

The image features a high-contrast black and white design. At the top, the word "START" is written in a bold, sans-serif font. Below it is a large white rectangular area. At the bottom, the word "CASE" is written in the same bold, sans-serif font. The entire composition is framed by thick, diagonal black and white stripes that create a sense of depth and movement, reminiscent of a 3D effect or a warning sign.

START

417

CASE

I N D E X

	Direct	Cross	Re-Direct	Re-Cross
Stewart V. Coles	10	28	36	37
Alfred J. Roser	40	74	90	
Charles N. Post	92	97	99	99
Daniel Leary	100	103	106	
George E. Moon	110	119	121	
Benjamin Graham	121			
William Ashcroft	129			
Amos G. Cheseboro	130	138		
George T. Moon	139			
Clarence Mitchell	150	157		
Patrick O'Brien	166	172		
Adolph Anderson	177	181	186	
Carrie Anderson	187	190		
Charles D. Kiersted	190	194		
Summing up for People	203			
Court's Charge	217			

COURT OF GENERAL SESSIONS OF THE PEACE

CITY AND COUNTY OF NEW YORK

PART II

Before

Hon. JOHN W. GOFF, R., and a Jury

-----X
: THE PEOPLE :
: :
: VS. :
: :
CLARENCE MITCHELL, PATRICK :
O'BRIEN, ADOLPH ANDERSON, :
CHARLES KIERSTED and MICHAEL :
LONG :
: :
-----X

Tried, New York, March 21, etc., 1904.

Indicted for Grand Larceny in the Second Degree.

Indictment filed January 18, 1904.

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

Asst. District Attorney MARSHALL B. CLARKE, for the People;
WAUHOPE LYNN, Esq., and MESSRS PRICE & HOYER, for the Defense.

Frank S. Beard,

Official Stenographer.

OPENING ADDRESS FOR THE PEOPLE
of
ASSISTANT DISTRICT ATTORNEY MARSHALL B. CLARKE.

If your Honor please:

Gentlemen of the Jury,

These five defendants, Clarence Mitchell, Patrick O'Brien, Adolph Anderson, Charles Kiersted and Michael Long, who are here in the order that I have named, stand charged by the Grand Jury of this County with the crime of Grand Larceny in the Second Degree.

Now, the specific facts which we propose to lay before you, in this particular case, are briefly these:

Cheseboro Brothers are, perhaps, the largest importers of western fish in this city, or in the East. They have their place of business in a market on the East River in the County of New York, known as the Fulton Wholesale Fish Market, and they are the proprietors or owners of a stand in that market, and the men who do business there are organized in an association, known as the Wholesale Fish Dealers Association, and each of them have a place of business in this general market building, which is on a dock or pier of this city, where an enormous business is done in fish; and Cheseboro

Brothers do, perhaps, the largest business of all the fish merchants there, especially in importing western fish, and particularly in a kind of fish known as western halibut, and other large fish, which are shipped on here in boxes, in which four or five hundred pounds of halibut are contained, together with ice, to preserve them during the trip, and they are shipped in railroad cars, consigned to Chesebore Brothers.

Now, such a carload of halibut arrived in Jersey City, in December last, consigned to Chesebore Brothers, each box containing between four and five hundred pounds of fish and ice.

Now, the defendant Mitchell is employed and one of the other defendants, O'Brien, I believe, is also, employed by the firm of Post & Co., who are truckmen, and they are employed in turn by Chesebore Brothers, in order to get this fish from the cars in Jersey City over to the Fish Market.

On or about the 23rd of December last, Mitchell went to Jersey City, with his truck, and got some eighteen of these large boxes, filled with halibut, and brought them over to the fish market, where they were to be delivered.

It was in the night time when he made this trip;

and they bring them over in the night time, so as to have them ready for the morning market; and he brought them to where they were to be delivered to Chesebore Brothers, on the dock.

Now, on this occasion he was assisted by the man O'Brien, who was, also, an employee of Post & Co., and was called a platform man, that is, he does not go on the trucks, but, when the fish is brought to the market, he attends to the unloading and the placing of them in their proper place.

Now, suffice it to say that suspicion had been aroused that something was not right; and, on the particular night in question, the Fish Mongers Association had stationed in an oyster boat, moored right alongside of this market, which, by the way, was well lighted, because they do business at night there, a great deal--this oyster boat was a covered boat, with small windows in it, overlooking the pier--two detectives, who had been retained and hired by the Association, and who had been concealed there for several nights before that, watching from this oyster boat the operations of the men loading and unloading fish.

And so, on the night in question, when Mitchell drove up there with his truck, loaded with eighteen boxes

of halibut, consigned to Cheseboro Brothers, we have there, on the lookout, watching to see what is done with the fish, two competent detectives, retained and paid, and posted there with permission from the owner of the oyster boat, and with his knowledge, for the purpose of watching and seeing what information they could get as to whether any fish was stolen, and in what way.

While they were watching in this darkened oyster boat, through these little windows, which gave them a clear field view of the pier and the building, of the whole place, in fact, Mitchell's truck comes down the street about one o'clock, Mitchell driving.

He drives out on to the pier, O'Brien joins him, and the other men, at one stage or the other of the operations, come out there, and, after they had done some other work, and opened several other packages there, they attacked the main proposition, namely, the eighteen boxes of halibut, which Mitchell had brought there.

Now, we will contend that they had no right to open them, that they were shipped in closed packages, and that Mitchell's duty ended when he brought them there, and delivered them to the people to whom they were consigned; and that O'Brien's duty ended when he assisted in getting them off the truck; and that Long's and

Kiersted's duties, if they had any duties at all, ended when they assisted in getting the fish off the truck.

Well, but what did they do?

Mitchell, having shoved a box down towards the rear of the truck, and the others having assisted him in getting it off on to the dock, they then looked around, to see if there was anybody connected with the Fish Market there, who would observe them, and, not seeing any one, and not knowing that the two detectives were concealed in the oyster boat, they proceeded to open a box, and take out a large halibut, an enormous fish, and, having tied the cover up, they took out one of these fish and put it in an empty box on the pier, and then nailed down the lid of the box from which they had taken the fish.

In this way they opened fourteen boxes, and removed from each box one large halibut, and put it in the empty box, or what had been the empty box at the start; so that the empty box was filled at the end of the operation with large halibut.

And we will show by an expert the total value of the halibut taken, in this way, from the fourteen boxes exceeding in value \$45, and making this case a case of grand larceny in the second degree.

Now, a peculiarity of this fish trade which

makes it very difficult to discover these thefts, and which would have enabled these thefts to be carried on indefinitely, if the perpetrators had not been watched and arrested as was done in this case, is that, the fish being shipped in Tacoma, Washington, it is necessary to put one hundred or one hundred and fifty pounds of ice in each case to preserve the fish, so it is not the custom to weigh the fish until it reached Cheseboro Brothers, because, when they get the fish here the ice is almost melted; and so they, therefore, credit the consignor only with the weight of the fish, weighed apart from what remains of the ice.

So that the stolen fish would not be missed, a fish being taken from each case, because no weighing was done at the other end; and no comparison could be made here with the weight taken at Tacoma, and the discovery made that fish had been taken out.

As matter of fact, however, suspicion was aroused, and this watch was set, and this particular operation went on the view of the detectives.

Now, we have a searchlight thrown on only one operation there, on this night; but we saw these five men working there in concert, opening these packages, which were consigned to and were in the hands of the truckmen

representing Chesebore Brothers, and which they had no right to open, and assisting other men in taking the fish from each of the fourteen packages, that is, the two men who had the right to handle the packages.

Now, having gotten a fish out of each of the fourteen packages that I have spoken of, and filled the originally empty box, the other four boxes were not disturbed, because they had then a box filled.

And that box was then put on a truck, the truck of Kiersted; and he drove it over to the other side of South Street, and left it in front of a fish store.

And the detectives went over there, after the men had gone away and identified the box as the box they had seen filled by these men, on the pier.

Now, we claim that all these men are principals, working together for the common purpose of depriving Chesebore Brothers, the lawful custodians of this fish, of the possession of it.

What was to be done with the box of fish at the fish store to which it was taken, we do not know and do not care.

We claim that the crime committed by the defendants at the bar was complete when the box of fish was taken surreptitiously from the pier, from the possession

of the true owner.

We have here other men, who saw the detectives watching there, and saw what was going on, in another way; and we have the evidence of the detectives as to what they saw there, on other nights, showing that this is not a mere coincidence that we happen to have detectives there on the night this happened, and showing a perfect knowledge on the part of these men as to what was being done, and none of them can plead ignorance.

And there is no mistake of identity here, because the detectives were careful afterwards to get the names of all the men that they saw there that night, and to identify them subsequently; and these men being there and acting in concert, we shall claim that they are all equally guilty.

MR LYNN: It appears, in this case, that some private detectives are employed, and we think that, while one is called the others might be excluded from the court room.

THE COURT: Yes.

MR LYNN: I will extend the same courtesy to Mr Clarke, if he asks it as to the defendants, that is, if he can ask it legally.

MR CLARKE: No; I couldn't ask that. All the defendants must be present at all times during the trial.

THE PEOPLE'S TESTIMONY.

STEWART V. COLES, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CLARKE:

Q Where do you live, Mr. Coles? A I live in Brooklyn.

Q Well, whereabouts in Brooklyn? A 51 McKay Place.

Q Have you some trouble with your voice? A A bronchial affection, yes, sir.

Q What is your business? A Detective, private detective.

Q Who are you employed by? A J. E. Orr, 375 Fulton Street, Brooklyn.

