

CASE #3083

ant at this restaurant near Saks? A No, sir, I did not.

Q Is there a restaurant there near Saks?

Objected to.

THE COURT: I suppose there are a dozen.

L E A H R U S S O, a witness called on behalf of the people,
in rebuttal, being duly sworn, testified as follows:

(The witness states she lives at 190 West 100th street.)

DIRECT EXAMINATION BY MR. WHALEN:

Q What is your occupation? A Transfer clerk for the
Acme Coal Mining Co.

Q Offices in New York? A Yes, sir, 20 Broad street.

Q Your duty is to transfer the stock of the Acme Coal
Co.? A Since the first of January, 1921.

Q The first of January, 1921? A Yes, sir.

Q Have you brought with you the record of the transfer
of shares of stock of the Acme Coal Company since June, 1920?
A Yes, sir.

Q Will you tell me if any stock was transferred into
the name of Edward P. Cullen in June or July, 1920?

MR. ISQUITA: I object to that. The witness did not
testify she had personal custody of the papers at that
time.

THE COURT: You will have to prove the record.

BY MR. WHALEN:

Q Have you produced the records here? A Yes, sir.

Q Are those the original records showing the transfer
of stock

CASE #3083

of stock of the Acme Coal Company? A These are the records which were sent to me by the Security Transfer and Registering Company who did the transferring at that time.; they were the transfer agents prior to the time of my appointment.

Q The Security Transfer and Registering Company?

A Yes, sir.

Q They are in your possession now? A Yes, sir, they are in my possession now.

Q These are the only records you have of the transfer of shares of stock of the Acme Coal Company since June, 1920?

A Yes, sir.

MR. ISQUITA: I object to that as not within the witness's knowledge.

THE COURT: It is within her knowledge whether those are the only records the company has.

THE WITNESS: They are the only records I have.

BY MR. WHALEN:

Q Can you state whether or not there is a record of the transfer of ~~the~~ stock into the name of Edward P. Cullen in June or July, 1920?

MR. ISQUITA: I object to that, if your Honor please, because this witness is not competent to testify; further that these records were not the records kept by an employee of this office at the time the records were made.

Objection sustained.

CASE # 3083

Q Have you taken personal charge of the transfer of the shares of stock of the Acme Coal Company since January 1, 1921? A Yes, sir.

Q Have you examined those records? A All of them.

Q Have you got them here? A Well, the record in this particular case was prior to that time,

Q I say have you the records since January 1st, 1921?

A Yes, sir, I have a record that would show this particular transfer at that time.

Q Have you got the record with you showing the transfer of shares of stock of Acme Coal Company since January 1, 1921?

A No, sir, I have not.

Q Have you examined those records? A Yes, sir.

Q Can you find any shares of stock transferred from the name of Edward P. Cullen since January 1, 1921? A I have not.

MR. ISQUITA: I object to that if your Honor please as not being within the issue.

THE COURT: The defendant testified that he sold this Acme stock for Mr. Cullen in March. I think this is proper.

MR. ISQUITA: The defendant did not testify that he sold that stock to this transfer agent. There is nothing shown by the District Attorney that all the stock must be transferred through this agent.

2162
CASE #3083

THE COURT: I suppose stock can be sold and not transferred on the books. I sustain the objection.

Q Do the original records in your possession show the transfer of any shares of stock of the Acme Coal Co. out of Edward P. Cullen prior to January 1, 1921? A They do.

MR. WHALEN: I object to that on the same ground.

Objection overruled. Exception.

MR. ISQUITA: I will withdraw the objection if the witness will testify that she has personal charge of these records.

THE COURT: She has already testified that the records were forwarded to her from another company and not kept by her.

BY MR. WHALEN:

Q Are you the only one who has charge of the transfer records of the Acme Coal Company? A At the present time?

Q Yes. A Well the transfer records, yes, sir.

Q That is what I want. Those records show the transfer of the stock? A Yes, sir.

Q All the records showing the transfer of stock are in your personal charge? A The transfer of stock, yes, sir.

Q You are the only one that attends to the record of transfer of shares of stock of the Acme Coal Company, is that right? A All transfers of stock. You understand that the registering is also done at the same time, but that is done

2193
CASE #3083

by somebody else at the present time; I simply attend to the transfer.

Q All stock is not registered? A Well ours is.