Q Is that known as Orr's Detective Agency? A Yes, sir.

Q 375 Fulton Street, Brooklyn? A Yes, sir; the Germanic Building.

Q Now, when did you first visit the Fulton Fish Market, in the City and County of New York? A On the morning of the 21st of November.

Q The 21st of November? A Yes, sir.

Q 1903? A Yes, sir.

Q How many times after that did you visit it?

A Twice. On the morning of the 21st of December.

Q You said the 21st of November? A Yes, sir; that's

right. The 21st of November, and then, again, on the morning of the 21st of December.

Q A month later? A Yes, sir. I was changed to something else, and, on the morning of the 23rd of December I went there again.

Q On the morning of the 23rd of December? A Yes, sir.

Q Now, take it on the 21st of December. At what time did you go there? A About eleven o'clock.

Q Eleven o'clock at night? A Yes, sir.

Q On what part of the pier did you go? A On the oyster boat.

Q Where is that? A It is right opposite the bulkhead of the Fulton Fish Market. It is moored at the bulkhead at South Street, and there is a plank on which you can walk right onto the boat, from South Street.

Q It is moored right alongside of the pier of the Fulton Fish Market Association? A That's the idea, exactly.

Q Who did you go there with? A Mr. Eberle, on that night.

Q Who is he? A He is in the same business.

Q And how long were you there that night? A Until three o'clock, the next morning.

Q Did you see any one of these defendants there, that morning? A Yes, sir; the whole five.

Q Which ones? A I saw Mitchell there, Mr. O'Brien,

Mr. Casey and Michael Long.

Q And that was the early morning of the 21st of December?

A Of November.

Q I asked you to take only the 21st of December?

A Oh. There was only three there, that morning, O'Brien, Anderson and Long and Mitchell.

Q Well, that is four. A Yes, sir.

Q Now, weren't you there on the 22nd? A No; I was not there on the 22nd. I was there on the 23rd.

Q You skipped a day, then? A Yes, sir. On the morning of the 23rd.

MR. LYNN: What is the date of the indictment?

MR. CLARKE: The 23rd.

BY MR. CLARKE:

Q Now, what morning are you speaking of now? A I went there the night of the 20th, and stayed there until the early morning of the 21st.

Q And how many did you see there then? A Only three, that morning.

Q Who were they? A Anderson, O'Brien and Long.

Q And what did you see them doing there? A Why, they were going through barrels of fish there.

MR. LYNN: It seems to me that I should enter an objection as to what he saw them doing on the morning of the 21st. They might have been stealing chickens,

your Honor, which is not at all material to this case.

MR. CLARKE: Oh, it was only to preserve the chronological order of the case, your Honor.

BY MR. CLARKE:

Q Well, did you see them doing anything in regard to any packages of fish? A Yes, sir; they were opening barrels of fish.

Q Who did you see doing that? A I saw O'Brien and "Red" -- Anderson, I should say.

Q Is Anderson known as "Red"? A Yes, sir.

Q Where was Mitchell at the time? A I don't know. He was not there.

Q And what was Long doing, at the time? A He was keeping watch.

Q Where was he?

MR. LYNN: Now, your Honor, that seems to me utterly unfair, that he was keeping watch.

THE COURT: Yes. Objection sustained.

BY MR. CLARKE:

Q What was he doing?

MR. LYNN: It seems to me, your Honor, that he is attempting to prove a larceny, on the morning of the 21st, which is no part of the indictment that we are trying here.

MR. CLARKE: It comes under a well known rule, your

Honor.

MR. LYNN: But he is trying to show another crime, your Honor, the three of these men committed another crime, on the 21st.

THE COURT: But the defendants cannot be injured or prejudiced by that. It is only to show their acquaintanceship or relationship with each other, I apprehend.

MR. CLARKE: Yes, sir. That is it.

BY MR. CLARKE:

Q Did you see them open any barrels, that morning, do you say? A Yes, sir.

Q How many barrels? A Oh, about 30 barrels, I think.

Q Did you see them take anything out of them, out of the barrels?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY THE COURT:

Q Did you ever see these five defendants together, at or about this time, the 23rd of December? A Yes, sir.

Q At what time? A At 1:25 in the morning.

Q In the morning of what? A Of the 23rd day of December.

Q Now, where did you see them together? A On the dock, on the Beekman Street dock.

BY MR. CLARKE:

Q That is, the Fish Market? A Yes, sir; right there.
BY THE COURT:

Q At about what time? A About 1:25.

THE COURT: The witness speaks so low and so indistinctly that I could not understand what he said, and therefore I have had to question him.

BY THE COURT:

Q Were they standing in a group, or scattered? A Well, the truck came there, at that time, with these eighteen boxes of fish, and they came from the inside of the market. That's the way I have to explain it.

BY MR. CLARKE:

Q And who was on the truck? A Mitchell.

Q Now, this is the early morning of the 23rd? A Yes, sir.

Q And where did the other four men come from? A From the market.

Q From the building there? A From the market, across here (Indicating)?

Q Now, where did the truck come from? A It drove down the dock.

Q On the dock? A Yes, sir.

Q The open part? A Yes, sir.

Q Now, is there also a covered portion? A Yes, sir. That is the market proper. This is only the dock (Illustrating), and the others came out of the market proper.

Q Did they come out together, or separately? A Well, they all streamed out together.

Q They came out separately, then? A Yes, sir; one after the other.

Q Did they speak to Mitchell, who was on the truck?
A Certainly; they were talking.

Q We don't know about that, you know; we were not there. A Yes, sir; they talked.

Q Well, did they get close to him, or far away? A Well, they got to the tail of the truck.

MR. CLARKE: Now, if your Honor please, that establishes what he saw that night. I was going to lead up to it by showing what he saw on the previous night.

BY MR. CLARKE:

Q Now, on the early morning of the 21st of December, which you were testifying about, a moment ago, I asked you if you saw the defendants that you say you saw there with Long, take anything from these barrels? A Yes, sir.

Q What was it? A Fish.

MR. LYNN: And that is the feature, your Honor, that I object to.

THE COURT: No. Follow up your examination as to the 23rd. Come down to that date.

BY MR. CLARKE:

Q You went there next on the 23rd? A Yes, sir.

Q Who went there with you, that night? A Mr. Roser.

Q Is he employed in the same detective agency? A Yes, sir.

Q Did you go there together? A No, sir; within five minutes of each other.

Q Who went there first? A I did.

Q Where did you go? A Aboard of the barge.

Q Who let you in? A We let ourselves in.

Q Did you have keys? A No, sir. The door had been left unlocked.

Q And you just walked in? A Yes, sir.

Q What time was that? A 11:30.

Q On the night of the 22nd? A Yes, sir.

Q How long afterwards did Roser come there? A Five or six minutes.

Q Who did you see inside of the oyster barge?

A An old colored man that they call "Uncle Ben".

Q What does he do there? A He lives on the barge.

Q Well, what did you do, when you got inside? A We got inside, and went upstairs, and went to the first window nearest South Street.

Q And did you both stand at the same window, or at other windows? A Yes, sir; at the same window.

Q How large is the window? A About that large, about that high, I suppose (illustrating).

Q About how long? A That long (illustrating). It was originally a window, but they put signs on the side of the boat, and that is cut out of what the window proper should be, as I understand.

Q Well, you could see the pier through there? A Yes, sir.

Q Was there any light there? A Yes, sir; a light from the market, and also from the market on the other side, Beekman Street.

Q What sort of light? A Electric light.

Q Was there any light in this part of the boat where you were? A No, sir; not in the room where we were.

Q And how long were you there before anyone came?

A The first person I saw was at about ten past twelve; I saw O'Brien and Casey .

Q O'Brien and Casey? A The man with the light brown mustache, (indicating) and the one with the gray hair.

Q Kiersted, you mean? A Yes, sir; I mean Kiersted, instead of Casey. They stood right in the open, and Casey --

Q Kiersted, you mean? A Yes, sir; Kiersted; had a crow bar about three foot long, and O'Brien brought an empty barrel, and Kiersted put it on the top of a tier of barrels, and O'Brien was watching down near the other end of the dock, that is, down towards Fulton Street.

MR. LYNN: I object to the word "watching".

THE COURT: Yes. Strike that out.

A (Answer continued) Well, looking down that way, then.

And Kiersted would take a barrel of fish, and turn it up on the head, and he would take this crow bar and throw it in, and knock out the bottom of the barrel, and take out a fish, and throw it up to the other empty barrel.

MR. LYNN: Now, I urge, your Honor, that they are trying to prove another larceny.

MR. CLARKE: These two did something first. It isn't our fault, if they did.

BY THE COURT:

Q This was on the morning of the 23rd? A Yes, sir.

BY MR. CLARKE:

Q Well, they worked over the barrels there? A Yes, sir.

Q How many barrels? A Ten or twelve. So that they filled the empty barrel. They would stop occasionally, because somebody apparently would come up the dock. And, at one time, Mr. Moon -- I don't know what his business is exactly -- he came down the dock; and these two people would watch this way and that way (Illustrating), and when he walked on, they would continue operations.

MR. LYNN: I object to that, that they would continue operations, and ask that it be stricken out.

THE COURT: No. This will not do. Strike it all out.

BY THE COURT:

Q Witness, have you not been drinking, to-day?

A No, sir. I had a glass of beer for my dinner.

Q No more? A No, sir.

BY MR. CLARKE:

Q Now, after this, did you see any of the other defendants? A Yes, sir; later on.

Q Which ones? A Mitchell, "Red" and Long.

Q Who is "Red"? A Anderson.

Q Where did Anderson and Long come from? A From the market.

Q And where did Mitchell come from? A He was on the truck, driving his truck.

Q What time did he come there? A 1:25.

Q Now, tell us where the others were when he came on his truck? A At 1:25 Kiersted had his truck on the market side, and he had this barrel of fish that they had taken, and another box, and Long said to him, "Are you coming out?" And Kiersted said, "Yes", and he pulls out in front of the market; and then Mitchell drives down, and turns around, and partly backs in a little, so that his horses were just about off the pavement, see, on the dock.

Q No, I don't see very well. I was not there. Now, when did Mitchell come there? A I say, at 1:25 Mitchell drove down on his truck, and asked Kiersted if he was going

to pull out, and Kiersted pulled out, and allowed Mitchell to get down in his place, alongside of the oyster boat.

Q Now, how near was he to where you were standing, with Roser? A About fifteen feet, from where we were standing down to where they were.

Q Were you above them, or to the left or right of the truck? A That is the truck, facing the street (Illustrating).

Q No. I mean, as you looked out of the window, was the truck straight ahead of you, in front of you? A Yes, sir. It was right down, very near underneath us (Illustrating).

Q Was there anything on the truck? A Yes, sir; eighteen boxes.

Q How large were they? A Well, they filled the truck. I should judge they were about four foot two in height, and about twenty or twenty-four inches in width, and about eighteen or twenty inches in depth.

Q Was it a two-horse truck? A Yes, sir.

Q Now, did you see any of the other defendants, at that time? A They were all there; when the truck came there, they came there.

Q All four of the others? A Yes, sir.

Q And what did they do? Did you hear what they said, if anything? A No, sir.

Q Well, what did they do? A Well, Long got down off his truck and untied his tail-rope.

Q Who did? A I should say, Mitchell. And Mitchell and O'Brien took the first case off. Anderson, he had a hand-truck ready, and, as the case landed on the dock, they threw the case over on the truck.

Q On this hand truck? A Yes, sir.

Q And what did they do then? A And then Kiersted, he had a crow-bar there, and he takes and pries the side towards O'Brien -- O'Brien was on the left of the box, and Kiersted was on the right of the box, as it stood on the hand truck, and he raised the lid towards O'Brien, and there was some trouble -- they couldn't get the fish out, and so O'Brien passed the bar to Kiersted, and they raised the other side of the lid, and took the fish out.

Q Did they take a fish out? A Yes, sir.

Q And who took the first fish out? A Why, Kiersted did.

Q Well, how big a fish? A Well, a fish about three and a half foot long.

Q And what did he do with it? A He handed it to Anderson, and he took it and put it in this ^{empty} box.

Q Where was the empty box? A On the dock, about twelve feet away from where they were.

Q Where had the empty box come from? Had you observed?
A I don't know. It was there when the truck drove up.

Q And they put the fish in the box? A Yes, sir.

Q Did you observe whether it was a headless fish or not?

A Yes, sir; it was headless.

Q Now, what else did they do, if anything? What did they do with the box, after they got the fish out of it? A They nailed it up, and placed it alongside of the stringpiece of the dock.

Q Yes? A And then Mitchell and O'Brien took off another box, and done the same thing. They opened the box, and took a fish out, and nailed it up, and put it alongside of the other box. And they done that until they had taken off six boxes, when Mitchell got on his truck, and threw a box on the body of the truck, and slided it down, and then they would take it off the truck, and throw it in the hand truck.

Q They first took sixboxes off? A Yes, sir.

Q And what did they do next? A Then Mitchell took a chance to get on the truck, and handled the boxes, without being on the dock. That's the idea.

Q And what was Long doing? A He was watching.

Q Now, don't say that he was watching. What was he doing?

A He was on the side towards the market, looking.

Q How far from the truck? A Oh, ten or twelve feet.

Q Did he take any part in opening the boxes? A No, sir.

Q He was ten or twelve feet from the others? A Yes, sir.

Q What did he do? A Why, he was just looking, to see that nobody came, as far as I could understand.

MR. LYNN: That is objected to, if your Honor please.

THE COURT: Strike that out.

BY MR. CLARKE:

Q What did he do? A He just looked; that's all.

Q Now, is that Percy Kiersted (Indicating)? A Yes, sir.

Q He had a truck there himself? A Yes, sir.

Q And, after driving his truck off, did he go back?

A Yes, sir.

Q And what did he do, in regard to these boxes?

A Why, he helped to slide the boxes off the truck, and also opened some of the boxes. He had charge of the iron bar, about three foot long.

Q And the next one is Anderson (Indicating)? A Yes, sir.

Q What did he do? A Why, he was helping carrying the fish.

Q After they were out of the box? A Yes, sir.

Q Did he have anything to do with the opening of the boxes? A No, sir. O'Brien and Kiersted done the opening.

Q Did he have anything to do with taking the cases to the hand truck? A No, sir. He was the one that ran the hand truck. He would hold the hand truck while they dropped the cases down.

Q That is to say, he would take the hand truck -- how far did they take it on the hand truck, on the truck, I mean?
A Only as far as they could drop the case on the hand truck, and then they would drop the handles, and then they could work

on it.

Q What did Anderson do? A He would take the fish out , or Kiersted would pull it out, one way or the other.

Q Well, did you see a fish in his hands, at any time?

A Yes, sir. And he carried it, and put it in the box.

Q Now, how many boxes, in all, did you see opened in this way? A Fourteen.

Q What did they do with the other four? A They put them on the dock, without opening them.

Q How many fish did you finally see in this empty box?

A Well, they took a fish out of each box, fourteen boxes, and the box was full.

Q Up to how near the top? A Well, just so that they could get the lid on properly.

Q Was the lid put on? A Yes, sir.

Q Who put it on? A Kiersted.

Q What did he use to put it on? A His pry-bar.

Q Did he use nails? A Yes, sir; he had nails in his pocket.

Q And did he nail the cover down? A Yes, sir.

Q And then what did he do? A One of the boxes didn't have a regular lid, and he got a ragged plank, and that projected a couple of inches.

Q And you noticed that, did you? A Yes, sir.

Q And, after they got it nailed up, what did they do?

A Mitchell pulled out onto the street, with the double truck, and drove off the dock, and Kiersted, O'Brien and Anderson raised up the box, and put it on this hand truck, that they used to put the cases on, after they took them off the truck, and, after they put it on the hand truck, Kiersted went around to where his truck was, in front of the market, and the two others ran the truck off to where Kiersted had taken his truck.

Q Now, how many of them had hold of it, at the time?

A Anderson had hold of the handles of the truck, and O'Brien was pushing it, like this, behind (Illustrating).

Q Mitchell was then on his truck? A Yes, sir.

Q And where was Long? A I don't know where Long went to. He went off somewheres.

Q And Kiersted? A He went around to his truck.

Q Now, did you see Kiersted and his truck after that?

A Yes, sir.

Q What did you see them do? A Then, in front of the oyster barge, there is three windows.

Q What does that look over? A It looks over on the street.

Q South Street? A Yes, sir. And then the truck came along, with a small box and a barrell, and, just as it got in front of the oyster boat,-- with a small box and a barrel and the case, I mean -- why, O'Brien jumped on the truck

with Kiersted, and they drive over to 105 South Street, opposite. There is a liquor store there, but there is a fish stand there, too, a temporary fish stand, that they can take down and put up; and they took off the case, and left it in front of the gin mill.

BY THE COURT:

Q What do you mean? What is that? A They left the large case and the barrel and the box that I had seen them load, prior to that time, in front of the saloon there.

Q How many packages were on that truck? A Three packages, your Honor.

Q What was their nature, or description? A One was the case that the halibut was in, and the other barrel, I don't know what was in it.

Q What were they? A Only a barrel and the other two boxes.

Q What was the shape of the case that the halibut was in? A About 4 foot 2 in height, and about 20 or 24 inches in width, and about 18 or 20 inches in depth.

BY MR. CLARKE:

Q And did you and Roser go over there afterwards?

A Yes, sir; as soon as we had a chance to get out.

Q And did you see this case that you have described here, with the ragged top on it? A Yes, sir.

Q Did you observe the projecting part? A Yes, sir.

Q Did you recognize it as the same case that you had seen them fill with halibut? A Yes, sir.

Q Where was it? A In front of the gin mill.

Q On the sidewalk? A This gin mill --

Q Don't say "gin mill"; you mean a liquor store? A Yes, sir.

Q Well, where was it? A Here is the liquor store door, and here is the cellar (Illustrating), and it was right at the edge of the cellar, back off the curb, on the sidewalk.

Q And where were the other two packages? A Right alongside.

Q And what time was that?

A That was about 2:40, twenty minutes to three.

Q And so that this operation had taken from 1:25 to 2:40?

A Yes, sir.

Q What became of Kiersted and his truck then? A I don't know where he went. He drove over towards the middle of the market.

CROSS-EXAMINATION BY MR. LYNN:

Q Mr. Coles, you are a private detective? A Yes, sir.

Q Paid by the job or the day; are you? A Paid by the week.

Q Paid by the week? A Yes, sir.

Q And you were on this fish case, were you? A That's the idea.

Q Now, will you kindly describe to his Honor and the Jury the nature of the place that you secreted yourself in,

1 that night, were you afloat or ashore, at the time you were looking? A We were afloat.

Q Were you afloat? A Yes, sir.

Q Was the tide low or high, that night? A I think it was a medium tide.

Q At half-past one o'clock in the morning? A Yes; about half-past.