Q All of it? A Yes, sir.

Q Now do the records in your possession or in your testimony show the transfer of any shares of Acme Coal Company stock out of Edward P. Cullen during 1920?

MR. ISQUITA: I object to that question. This witness was not there in 1920, and didn't have charge of those records.

BY MR. WHALLEN:

Q Do the books of the company show at the present time whether Mr. Cullen is a stockholder or not? A Mr. Cullen is not a stockholder at the present time.; the books do not show that he is a stockholder.

Q Do they show when his stock was sold? A They do.

Q Have you consulted the original books? A The original book.

Q What was the date when his stock was sold or rather transferred? A Mr. Cullen's stock was transferred on September 7th and on September 13th.

Q How many shares? A 150 shares transferred September 7th.

Q What year? A 1920, and on September 13th, 1920 an additional hundred shares were transferred out of Mr. Cullen's name.

2167
CASE #3083

CROSS EXAMINATION BY MR. ISQUITA:

Q Do you know whether at any time Schwitt & Company had anything to do with Acme Coal? A Schwitt is the promoter of the issue.

Q You say you were not there until January 1st, 1921?

A I was there but I was not the transfer agent of the company.

Q You were not in charge? A No, sir.

Q You don't know anything of your own knowledge with regard to any transaction prior to January 1st, 1921? A I do know.

Q May I see that record? A Yes, sir.

Q These records are typewritten? A Yes, sir.

Q Did you do the typewriting yourself? A No, sir, I did not.

Q Was it done under your supervision? A No, sir, it was not.

Q Who did authorize the typewriting of these sheets?

A The Security Transfer and Registering Company do the typewriting. You weren't there when they were done, were you?

A No, sir, I was not.

Q You only saw those sheets after they were all made up -- and the first time you saw them was after the transfer company had turned those sheets over to your company? A Yes.

Q How long ago is that? A Well what sheets are you

CASE # 3083

referring to. If you are referring to the June sheets they were turned over to us on the day after they were typewritten in every instance.

Q Well the June sheets had nothing to do with this case, had they? A Well one set of sheets showed when he received the stock and one set of sheets showed when the stock was turned into his name.

Q When did you receive the september sheet? A On the day after the date on the sheet.

Q So that you received this sheet, September 8th, this first sheet? A If the date there is september 7th, I received it on September 8th.

Q And the other one september 14th? A Yes, sir, the day after the 13th.

Q So when they were received they were in the custody of somebody in your company for about four months before you got hold of them? A No, sir; I received them as soon as they were received by our office; they were turned over to me immediately.

Q How were those sheets sent to you? A By the mail.

Q By mail? A Yes, sir.

Q You don't know who handles them before they are sent to you? A You mean over at the company?

Q Yes. A Well, they have lots of employees over there.

Q You have lots of employees too, haven't you? A No, sir, we have not.

2166
CASE #3083

Q Do you receive this mail personally? A Well, I cannot say whether these particular sheets were received personally, but as a rule I do.

MR. ISQUITA: I ask that the witness's testimony be stricken out as not being strictly within her knowledge.

THE COURT: Motion denied.

Exception.

Q You don't know whether the Cullen mentioned in those sheets is the Cullen that is the complainant in this case, do you? A Only that the names are identical.

Q Do you know Mr. Cullen personally? A I do not.
BY THE COURT:

Q Is that the only Edward P. Cullen? A Edward P. Cullen, the only one on the books, yes, sir.

BY MR. ISQUITA:

Q Stock when it is sold may be sold to anybody and retained by anybody for any length of time before it comes to your company?

THE COURT: You do not need to ask this witness that. Everybody knows that.

Q Did you ever see these books of the Acme Coal Co.? A What books are you referring to? A The actual books of the issuance of the stock? A Yes, sir, of course.

Q Have you got those in your possession? A Yes, sir.

Q Those books show the transfer, don't they? A Transfers

2167
CASE # 3083

of stock? Yes.

Q Why didn't you bring those books with you? A Because they are too heavy; each one of them is an immense volume.

Q These sheets here are not taken from those Books, are they? A They are.

Q From the books themselves? A Yes, sir, from the books themselves.

Q Of the Acme Coal Company? A Yes, sir, of the Acme Coal Company.