Q Do you know whether the moon was up or not, that night? A No; I don't think we had any moon, that night.

Q That was the 23rd of December? A Yes, sir; the morning of the 23rd.

Q And you went aboard your lugger at half-past eleven? A Yes, sir.

Q Now, this lookout is something on the top of a boat? A It is a window.

Q A little window? A Yes, sir.

Q How big was the room? A Oh, I suppose the room was--- it is cut off a little. If it was all clear, it would be about 70 foot, the whole room.

Q The whole room? A Well, it was about 50 foot, and there is two small rooms there; and, if it was all clear, it would be 70 foot.

Q And the room, out of the window of which you were looking, was then about 50 feet long? A Yes, sir.

Q Was there any glass between you and the air? A No, sir.

Q You were looking straight through the air? You were not looking through any glass aperture? A No, sir.

Q Were you smoking that night? A No, sir.

Q Were you drinking at all that night? A No, sir.

Q Didn't you have a drink at all that night? A No, sir.

Q Didn't you have a drink in that room? A No, sir.
A drink of what?

Q Well, liquor? A Well, no, sir; we didn't have anything to drink in that place but oyster juice, which is good and healthy, I suppose.

Q Well, didn't you have any whiskey, or beer or ale?
A No, sir.

Q Wasn't any brought in to you while you were there?
A No, sir.

Q Now, don't you know that Mitchell was carrying fish for Mr Chesboro that night? A Yes, sir.

Q Don't you know that he was regularly employed to do that? A I have learned it since. I didn't know it then.

Q And didn't you know that he had a right to take those fish boxes off the wagon, and put them on the truck that night?
A No, sir.

Q Well, you knew that he had brought eighteen boxes of fish, with his team? A Yes, sir.

Q And you saw him unloading his fish, his truck load on the dock? A I did.

Q And now you knew that O'Brien was working there, didn't you? A Yes, I do now.

Q And you knew that O'Brien had a right to help Mitchell with this fish on to this hand truck; didn't you? A No, sir; I didn't know what his duties were.

Q Well, haven't you learned since that O'Brien was the platform man, as it is called? A Well, I didn't know what that signified.

Q Did you suppose at the time you were seeing these men unload this truck, and take these boxes off, that you were looking at a lot of thieves that had no right there? A Yes, sir, from previous observations, I can say so.

Q And haven't you been informed since, even, that these men, including Mitchell and O'Brien were regularly employed to take these fish off the truck, and carry them through the streets there, in hand trucks? A No, sir.

Q That is, on this very morning that you were watching? A No, sir.

Q And don't know know that Anderson and Long and Kiersted are men who work for another truckman who carried fish to and from the Fulton Fish Market? A No.

Q Well, you have learned it since, haven't you? A Yes.

Q Now, were those fish fresh, that night? A Well, they had the ice on them. I suppose they were fresh.

Q Well, didn't yet get near enough to them to know?

A Well, they had ice on them and I supposed they were fresh.

Q Well, how near were you to them? A Fifteen or seventeen feet.

Q From your point of view over to where they took them off? A Yes, sir.

Q Now, after they took the fish off the dock, off the pier, off the truck, they put them on the dock? A No, sir; on the handcart first. They were delivered right alongside the stringpiece, right next to the oyster float.

Q Where is the box of fish that you say was taken away by these five men? A I don't know where it is now.

Q Well, you had it, didn't you? A That night, we had it, certainly; at least we knew where it was delivered.

Q No. I am asking you about this box of fish that you say was missing sometime in the night, and which you subsequently found across the street. Was it just across the street? A Yes, sir; 105.

Q How wide is the street? 50 feet? A Yes, sir, I guess so; or maybe more.

Q Was that box that you saw across the street taken directly from the dock and then wheeled into the Fulton Market?

A It was wheeled into the market, yes.

Q Now, how could you see, Brother Coles, looking as you did around the corner? A I couldn't see it put on the truck, but I could see one side of the head of the cover.

Q Then why did you tell this jury that? You have told the jury how you followed that box, after it went around the corner? A I didn't say that I followed the box at all.

Q Now, after the box went around the corner-- A What corner?

Q As you have described it? A No, sir; I said it went in the market, and I suppose it went on the truck because I know it went across the street.

Q How do you know that the box that you saw wheeled off the dock into the market was the same box that was subsequently wheeled out of the market, and put on the truck and taken over across the street? A Well, one side of the cover of the box was ragged, a jagged end. It wasn't a cover that was sawed off straight.

Q Aren't all those fish boxes alike? A No, sir; that is the covers are not.

MR LYNN: Now, will your Honor permit two of the defendants to go out and bring a fish box in, that they have out there? I can't ask anybody else to do it.

THE COURT: Yes.

BY MR LYNN:

Q Now, weren't the boxes exactly like that? (indicating

a fish box) A On one side of it, on this side of the box (indicating) it was not a regular cover. It was a plank that they had picked up and made for a cover, and ragged at the ends.

Q Well, I haven't asked you that. Aren't all fish boxes like the one I have just shown you? A Most of them are, yes.

Q Now, what mark~~was~~ there on the box that you speak of? A Well, on one side of the cover, it was not a proper cover.

Q I am asking you for marks. Were there any labels or letters or signs of shipment that you could see that evening?

A No, sir; not that we could see.

Q But you subsequently had that box in your possession, after finding it across the street. Did you find any marks on it then? A No, sir.

Q Now, will you tell me, Mr Coles, how it comes that you are able to swear, as you are now doing, that a box of that size (indicating the fish box in court), which you saw carried into the market from the dock--you lost vision of it, at that time, did you not? A Yes.

Q And subsequently a box came out of another door of the market, and was dropped across the street. Now, how can you swear that it was the same box that you saw some of these men carrying away? A On account of the jagged plank on the cover,

on one side of the cover.

Q Well, did you examine the fish? A No, sir.

Q Did you see the fish when they were taken out from the original box? A Yes, sir.

Q And did you see the fish subsequently, that were found in the box across the street? A No, sir

Q And then you are unable to say that the box was the box of fish that was taken from the dock, in the first instance, are you? A Only, as I saw them put them in the box, and saw the box over there, with the same marks on it.

Q And then you only infer that because you saw a box, somewhat like the first box, and say that it contained halibut, that it was the same box? A Only from the mark on the lid.

Q Well, was the mark so remarkable that there was none other like it? A Well, it was in such a way that it wouldn't stand on the other end.

Q And was it so different from any other box? A I say, the edge was ragged.

Q There was no other box ever made like it? A Well, part of the lid had been knocked off, and that lid over there (indicating the fish box in court) is smooth.

Q And is that the only way you can tell it? A Yes, sir.

Q Because a projection from the cover went over two or three inches? A Yes, sir.

Q And that is the only way you have of telling it?

A Yes, sir.

RE-DIRECT EXAMINATION BY MR CLARKE:

Q One moment. You say you saw the halibut put into the box? A Yes, sir.

Q Now, do you mean to say that that box went out of your sight, at any time, before it went around the corner? It was in your sight when they nailed it up? A Yes, sir.

Q Had any halibut been taken out of it then? A Not to my knowledge.

Q And then you saw it as they wheeled it off the open dock? A Yes, sir; until it passed through into the market, so that we couldn't see it any more.

MR CLARKE: I offer in evidence these two photographs, if your Honor please.

MR LYNN: I assume that what Mr Clarke offers is in good faith, and therefore I will not object.

MR CLARKE: I offer two photographs of the dock, in evidence.

MR LYNN: No objection.

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

BY MR CLARKE:

Q Now, I show you this photograph, People's Exhibit 1, and turn it so that the jury can see it. Now, show where you were, and show where you saw the two men push the case, after it was filled up. Is that the window where you were (indicating)? A Yes, sir. And that is just about the position of the truck (indicating).

Q And here is the front of the market (indicating)

A Yes, sir.

Q Now, where did they take the case, after they had loaded it on the hand truck? A Right into the market here (indicating). You see this opening here (indicating)? They took it across the dock into that opening.

Q And, later on, they drove down the street? A Yes, sir.

Q And left the box over here (indicating) A Yes, sir.

Q Now, how long a time elapsed after you saw these two men trundle the box into the market, and the time that Kiers-yed drove his truck down and left the case at 105 South Street? A Not over five or ten minutes.

Q And that was the only time it was out of your sight?

A Yes, sir.

RE-CROSS EXAMINATION BY MR LYNN:

Q And you didn't know these men two weeks after that night, did you? A Well, I---

Q Answer the question. You didn't know these men two weeks after that night, did you? Was it not two weeks afterwards before any of these men were arrested, and you picked them out? A Certainly I did.

Q Was it not on the 12th of January? A In the preliminaries--before the---

Q In the preliminary examination? A Yes, sir.

Q Before the police magistrate? A Yes, sir.

Q And wasn't it nearly two weeks afterwards that you said that they were the men that were to be arrested? A Yes, sir.

Q On this charge? A Yes, sir.

BY MR CLARKE:

Q Did you go around the market, between the 23rd of December and the police court proceedings, looking for these men?

A I didn't have to; because the man that was with me in the barge, the first night, pointed them out to me.

Q What man? A Mr Eberle, one of our operators, who was following the different trucks there.

Q And had you yourself seen these men on previous nights? A Yes, sir.

BY MR LYNN:

Q And who is Mr Eberle? A One of our operators.

Q And he assisted at the identification, didn't he?

A Yes, sir. He had been shadowing Kiersted.

Q (Question repeated) A Yes, sir; on the first night; or the night of November 21st.

Q Well, didn't he point them out to you? A Yes, sir; on the night of the 21st.

Q As being the men? A Yes, sir; told me who they were. They were working there and he said, "This is so and so." We were both in the same barge on the night of the 21st of November.

Q You haven't told me what became of the box of fish, which was filled that night and driven across the street and left in the possession of nobody; what you done with the fish? A My duties ended then, when I saw the goods delivered there. That was my instructions.

Q Well, do you know who took charge of the fish then?

A No, sir, I don't.

Q Didn't you make the remark that it was a good, clever day for the office? A No, sir, I didn't; I didn't use that kind of language.

Q Well, you continued your work on this job, afterwards, didn't you? A That was the last morning I was on to it.

Q The last morning? A Yes, sir.

Q How many days had you put in there, altogether?

A Three.

Q When? A On the morning of the 21st of November, and on the morning of the 21st of December, and the 23rd.

Q Now, who was your partner, you say? A On November 21st, Mr Eberle, and, on the 21st of December, Mr Orr was with us.

Q Now, don't you know that at nights, there are thousands of boxes of fish come there, and it is a frequent occurrence for the truckmen and handlers, when a box of fish is broken, to take hammer and nails, and nail it up? A Well, that wasn't done that night, that way.

Q I didn't ask you that. (Question repeated)

A Well, I don't know anything about that. I don't know what their duties are.

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

DIRECT EXAMINATION BY MR CLARKE:

Q Where do you live, Mr Roser? A I live at 170 Seventh Avenue, Brooklyn.

Q What is your business? A I am a private detective.

Q What establishment are you connected with? A With Orr's Detective Agency.

Q You are a private detective, of Orr's Detective Agency?

A Yes, sir.

Q And where is their place of business? A 375 Fulton Street, Brooklyn.

Q And you know the last witness, Mr Coles?

A I do.

Q Now; have you visited the Fulton Fish Market in this city? A I did, yes.

Q What day did you go there, first?

A I first met---

Q No, what day first?

A The 23rd of December, 1903.

Q A t what time of day? A Well, it was the 22nd of December at 11:25 P. M.

Q Who did you go there with?

A With Mr Coles.

Q Where did you go? A Well, we went into the oyster float.

Q Into the oyster float?

A Yes, sir.

Q Alongside of what pier?

A The Beekman Street pier.

Q And that is where the fish market is?

A Yes, sir, the fish market is alongside of the pier.

Q And did you go there with Mr Coles?

A Why, we left--no. Mr Coles went in first, and I five minutes after him.

Q And who did you see in there?

A Why, I saw a colored man up there, and also Mr Coles, up in the second story.

Q Now, how long were you there?

A We remained there from 11:25--I remained there from 11:25 until about 2:40, on the 23rd of December, 1903.

Q Until what time the next morning?

A 2:40.

Q Now, I want you to state where you stationed yourself, and what you saw?

A Why, I stationed myself at a small window, on the upper part of the oyster float, and, from that window, I could overlook the dock, and at 12:10 I saw that second man there (indicating).

MR. LYNN: That is O'Brien.

A (Answer continued) O'Brien. And that man, with the white hair (Indicating).

MR LYNN: That is Kiersted.

A (Answer continued) Kiersted. I saw them appear from the interior of the market; that is, there is an entrance to the market. On the picture there, you can see it very distinctly (Indicating).

BY MR. CLARKE:

Q What they call "the Break"? A I believe so. I believe that is what they call it.

Q That is almost opposite where you were? A Yes, sir. And Kiersted started to open a barrel of fish, I believe, at the Cheseboro stand.

He took a crowbar, and pried open the bottom of the barrel -- the top had burlap on it -- and he opened the wooden end of the barrel, the bottom, and opened that with the crowbar, and took half the barrel of fish, which he put in an empty barrel that he had on a tier of barrels; and he kept agoing fish up (Illustrating), and I saw the fish go up in the air and come down.

And he opened about ten barrels, until the other barrel was filled.

And ^{that} ~~we~~ remained there until the truck was brought around, that is, Kiersted's truck, was brought around from the front

of the market; and it was just sort of pulled this way (Illustrating), and the horse headed up Beekman Street, and it was a single truck, and the tail of the truck was towards the end of the dock, and it remained there.

And O'Brien and Kiersted went to this barrel, and one got a-hold on this side (Illustrating), and the other on the other side, and they put the barrel of fish, which then had a cover of burlap, worked up, as though it was full, on the single truck (Illustrating).

And, while they were doing this, a man wheeled up a hand truck, with a small box, which seemed to contain something, on it, and that was also put on the truck.

And, before that was done, Kiersted took a tag out of his ulster pocket, and nailed a tag on the small box.

And then that was also put on the single truck, and the truck remained there, and Casey and O'Brien disappeared into the interior of the market.

Well, I waited, and, about --

MR. LYNN: Now, your Honor, here is a relation of something that has no bearing at all, and I do not see that it has any termination; and I don't know what impression your Honor's mind or the Jury's minds may have received as to Kiersted's opening the barrel of fish, and taking out half the barrel, and then opening ten barrels altogether, and filling one barrel with the ten half-bar-

rels.

THE COURT: Well, we must be patient, until the witness tells his story.

BY MR. CLARKE:

Q Now, tell us when Mitchell's truck came there?

A 1:25 in the morning.

Q What happened then? A I heard a sound of a truck coming down Beekman Street, and there appeared this man Mitchell. He drove a team, a gray team, which was drawing a yellow truck, as if it was a new truck.

And he came down, and at the sound of the truck -- of course, at that hour of the morning, it was very quiet, and you could hear the sound of the truck, and I heard it, -- and I saw Casey and O'Brien and these two other men, Long and Anderson, appear, as if by magic. They were evidently waiting for it.

MR. LYNN: That is objected to, the latter part of the answer, if your Honor please.

THE COURT: Yes. Strike that out. Just confine yourself to what you saw.

A (Answer continued) Well, they appeared, anyway. And Mitchell drove down alongside of the dock, and drove down about thirty feet, and then turned around, and headed his horses up Beekman Street, and the tail of the truck was headed down towards the end of the dock, and the truck was

about three feet from the stringpiece of the dock, and was, practically, under us.

And Mitchell then got off the truck, and undone the rope, which held on the boxes.

And ~~he~~ then, with O'Brien, very carefully took one box off the wagon, and put it on a hand truck, which was there, and moved it about ~~a~~ foot back from the tail of the truck.

And then Casey, he took a crow-bar, and pried open one end. If that was enough to take a fish out, he didn't pry it all the ways off, but, if the fish was larger than the rest of them, he would pry off the whole top, to get the fish out; and then he would have Andersen and Long assisting him in carrying the fish, because they were very heavy; and they would put it in a box, something similar to the box that was on the wagon, quite a large box, until there were six boxes taken off. Mitchell, all this time, remained on the dock, as-

sisting O'Brien in taking the boxes off the truck; and, after the sixth one was taken off, he got on the truck, and kept moving the boxes from the front of the truck to the bottom, sliding them with a hook; and he remained on the truck until the rest of the eighteen boxes were taken off the truck. But the first fourteen boxes were opened by Kiersted and O'Brien. They would take a chance at the other side of the box --

MR. LYNN: Objected to. This witness is testifying

so ingeniously that I must object now, sir.

THE COURT: Yes, strike that out.

A (Answer continued) He would take turns, I mean, at using the crowbar.

MR. LYNN: Now, don't do that. Don't generalize in that way. Tell what was done as to each box.

BY MR. CLARKE:

Q Well, who opened the first box? A Kiersted opened the first box, with the assistance of O'Brien. You see, one man was standing on one end of the box, and the other on the other end; and as Kiersted opened this end of the box, (Indicating), if there wasn't room enough to take a fish out, he would pass the crowbar over to O'Brien, who was waiting on the other end to assist in opening the box.

MR. LYNN: That is objected to. He describes a man standing aside, waiting to assist to open a box; how did he know that?

THE COURT: Strike that out.

BY MR. CLARKE:

Q What was Long doing? A Long would carry a fish from the box, after Kiersted would hand it to him, and put it in the empty box; and, occasionally, he would look around, up and down South Street, and up and down ~~the~~ Beekman Street, and all around the market, as if expecting to be disturbed.

MR. LYNN: Now I object to that. He can't keep away

from dramatic descriptions.

MR. CLARKE: No, don't tell anything that you think he was trying to do.

MR. LYNN: He is putting this dramatic form to it, that is very detrimental to good order in the court, if not to the cause of the defendants, though their rights will be amply protected, no matter what this witness may say.

BY MR. CLARKE:

Q Now, after the fourteen fish were placed in the box, what was done with it? A The box was nailed up.

Q How large were the fish? A Three feet, four or six inches long.

Q And did they have their heads on? A No, sir; they were off. And the fish were right to the top of the box, and they couldn't put any more in, and they nailed the lid down.

Q Who did that? A Why, Kiersted done that, and O'Brien.

Q What did they do it with? A Why, they done it with a hammer and a crowbar.

Q And what took place then? A And, after the lids were nailed down on the box, Anderson got in between the handles, like getting in the shafts of a wagon, in front of the truck, and started off with it, and O'Brien pushed behind.

Q You mean the hand truck, now? A Yes, sir; the hand

truck. And they went to the interior of the market, with the hand truck, containing the box.

Q Through this opening here (Indicating)? A Yes, sir. And then they turned to the right. There is an entrance there (Indicating).

Q Towards the front of the market? A Yes, sir.

Q And you lost sight of them there? A Yes, sir.