Q Didn't you just tell me that those books or those sheets came from the Security Transfer Company, and not from the Acme Coal Company? A The sheets are made up by this Security Company and the Acme put them in a book that belongs to the Acme Coal Mining Company and not the Security.

Q There is a book owned by the Acme Coal Company in which they put in all their transfers, all their sales and all their purchases, is that right? A Yes, sir.

Q Now that sheet does not come from that book does it?
A Yes, sir, it does.

Q This sheet is not made up by anybody in the Acme Coal Company? A Not this particular sheet.

(TESTIMONY CLOSED.)

(At this point the Court admonishes the jury and takes a recess.)

AFTER RECESS:

MR. ISQUITA closes the case on behalf of the defendant
MR. WHALEN closes the case on behalf of the People.

CASE #3083

THE COURT'S CHARGE.

NOTT, J.- Gentlemen of the jury:

The defendant has been indicted by the Grand Jury of this County charged with grand larceny in the first degree. For reasons that I shall explain to you later I shall submit the case to you not as grand larceny in the first degree but as grand larceny in the second degree.

The count of the indictment that I shall submit to you charges that on or about the 10th day of March in the year 1921 in this County, the defendant was an agent, bailee and trustee of one Edward P. Cullen, and as such agent, bailee and trustee, had in his possession certain goods and personal property of the said Cullen, towit, a written instrument, namely, a stock certificate issued by a certain corporation called the Middle States Oil Corporation, for 20 shares of the stock of that corporation of the value of \$351 and also the sum of \$362.36 in money, and having such property in his possession as such agent, bailee and trustee, did feloniously and with intent to deprive the true owner of his property appropriate it to his own use.

That is the form of the indictment which has been filed against this defendant..

Grand Larceny in the first degree is the larceny of property of over \$500 in value, and therefore, you see to make this grand larceny in the first degree you would

CASE #3083

have to find that the defendant stole not only the stock certificates but the cash or money which had been realized from the sale of the Acme Oil stock. These two together would come to \$713 but each item, by itself, \$351 and \$362.36 is below \$500 and, therefore, if he only took one of those items he was not guilty of grand larceny in the first degree as the larceny of property under \$500 in value is only grand larceny in the second degree. Therefore, the defendant could not justly be charged nor could the People justly contend that he could have stolen both of those two forms of property. It appears from the people's own testimony that Mr. Cullen directed the defendant to sell this

Acme Coal and permitted him to spend the money by investing the money in the Middle States Oil Company stock. If the defendant, therefore, carried out Mr. Cullen's instructions, if he sold the Acme Coal and used the money to buy the Middle States Oil he did not steal the money. That is too plain for argument. If he carried out Mr. Cullen's instructions and did what he told him to do with the money, namely, buy the Middle States Oil he could not have stolen that money. On the other hand, suppose that he did not carry out Mr. Cullen's instructions as to purchasing this oil stock, or, in other words, he stole the money, he could have only done that by not buying the Middle States

CASE #3083

Oil as Mr. Cullen told him to. If he did not buy any Middle States Oil stock of course he could not have stolen it because he never had bought it and never had it in his possession. So it is perfectly evident that if Mr. Cullen never told him to invest the money, to sell the Acme Oil and spend the money in buying a certain stock he could not be guilty of both stealing that money and stealing the stock too. Now, the question then would be as to what he should be charged with, the larceny of the money, that is to say, the proceeds of the Acme Coal Company or with the larceny of the stock certificate of the Middle States Oil Company. There is some evidence in this case, if it is true -- and you are the only judges of that -- which tends to show that this defendant had disposed of at least 150 shares of the Acme Coal Company back in September. Mr. Cullen told him to do so. Now, that may have been an irregularity especially if the People's evidence is true that he did not report that sale at the time, at least, he did not report it until the following March. But nevertheless, even if he did sell it without an order and did not report the sale, yet if he was told later to sell it and apply the money in buying the Middle States Oil and he did apply the money in buying the Middle States Oil, why he did not steal the money. He had it in his possession irregularly for some months, but if he ultimately, on the order of Mr. Cullen, ap-