Q And when did you again see Kiersted's truck, or that box, again? A Oh, ab out fme minutes after, they crossed our front (Illustrating), and we moved our position from where the operations were going on to the front of the boat, where there is a lot of glass.

Q These windows here (Indicating)? A Yes, sir. And we saw -- I saw -- Kiersted driving the truck, and O'Brien on the tail-end of the truck.

And the truck drove across the way, in front of 105 South Street, where it backed up, and these two men, Kiersted and O'Brien, unloaded the truck.

Q What was on it? A There was a box with the ragged edge, the ragged lid.

Q The one you have been describing? A Yes, sir; that's the one, Mr. Clarke. And a barrel, with a canvas top, and a small box, which Kiersted had put the tag on.

THE COURT: We will suspend here.

Gentlemen of the Jury, do not talkabout the case or

form or express any opinion as to the guilt or innocence of the defendants, until the case be submitted to you.

Adjourn Court until to-morrow morning, at half-past ten o'clock.

MR. LYNN: Your Honor, these men have all given bail, and all have positions, and are all employed.

THE COURT: Is there any objection, Mr. District Attorney?

MR. CLARKE: I don't object, sir.

THE COURT: Then the defendants may go on their bail, this evening.

(The trial was then adjourned until Tuesday morning, March 22nd, 1904, at 10:30.)

TRIAL RESUMED.

New York, March 22nd, 1904.

ALFRED J. ROSER, his direct examination being continued, testified as follows:

DIRECT EXAMINATION CONTINUED BY MR CLARKE:

Q Now, Mr. Roser, you say that you went to this oyster float, next to the fish market dock, on the night of the 22nd of December, 1903? A Yes, sir.

Q And stayed there for some two hours? A I stood there--

Q Stayed there, I mean? A Yes, sir.

Q At the oyster dock? A Yes, sir.

Q For some time? A Yes, sir.

Q Now, how did you get in there? A Well, I went across the road, and went downstairs -- there is only a door--

Q Now, don't talk so fast, and talk louder? A I went through the folding doors.

Q Did you walk in so that anybody could see you?

A Well, I tried to conceal myself as well as I could, so as not to be seen. And I opened the folding doors, and went in, and back, and went up the stairway, and took up my position at the window on the second story.

Q Did you see this old colored man there? A Yes, sir.

After I had been there several minutes. He was in a room, marking baskets; and he came out and spoke to me, after awhile.

Q Was the door open when you got there? A Yes, sir; at least it was unlocked.

Q And did you find Coles in there, when you got in there? A Yes, sir; he went in there five minutes before I did.

Q Where was he when you got there? A He was upstairs, waiting for me.

Q And, at that time, where was he, at the time that you entered? A At that time, he was talking to the colored man, "Uncle Ben".

Q And what did you do? A We took our position at the window.

Q That was what time? A It was 11:40.

Q Now, I see that , on this photograph, People's Exhibit 1, there is a trough that seems to go across that window? A We looked out underneath.

Q How much space was undernath that? A About five inches.

Q Was there any glass window there? A Yes, sir; there was; but it was open; a sliding window.

Q Now, what was the first sign that you saw of these

defendants? A At 12:10 in the morning, Mitchell -- O'Brien and Mitchell appeared from the interior of the market.

Q Mitchell and O'Brien? A Kiersted and O'Brien. And Kiersted started to undo barrels and take small fish out, and fill up an empty barrel, which was already there. It was on the second tier there.

Q Who was with him? A O'Brien.

Q What did he do? A He looked around, and sort of --

Q Well, he looked around? A Yes, sir. And Kiersted, he would open -- the first barrel he opened, he took quite a lot out, a double handful, like that (illustrating), and threw it up into the empty barrel; and he took enough out of ten barrels in this way to fill this barrel.

Q Well, what size of fish were they? A Well, about 15 inches in length, I should say; about that size (indicating).

Q Now, what was done with that barrel? A After the barrel was full, the canvas cover was put on top.

Q By whom? A By Casey.

Q You will call him Casey? A Kiersted, I mean.

Q Is he known around there as Casey? A Yes, sir; always known around there as Casey. And he put a canvas cover on the barrel that he filled, and left it there, at the edge of the first tier.

And, in the meantime, while they were working there,

a tall man wheeled up a box. Well, the box was 2 feet or 2 feet 6 long, and it appeared to contain fish.

Q Never mind that. There was a box brought there by somebody? A Yes, sir. And Kiersted took a tag out of his pocket, and nailed it on the box.

Q Well, now, when did you first hear anything about this truck coming there? Just describe that again, as fast as you can. A Well, at 1:30 on the morning of the 23rd of December, I heard a sound of a truck, coming down Beekman Street.

MR. LYNN: Your Honor, this has all been gone over, yesterday, very clearly.

THE COURT: Well, I will hear it, Mr. Lynn.

MR. LYNN: Unless the Court did not hear it, or the Jury doesn't remember it.

A (Answer continued) And, as I heard the sound, I still kept looking towards the door of the interior of the market, and O'Brien and Casey and Anderson and Long -- of course, Mitchell was driving the truck -- those four appeared from the interior of the market.

THE COURT: Now, allow me to interfere here, so as to have an intelligent understanding.

BY THE COURT:

Q Which two of the defendants were taking the fish out of the barrels and putting them into other barrels, as you

have described? A Kiersted and O'Brien.

Q Now, after they had done that, where did they go?

A They went into the interior of the market. I lost sight of them.

Q And the next appearance was the incident of the truck that you have been testifying to? A Yes, sir.

Q How much time, to the best of your knowledge, intervened between the time O'Brien and Kiersted went into the -- retired into the shed of the market, and when you saw them, in company with the others, reappear? A About an hour.

Q And were you in your position during this hour?

A Yes, sir; I still held the same position that I was in before, sir.

Q Now proceed. In the meantime, during that hour, did you see anyone at all on the dock? A Yes, sir. I saw some policemen going down to the end of the dock, towards the river.

Q And did they return? A No, sir; I didn't see them return.

Q Any other persons, that you can name or describe?

A No, sir.

Q None except the policemen? A No, sir.

BY MR. CLARKE:

Q Well, now, you say you heard the rumble of this truck, approaching? A Yes, sir.

Q How far off was the truck, when you first saw the other four defendants, besides Mitchell? A Well, the horses were on, right on the dock, when they appeared. They came from the interior of the market.

Q All four together? A Well, Casey and O'Brien came first, and then Long and Anderson came in the rear of them.

Q Well, now, what took place then?

THE COURT: Well, did they precede the truck or follow it, Mr. District Attorney?

MR. CLARKE: Well, the truck was coming from up the street, as I understand it.

THE WITNESS: Yes, sir. From Beekman Street.

BY MR. CLARKE:

Q Did they come out before the truck got there, or afterwards? A Just as the truck came there, just as the horses were coming on the wooden dock, then they came out from the interior of the market.

Q Now, where did the truck take up its position? A Mitchell drove the truck down about 30 feet on the dock, and turned around to the left, and brought the truck up about three feet from the stringpiece.

Q That is, the side of the dock? A Yes, sir.

Q Running along by the oyster boat? A Yes, sir; about seven or eight feet from where we were standing, or ten

feet, and right in front.

Q And where were the other defendants while he was doing that? A Then they came out on the dock, and, as Mitchell turned his truck around, and faced his horses up Beekman Street, he got off the truck, and he went down to the rear of the truck, and undone the rope which kept the boxes in position, and O'Brien wheeled the small hand truck out underneath the rear of the wagon; and then O'Brien and Mitchell took off the boxes, these large boxes.

Q Well, one at a time? A Yes, sir. Very carefully. They were very careful to get off one first, and open that one.

MR. LYNN: Now, your Honor, see how ingenious this witness proceeds to put in testimony, that they were very careful to get off one at a time.

THE COURT: Yes. Strike that out.

A (Answer continued) Well, they took off one box, at a time, until they got off the first six, one by one.

BY MR. CLARKE:

Q Well, who took them off? A Mitchell and O'Brien.

Q They took a box off the truck? A Yes, sir.

Q Where was Mitchell? On the truck or off the truck?

A He was off the truck. Both of them were using hooks to pull the box to the end of the wagon, and the box was put on the hand truck, and pushed back a little ways from the

truck behind, and opened.

Q And who opened it? A Kiersted opened one end with a crowbar, about three feet long; and then he passed the crowbar over to O'Brien. He would then stop, after opening one end. Then he would go back, and help to take off the next one; and a fish was taken out of the box, when it was opened, and put in the empty box.

Q What sort of a fish? A A halibut fish.

Q Have you seen this cast here (Indicating a plaster cast of a halibut)? A Yes, sir; that's about the size.

Q Well, what color were they? A Well, white on one side and dark on the other.

Q Now, who took out the fish? Take the first one, if you can remember, taken from the first box that was opened?

A First he took one out of the first box, and passed it over to Anderson. Of course, I didn't know the name then. I called him "Red", because I didn't know his name at the time. I gave his description in my reports as "Red".

THE COURT: Strike out the latter part of that answer. Refer to the defendants as best you can, describing them as they sit here before you.

A (Answer continued) And he put the fish in this empty box, Anderson did.

BY MR. CLARKE:

Q And where was the empty box? A It was about 15 feet

to my left front.

Q Well, was it nearer the stringpiece, or further from it, than the truck? A Further out than the truck.

THE COURT: Possibly I have lost the thread of his testimony, Mr. Clarke, and, because of the number of defendants, we want to be extremely careful that the testimony of the witness shall be clearly understood, as referring to each one.

MR. CLARKE: Yes, sir.