CASE #3083

plied the money in buying the Middle States Oil, why, there is no larceny of that money. The people have submitted no direct proof that he did not buy the Middle States Oil. On the other hand, there is direct proof in the case, supported by the defendant's written statement and his testimony on the stand that he did buy the Middle States Oil. Therefore, I shall not submit to you the charge that he stole this money because, as I say, if he invested the money in the Middle States Oil according to instructions he did not steal it. What I shall submit to you is the question whether he stole the stock certificate,-- whether having in his possession this stock certificate as the agent, bailee and trustee of Mr. Cullen, having Mr. Cullen's instructions to forward it to him and he converted it to his own use without Mr. Cullen's knowledge and consent. Now that, gentlemen, will bring this issue down to a very simple question. If this defendant was the agent, bailee and trustee of Mr. Cullen, that is, acting as his broker,-- and of that there is no dispute, -- and if he had this stock certificate in his possession, and he says that he did,-- then did he convert it to his own use? Again he says he did, he says he pledged it. Did he convert it to his own use with the knowledge and consent of Mr. Cullen or without his knowledge and consent and against his wishes, Now that is the disputed point. He says that Mr. Cullen

CASE #3083

made an arrangement with him and gave him express permission to take Mr. Cullen's property, his stock, and deal with it as he would, pledge it or loan it or anything else for the purpose of helping him out of financial embarrassment. Mr. Cullen says that that is not so, he never did anything of the sort, and that he did not know that this defendant was pledging his property or using it for his own purposes. That is the issue. If he, as agent, bailee and trustee of Mr. Cullen took Mr. Cullen's property, which he held in that capacity, and pledged it for his own use without Mr. Cullen's knowledge or consent, intending to defraud him, then he would be guilty of larceny; but if he converted it to his own use, with the knowledge and consent of Mr. Cullen then he has committed no offense.

You are the sole and exclusive judges of the facts of this case. You are sitting in the capacity of judges as much as I am. You have been chosen by both sides as fair judges. You are not sitting as lawyers of either side to either convict or acquit the defendant. You are sitting here as judges to weigh the evidence and make up your minds whether the facts disclose him to be guilty or not guilty. As judges of the facts you are the only judges of the credibility of witnesses, where the truth lies and where there is a conflict of evidence.

CASE # 3083

You have seen the witnesses on the stand, you have heard them testify and you have heard the explanations they have given. You have heard them testify as to their version of the transaction and it is for you to bring your own common sense and knowledge of human nature to bear in making up your minds who is telling the truth. You may consider the motive or interest any witness may have to testify falsely or truly. You may consider whether any witness is corroborated or contradicted by the ^{written} evidence in the case or by other verbal testimony. You may consider all these things as common sense men in making up your minds as to who is telling the truth.

The defendant has called certain witnesses who have testified that hitherto his reputation for honesty has been good. That is a factor that you should consider in the case. The Court of Appeals has held that evidence of good reputation may create a reasonable doubt where without it there would be no reasonable doubt of guilt,-- but whether it does or not is always for the jury to say. Testimony as to good character is not submitted on the theory that it is a defense in itself. A man cannot say "yes, I committed this act, but I ought to be acquitted because my previous character is good." That is not so. Everybody is bound to obey the law. If a person of good character breaks it why he is amenable to the law. The

CASE #3083

evidence is only submitted on the theory of enabling the jury to make up their minds, whether in the light of that evidence, the defendant is guilty or not. Of course the first thing for you to make up your minds upon, as I say, is the weight you will attach to the evidence of character these good witnesses,-- what sort of men they are, how far you will trust them and whether they know what the defendant's real character and reputation is. If you find that the defendant's good reputation has been established why then you should consider that with all the other evidence in the case on the question of his guilt or innocence. The defendant is presumed to be innocent until his guilt is established, and it is not proved in the eye of the law, until proved beyond a reasonable doubt. That is to say the defendant is entitled to the benefit of a reasonable doubt and if it exists to an acquittal; but if proven guilty beyond a reasonable doubt then he is guilty and should be convicted. Proving a man guilty beyond a reasonable doubt is not the same thing as having to prove him guilty beyond every possible or imaginable doubt. The mind of man can always imagine doubt or conceive of a doubt on any proposition. It would be practically impossible to prove any case beyond every imaginable or conceivable doubt. In other words you cannot prove a case to a mathematical and absolute certainty. The law does not re-

CASE #3083

quire that. But a case may be proved to a reasonable certainty, such a reasonable certainty as you would feel justified in going ahead on and acting on in your own very important affairs. The law says that a case need not be proven to a mathematical and absolute certainty; it must be proved to a reasonable certainty in order to convict.

Now with these preliminary matters charged I will read you the definition of the law of larceny set out in this count. This form of larceny, gentlemen, formerly used to be known as embezzlement, a separate crime. But under the laws of our State it is made one form of larceny and it is defined as follows: "A person who with intent to deprive and defraud the true owner of his property and to appropriate the same to the use of the taker having in his possession custody or control as bailee, agent or trustee of any person any money, property or article of value of any sort appropriates the same to his own use has stolen such property and is guilty of larceny." You see, therefore, that in the first place it must be established that a certain relationship existed between the defendant and the owner of the property, namely Cullen, the relationship of trustee or agent. There must be an agency or trusteeship or what the law calls a bailment. The relations between a broker and his client falls within one

CASE #3083

of these relations. It is testified here that that relationship existed. The defendant does not say that he came into that property originally for his own benefit or that the stock was his. He admits that when he got it he got it as the agent or broker of Mr. Cullen. The second thing to be proved, after you prove that that relation existed, is that the property came lawfully into the possession of the defendant in that character, that is, to say, that being the agent of the complainant he became possessed of the complainant's property to deal with as an agent. That is not disputed here. The third thing to be shown is that having that property in his possession as an agent he appropriated it to his own use. As I said before that is not disputed. The defendant says that he did have that property in his possession as a broker or agent of Mr. Cullen and that at some time in March he did appropriate it to his own use by raising money on it for his own benefit, by pledging it for a loan. The thing that is in dispute is when he did that did he, in the words of the Statute, do it with intent to deprive and defraud the true owner of his property. In other words did he do it with the knowledge and consent of Mr. Cullen, lawfully, with an honest intent or did he do it intending to defraud Mr. Cullen of his property without Mr. Cullen's knowledge and consent. That is the matter,

2177

CASE # 3083

as I say, that is in dispute. On that you have all the evidence of these parties. You have heard this correspondence read and a certain number of letters from Mr. Cullen to the defendant have been put in evidence. Of course he testified that he mailed the originals of those letters in the regular course, but the defendant denies that he received them except, I think he admits receiving two. Of course if he did not receive them why those letters are not binding on the defendant in any way. If he did receive them then you are to take the two that he admits receiving and the letters from him to Cullen which have been put in evidence. You may consider the stories of the two parties in the light of these letters. You will also take into consideration the written confirmation or report that the defendant admits he sent to Cullen. In one report, dated March 10th, he reported the sale of Acme Coal and Meridian Oil for a certain amount, and on the same date he reports the purchase of this Middle States Oil and in his handwriting underneath the figures are the words "will deliver as soon as possible" or to that effect. He says that before that date Cullen had agreed that he could deal with Cullen's property by way of pledge or loan or any other way he saw fit, but, he says, apparently Cullen revoked that arrangement because he did tell him to sell the Acme Coal and to buy the Middle States Oil but he says

CASE #3083

that Cullen after he had bought the Middle states Oil then cullen restored this consent to a loan or a pledge . Cullen denies that and a long letter from the defendant has been put in evidence which he says was written to clarify the situation, to put in black and white exactly what it was, to make it evident that there was this agreement for him to use this property. You may consider that letter as to whether it bears out that contention or whether the letter bears out the contention of Mr. Cullen that he never gave permission to this man to deal with his property as he saw fit but consistently told him to turn it over to him as soon as possible. All these matters you may take into consideration.

There is one other matter I should call your attention to and that is this so-called brown transaction. As I have left the case to you, gentlemen, you see it turns largely on the question of the fraudulent intent, whether the defendant had a felonious intent to cheat Cullen or acted with cullen's knowledge or not. Now the law says that you cannot prove a man to be guilty of one crime simply by proving him guilty of another even if they are much alike because he may have committed one and not the other. But where a man's intent is in issue, where the question is was he acting honestly, with an honest mind, or

CASE #3083

was he making an honest mistake, or, on the other hand, was he acting with a fraudulent mind, simply on the question of intent. what his intention was in the case on trial, you can prove that in another instance he did practically the same thing by the same means at about the same time. Now the reason of that is as I may illustrate: It is not allowed in every class of case. One of the classes of cases in which it is allowed is the passing of counterfeit money. Suppose a man is on trial for passing a counterfeit bill and says, "Yes, I passed that bill, but I had no fraudulent intent, I did not know it was counterfeit." If there is nothing else except the fact that he passed that one bill why the jury will have to judge of his intent as best they can from all the surrounding circumstances. They could not convict him unless they find he passed the bill knowing it to be counterfeit. But suppose the prosecution put in proof that on numerous other occasions, closely connected in point of time, he passed similar counterfeit bills then the jury would have that to consider in making up their minds what the defendant's state of mind was when he passed the counterfeit bill for which he was being tried. The jury could not say that because he passed these other bills.