BY THE COURT:

Q When this truck was driven onto the dock by Mitchell, and the other four defendants appeared, what was the first thing that any one of them did? A Why, Mitchell got off the truck, and took the rope from behind the truck, and fastened it on the side, and Mitchell and O'Brien took off the large box.

Q Now, you see that you have not described that. Was there a box on the truck? A There was sixteen boxes on the truck.

MR. LYNN: Eighteen; I will correct the witness.

THE WITNESS: Eighteen, yes; that's right.

BY THE COURT:

Q Now, go on and describe those boxes as nearly as you can? A Well, the length was about four feet, and twenty inches in depth, by two feet in width.

BY MR. CLARKE:

Q Were there any marks on them? A Not that I saw. I didn't see any marks on the boxes.

BY THE COURT:

Q Were they all the same size? A Yes, sir.

Q Of uniform size? A Yes, sir. And, after --

BY THE COURT:

Q Now, which of the defendants do you say it was that took the first box off that truck? A It was O'Brien and Mitchell, the driver of the truck, and O'Brien.

Q They lifted it off? A Yes, sir; onto the small hand truck.

Q How near were the other two defendants at the time that they lifted off the box? A Right there. Long and Anderson, they had looked around. They would go up and down, and looked around.

Q Now, were there any other persons than the defendants that you have described? A No, sir.

Q Any other persons on the dock, that you could see? A No, sir; not in sight.

Q Now, proceed and state what occurred. What was done with the first box? A The first box was taken off the truck by Mitchell and O'Brien, and placed on the hand truck. Then Mitchell -- then Kiersted would take a crowbar, about three feet in length --

BY MR CLARKE:

Q Well, did he do it? Not what he would do. A Yes, sir. And he would pry open the end of the box, and O'Brien would get on the other end, he would leave his position, then, at the truck, to go to the other end of the box and take the crowbar from Kiersted, and pry open the other end; and they would take off one end of the lid first, and if it was large enough to let a fish out, they would be satisfied with that; and, if there was not room enough, they would take the lid off the box entirely, and they would pass the fish to Anderson; and, of course, at various times, they would pass it to Long, and they would go and place the fish in an empty box.

Q Where was the empty box? A Why, nearly in the center of the dock. It was there before we got there. And they continued the same manoeuvring until --

THE COURT: No. Strike out the word "manoeuvring".

BY THE COURT:

Q Now, can you state, in plain English, what they did? Do you understand, Witness, the difference between what a man actually did, and your own characterization of it? A Yes, sir; I understand.

Q Then make a plain statement of fact, without the introduction of any descriptive terms, at all. Only state what they did. That is what we are interested in. Now, confine yourself to that.

BY MR. CLARKE:

Q Now, you have got one case off the truck. Now, what did they do with the second case?

THE COURT: Pardon me, Mr. District Attorney

BY THE COURT:

Q Can you state whether or not they took all the fish that were in the first case? A No, sir; only one fish.

Q And what did they do with the case out of which they had taken the fish? A They nailed it up and sit it on end, near the stringpiece.

Q They didn't put it back on the truck? A No, sir. Kiersted would nail up one end, with his crowbar, and O'Brien would nail the other end of the case up with a hammer or hatchet, something of that kind.

Q Now, the next step. What was done next? A Then they took the second case.

Q Off the truck? A Off the truck. And put it on the small truck, the same as they did the first case; and took the lid off, and took out another fish, and put it in the box that they put the first fish in, and then nailed the lid on again.

Mitchell -- Kiersted and O'Brien -- each nailed different ends, and, when they got the fish out, they turned it up on end, alongside of the stringpiece.

BY MR CLARKE:

Q Well, was there any one of the five that did not take part in this procedure?

MR LYNN: Objected to.

THE COURT: Objection sustained.

A Why, they all took part in it.

THE COURT: The objection is sustained; strike out the answer.

BY MR CLARKE:

Q Now, how many boxes did they take off, as you have described? A The first six boxes.

Q And what did they take out of them? A Out of each box a halibut, and then they nailed the lids on again.

Q And after they had got six boxes off, what happened? A Then Mitchell got on his truck and kept moving the boxes down towards the end, with his hook.

BY THE COURT:

Q With his what? A With his hook, the hook that long-shoremen use. And then Kiersted took a position there, and took off the box, with O'Brien, and Mitchell remained on the truck, moving the other boxes down.

BY MR CLARKE:

Q And how far were Kiersted and O'Brien from Mitchell at the time? A About three or four feet.

Q And where were Long and Anderson? A They would help carry the fish, and look up and down Beekman and South Street and the dock. They walked around, and looked around as if---

Q No. Never mind, as if.

BY THE COURT:

Q Now, go on and describe what occurred when Mitchell drew the cases down with his hook, as you have described?

A Well, Casey and O'Brien would take them off the tail end of the truck, and put them on the hand truck, and they opened the cases, and they took out a fish from each case, until the fourteenth case was reached, and then the other four cases they didn't touch.

Q How about the number of fish in the empty case that they started with, that was empty when they started?

A They had fourteen in that, and it was filled right to the top. Here was the top of the case, and the fish come up like that (illustrating). You could see them. And then Anderson and--

Q What was the size of that box with reference to the other boxes? A About the same size.

Q That is, with reference to the cases that came down on the dock, upon the truck? A About the same size, your Honor. And they opened fourteen of them.

Q Fourteen cases? A Yes, sir.

Q Were they all on the truck, all of the cases that they opened? A Yes, sir, they were. There was eighteen on the truck.

Q There were eighteen altogether? A Yes, sir.

BY MR CLARKE:

Q What did they do with the other four? A They wheeled them over, on end, and stood them alongside of the stringpiece, and the other four were taken off the truck--

Q I mean the four that were not open? A They were taken off the truck but not put on the hand truck, and wheeled over to the other fourteen.

Q And who did that? A O'Brien and Casey. And Long would help too. They would all get in and help at the tail end of the wagon, and wheel them over, and stand them up by the string piece.

Q Now, after the eighteen boxes were off the truck, what happened? A O'Brien went into the entrance of the market, and got a large shovel and a broom, and came out and swept up all the ice that had fallen out of the boxes, while taking the fish, and threw it into the river, alongside of the oyster float. I heard the ice fall down alongside of the boat that we were on.

Q Did you see him shoveling? A Yes, sir.

Q Which did he use, the broom or the shovel? A He swept it first up into a pile, and took the end of the broom under his arm that way (illustrating) and swept the ice into the shovel and threw it into the water.

Q And so, when he got through there was no ice there at all? A No, sir.

Q And what were the others doing while he was shoveling the ice overboard? A Well, Anderson and Long kept looking around; in fact, they did it all the time, looking around.

BY THE COURT:

Q Did the ice fall out of the cases that were opened?

A Yes, sir.

THE COURT: Has he stated what became of the four cases that were untouched?

MR CLARKE: Yes, sir; he said that they stood those alongside of the other fourteen, on the dock.

BY THE COURT:

Q In one group? A Yes, sir; three abreast, like.

BY MR CLARKE:

Q And then what did they do with the case into which you say they put the fourteen halibut? A Why, Kiersted went over there and nailed it up; and then Anderson and O'Brien-- O'Brien got in front of the truck, like a horse between the

shafts, and Anderson steadied the case on the trucks, and they pulled it out through the opening in the market, and to the right.

MR LYNN: Now, I ask your Honor to intervene now, because the witness's vision could not be exercised beyond that point.

BY MR CLARKE:

Q Now, was it light in there? A Yes, sir; almost as light as it is here.

Q Electric lights? A Yes, sir.

BY THE COURT:

Q Who drew the truck? A Anderson drew the truck.

BY MR CLARKE:

Q And who was pushing the box? A O'Brien was steadying it so that it would not fall off the truck.

Q Were the other three there? A Mitchell was there, and Kiersted was there; and, when the truck disappeared, when it went into the market, Kiersted went around to the front that way (illustrating), and I could just see the bottom of it after it got into the entrance of the market, turning this way and disappearing (illustrating).

BY MR CLARKE:

Q Towards the street? A Yes. And then I lost sight of the truck.

Q Now, Kiersted had a truck there himself? A He had a single horse truck.

Q That had been there since earlier in the evening? A Yes, sir, that was there when Mitchell came down on his truck.

Q And what did he do with it? A He drove around to the front of the market. He didn't go very far. You could hear the sound.

BY THE COURT:

Q Where was the truck, while the truck driven by Mitchell was on the dock? A That was in the front of the market, your Honor.

Q That was Kiersted's truck? A Yes, sir.

Q Where was that when Mitchell's truck drove on to the dock? A When Mitchell drove down Beekman Street on to the dock, he asked Kiersted if he was going to pull out, and Kiersted said yes, and he did; and he led his horse and truck around to the front of the market, and Mitchell drove down.

Q Now, when you refer to the truck upon which the case of fish, which was filled according to your statement, that was drawn into the market, you mean a hand truck? A Yes, sir.

Q So as to distinguish that truck from a truck to which a horse was harnessed? A Yes, sir. A very small affair, a

hand truck.

BY MR CLARKE:

Q Now, state whether or not the hand truck was taken in the same direction as you had seen Kiersted take his truck?

A Yes, sir.

Q That is, around in the front part of this canvas building, the market building? A Yes, sir.

Q And did you notice anything about the lid of this case or box in which you say they put the fourteen fish? A I did.

Q Well, what did you notice? A Well, the lid of it, the lid that was on the box that contained those fish had a ragged edge which projected anywhere from two to three or four inches from the end of the box, at one end.

Q The whole lid? A Well, two or three boards, anyway. It seemed to me the whole lid.