2160
CASE #3083

that they would find that he passed this counterfeit bill. They have got to prove that he passed the bill independent of the similar instance. But the jury may say in looking into his mind we will take into consideration the fact that he passed other bills at about the same time." That is the purpose for which this evidence is admitted here. You should not say, even if you find it to be a fact that the defendant may have defrauded Brown, that that shows that he defrauded Cullen, but in making up your minds as to what the intention was, whether he had the intent in his mind to act dishonestly and to steal, you may consider whether he had a similar intent and manifested it by similar means in the Brown case. Now of course the defendant contends that there is no dishonesty whatever committed in the Brown case. That is the first thing for you to determine. If you find that his dealings with Brown were honest that ends that and it is of no weight at all in this case. If, on the other hand, you find that he did embezzle Brown's stock fraudulently then you may consider whether or not that throws any light on the intent in his mind in dealing with Cullen's stock. Brown says that he directed this man to sell certain stock and take the proceeds and buy other stock; that the defendant admitted he bought the other stock but never gave it to him nor accounted for the money but used it for his own pur-

CASE #3083

pose. The defendant's contention, however, is that that was a marginal transaction, and that the proceeds of Brown's original stock was used only as margin, that Brown never paid in full and his stock went down and the margins were to be used to protect himself and he never gave the stock to Brown. Of course, if that is so why there was no dishonesty involved, but that is for you to say.

I think, gentlemen, that comprises the law in the case. As I say again it is for you to say whether this defendant as the agent of Cullen came into the possession of Cullen's property, towit, this stock certificate of 27 shares of Middle States Oil corporation and whether having it in his possession he appropriated it to his own use intending thereby to deprive and defraud the true owner of his property.

Any requests or exceptions?

MR. ISQUITA: I ask the Court to charge the jury that if the jury find that it is a custom for a broker not to place his client's stock in the client's name, but to retain it in his own name and if there is no demand made for this stock and if they find this situation here there was no larceny, and they should find a verdict for the defendant.

THE COURT: Gentlemen as to that I charge you that it won't make any difference whether this stock was trans-

CASE #3083

ferred on the books of the company into the name of Cullen or not. If he got a stock certificate for Cullen's benefit that would be Cullen's property whether the defendant had it transferred on the books of the company or not. Of course he could not have stolen it without a demand made for it. So if Cullen simply told him to buy it and keep it and he kept it and never turned it over, that is one thing, but if Cullen directed him to deliver the stock to him and he did not why that would be another thing.

MR. ISQUITA: I ask the Court to charge that if the defendant had disposed of or pledged the stock with Cullen's consent to another why then there is no larceny.

THE COURT: I have already charged that.

MR. ISQUITA: I ask your Honor to charge that if the jury find that there is a reasonable doubt in their minds as to whether or not there was an intent on the part of the defendant to defraud Cullen -- if there was no intent to defraud Cullen they should find for the defendant.

THE COURT: Yes, I have already charged that. You must find all the essential ingredients of the crime beyond a reasonable doubt.

MR. ISQUITA: I ask the Court to charge that if the jury find there was a new relationship created by the agreement to accept the additional stock in place of that owned by Cullen that then that created a contractual

CASE #3083

obligation and there is no larceny.

THE COURT: I refuse to so charge. That would depend on the date. I say on that, gentlemen, that if this defendant sold that stock on or about March 10th, and if Cullen subsequently agreed to give him time to replace it which the defendant promised to do and put in more stock than the original certificate that would not affect the larceny. If a larceny was committed it was committed and any action on Cullen's part in giving the defendant more time to replace the property would not change the character of the original act.

Exception.

MR. ISQUITA: Now I will ask the Court to charge that the rulings of the Court are not to be considered by the jury.

THE COURT: I don't exactly understand that.

MR. ISQUITA: That any rulings by the Court are not to be considered by the jury in their consideration of the merits of the case.

THE COURT: They will only be considered as rulings letting in or keeping out evidence. Evidence was either excluded or admitted.

MR. ISQUITA: I ask the Court to charge that if the jury find that a witness testified falsely in one respect they may believe he testified falsely in other re-

CASE #3083

spects and will disregard his testimony.

THE COURT: The rule is that if the jury find that any witness on either side has wilfully and intentionally testified falsely on a material point in the case they are at liberty if they wish to, to throw out all that witness's evidence.

MR. ISQUITA: I ask the Court to charge that if the jury find that there was no relation of client and broker existing after March 10th the date alleged in the indictment, between Cullen and this defendant then there is no larceny and they should find for the defendant.

THE COURT: If they find that on the date when the defendant pledged this stock there was no relation of client and broker I so charge.

MR. ISQUITA: I ask the Court to charge that if the letters written by the defendant Cullen are not found to be direct replies or responses to those letters or copies of letters introduced in evidence by Cullen then the letters sent by Cullen are not to be found as having been received by the defendant and should be disregarded.

THE COURT: I have already charged the jury that they are not to regard those copies of letters unless they find they were received by the defendant.

MR. ISQUITA: I ask the Court to charge that the parallel of the passing of counterfeit money set forth

CASE #3083

by the Court in his charge to the jury should not be considered by the jury as in any way binding in their consideration of this case, but only as explanatory of the law as to the similarity of intent.

THE COURT: I so charge.

MR. ISQUITA: I ask the Court to charge that if the jury find that Cullen at any time asked the defendant to sell the Acme Coal they are to disregard the entire testimony of the last witness for the people as not being within the issues of larceny.

THE COURT: I have already explained to the jury that if the Acme stock was sold prior to the time it was ordered to be sold no larceny could arise out of that, if he subsequently used the proceeds of that sale in accordance with Cullen's directions.

MR. ISQUITA: I ask the Court to charge that if the jury find that any of the papers produced in the Magistrate's Court by Brown were produced here and would have been beneficial to the defense then they are to disregard the testimony of Dr. Brown.

THE COURT: I do not understand that request. I refuse to charge it in that language.

Exception.

MR. ISQUITA: I ask the Court to charge that if the jury find that if the letters were produced by Dr. Brown

CASE #3083

and if such letters were beneficial to the defense they are to regard them as beneficial to the defense.

THE COURT: I do not know what that means. I refuse to charge in that language.

MR. ISQUITA: I ask the Court to charge that if Dr. Brown had produced those letters, confirmations and receipts and if the jury believe that such letters, receipts and confirmations would have been of benefit to the defendant and for that reason not produced by Dr. Brown then they are to consider them as beneficial to the defense.

THE COURT: You ask me to charge if Dr. Brown had produced a letter which he has not produced -- I don't see that there is anything to charge there.

MR. ISQUITA: I ask the Court to charge that the fact that Dr. Brown did not produce the letters may create and does create a reasonable doubt as to the veracity of Dr. Brown's statement.

THE COURT: I refuse to charge that. He says that the letters were turned over at the Magistrate's Court. If that is so he would not have it in his power to produce them.

Exception.

MR. ISQUITA: I ask the Court to charge that if the jury find that Dr. Brown's transaction is not similar to that between the defendant and Cullen that they are to

CASE #3083

disregard the entire testimony of Dr. Brown.

THE COURT: I so charge.

MR. ISQUITA: I ask the Court to charge that the defendant is entitled to every reasonable doubt and if the jury find any reasonable doubt or if the case is not proved beyond a reasonable doubt that they are to find for the defendant.

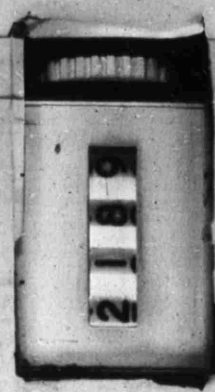
THE COURT: I so charge. Your verdict will be guilty either of grand larceny in the second degree or not guilty according as you find the facts.

(By consent the jury take the exhibits in the case.)

(The jury return a verdict of guilty of grand larceny in the second degree with a recommendation to the clemency of the Court.)

(The defendant remanded to January 20th, 1922.)

CASE # 3083



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CASES 3066 **TO** 3083

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