Q Now, did you see that box again? A Yes, sir.

Q How long afterwards? A After it went into the market?

Q Yes. A About twenty or twenty-five minutes after.

Q Where did you see it? A No, I should say ten minutes after.

Q (Question repeated) A I saw it on Kiersted's truck, that went across my right front, in this way (illustrating), And then I changed my position, the window I was holding and

went to the front of the boat that we were on, where there was all glass windows. He came across that way from (illustrating)---

Q With his truck? A Yes.

Q And what was there on the truck? A There was a barrel and a small box and a large box, which contained the large fish. And that second man there, O'Brien, was on the tail end of the truck.

Q And who was driving it? A Why Kiersted was driving it. And O'Brien got on about fifteen or twenty feet from the market.

Q And where was Mitchell? A He drove around, with his team.

Q And what became of the other two? A They went into the interior of the market, and disappeared entirely.

BY THE COURT:

Q Now, I wish to ask you this: Are you able now, to swear that the case that you saw on Kiersted's truck, that was driven away in the manner you have described, was the identical case which you saw the defendants, as you have narrated, put the fish in, as they took the fish from the respective cases that you have described? A Yes, sir.

Q It was the identical case? A Yes, sir.

BY MR CLARKE:

Q Now, did you examine it later? A I did.

Q Where did they take it to? A They drove the truck up in front of 105 South Street.

Q And where is that in regard to the oyster float?

A It is just across, almost right opposite. I could see it from the window where I was, just across the street.

Q And they drove over there? A Yes, sir. And then Kiersted backed up his single truck and O'Brien and Kiersted then took the box, the small box and the barrel, and the big box, with the ragged edge, off the truck, and put them on the sidewalk there.

And, after they done that, Kiersted drove his truck in front of the market, and, of course, they disappeared. And O'Brien went into the interior of the market. And, after they disappeared, I was very anxious to go downstairs---

Q Never mind that? A I came out of this float and went up towards the Brooklyn Bridge, and crossed over at the corner and looked at the box, and saw the ragged edge, and identified it as the same box that the fish were put in.

Q How about the barrel and the small box? A That was also alongside of the big box.

Q That is in front of 105 South Street? A Yes, sir.

Q Right in front of the place? A Right in front of

where we were watching.

Q And at what time was that? A That was 2:40 in the morning.

Q And what did you do then? A And then my duty was ended.

Q And you went home then? A Yes, sir; I went home.

Q How did you learn the names of these various men?

A Well, Casey was pointed out to me by Uncle Ben.

Q A colored man? A Yes, sir. He was in charge of the boat that we were on that night. And Eberle, he informed me who O'Brien was.

Q You had been there before? A No, sir, that was my first night.

Q But he had been working on the case before? A Yes, sir. And he pointed out O'Brien as he was shadowing him, I believe, from Long Island City. And I didn't know who "Whitey" or "Red" was.

Q Who is "Whitey"? A "Whitey" is Long and "Red" is Anderson.

Q Did you go around there afterwards? A Yes, sir; two or three days after this affair occurred. And I picked the men out, from around that vicinity; and then I was told who they were.

Q You made inquiries as to who they were? A Yes, sir.

Q And that is the way you learned their names?

A Yes, sir; exactly.

Q Now, where were the electric lights on this night? Can you give us any idea? Were they inside or outside?

A Inside of the market, right near the entrance, where they came through; and then one was right opposite, across the street there, corner of Beekman and South Streets, right opposite where we were.

Q Could you distinguish these men's faces? A Very plainly.

Q And how far were they away from you as they were working there? A About ten or twelve feet, right like that (illustrating) and the light shone right on their faces.

Q Now, did they work continuously, or stop occasionally?

A Well, they would stop occasionally to look around the market and up and down South Street, and along the docks, and they would go back and forth in that way.

CROSS EXAMINATION BY MR LYNN:

Q Did you open the box when you got it across the street? A I did not.

Q It was right in front of you; was it not? A It was.

Q And the fish were in it, weren't they? A I believe so.

Q Well, don't you know? A Well, I saw the fish put in,

and I didn't see anybody open it in the meantime.

Q Well, are you willing to swear that the fish were in the box, at the time you saw it again? A Yes; I can swear to that.

Q Notwithstanding the fact that you saw some one wheel the box into the market, and saw a box come around from where you couldn't see it, you will swear that? A Yes, sir.

Q And, because the box was like the one you saw wheeled out from the market, you say the fish were still in it? A Yes, sir.

Q Well, why didn't you open the box? A I had no right to open it there, in the street.

Q Well, you had possession of the box? A I had not.

Q Did you remain with the box? A I did not.

Q You disappeared, then; did you? A My work was through. I followed my instructions, and then I went home.

Q And when did you next see the box? A I didn't see it again.

Q Didn't you go back? A I did not.

Q Next day? A No, sir.

BY MR CLARKE:

Q Didn't you work on the case any more? A No; I didn't work on that case after that.

BY MR LYNN:

Q Well, you know that the people who pretended to own this box of fish still had the case of fish, don't you?

A No, sir, I don't.

Q Well, do you mean to say to the jury then, that the case was moved across the street and left there? A Yes, sir, it was.

Q On the sidewalk? A Yes, sir.

Q At 2 o'clock in the morning? A 2:40.

Q 2:40? A Yes, sir.

Q And that is all the defendants done, so far as you know? A I don't know what you mean, Mr---

BY MR CLARKE:

Q Well, that is what you saw them do, is it not? A Oh, yes.

BY MR LYNN:

Q Well, did they carry the box off somewhere and take it and keep it? A Which box are you referring to?

Q The one they carried across the street. Did any one take it away? A Not that I know of.

Q You and another private detective were within fifty feet of this box, and you saw it filled, packed, and taken across the street and left there, within your own vision? A Yes, sir.

Q And that is as far as you know about the case?

A Yes, sir. And I was following my own instructions.

MR CLARKE: Don't argue with Mr Lynn. You don't have to argue with him.

THE WITNESS: Yes, sir.

BY MR LYNN:

Q Well, then, when were the fish stolen?

MR CLARKE: I object. We will settle that. The fish were stolen when they were taken out of the boxes, we content. But it is a question of law.

BY MR LYNN:

Q Now, I want to know when these men stole those fish?

MR CLARKE: Objected to.

MR LYNN: Question withdrawn.

BY MR LYNN:

Q What was in this room that you were looking out of?

A Well, there were oyster baskets and burlaps.

Q How many oyster baskets? A Oh, I couldn't say, because it was dark in there.

Q Now, I want you to mark on that card where you looked out that night. Put a cross on it (indicating People's Ex. 1)

A Right there, sir. (indicating.)

Q Now, the window that you marked here is immediately under the cross, right next to the roof; is it not? A Yes, sir.

Q And is it next to the sign or next to the roof?

A I'm sure I don't know. But there it is there, in the picture (indicating).

Q Well, but you have put a cross on the roof, my dear. Now how far down is the window? A Well, I don't know how far it is down, I am sure.

BY MR. CLARKE:

Q Do you see a small black spot, right across there (indicating)? A Yes, sir. That is the window (indicating).

Q And that other spot? A That looks like a shadow. I don't know what that is.

BY MR. LYNN:

Q Now, in this place, where were you standing? It contained what? A Why, it contained burlap bags and oyster baskets.

Q How many oyster baskets? A Oh, I can't say; because it was dark, and I didn't count them.

Q Well, was it so that you had eight or ten feet space around you? A We had about six feet space, by the window.

Q So that you and your partner and the colored man were in this small space of six feet? A Oh, no. The space of six feet that I had reference to was a space cleared away from the window. The room itself, I should think, was about 25 by 40.

Q But the room was filled up; was it not? A Only partly;

on the sides.

Q Is the window there, to-day the same as it was on that night? A I believe so.

Q What is the black line that is indicated in that window, between the top of the sign and the window that you have marked? Is that the rain pipe?

BY MR. CLARKE:

Q Do you know anything about it? A Yes, sir. It is a drain pipe.

BY MR. LYNN:

Q Yes; to carry off the water on the sides? A Yes, sir, I believe so.

Q Well, you couldn't stick your head out of this window? A No, sir; not out of six inches. Not very well.

Q So that you would have to get a vision that would be somewhat in line with the objects, in order to see?

A I don't understand your point, Mr.--

Q Well, looking through a small slit-- A Six inches in depth.

Q Five inches? A- Five or six.

Q How far above the level of the dock were you standing, looking out of this window? A Oh, about 8 or 9 or 10 feet.

Q So that the barge was close to the string piece?

A No, it was not. It was about two feet from the string-piece.

Q Well, a person standing on the string-piece, you could see them? A Well, hardly. I suppose you could see their heads; and that's about all.

Q Their heads? A Head and shoulders, probably.

Q And how far was the fish boxes from the string-piece?

A That were on the trucks?

Q Yes? A They were right alongside of the string-piece.

Q They were right alongside of the string-piece? A Yes, sir. But the string piece was quite wide.

Q So that if a man, five foot six, was standing at the string-piece you could see his head, and how much of a box could you see, that was close to the string-piece? A Well, just probably the end. You could see the top of the box. You could see that part there, like that (illustrating).

Q Well, you could see a man, standing two feet higher?

A Well, the box, alongside of the string-piece, was a little further than the man.

Q Well, were you standing on a stool? A On burlap.

Q And how far was it up from the floor? A Probably three or four inches.

Q How many officers did you see going up and down that dock? A I saw three police officers going down toward the river end of the dock.

Q You saw three police officers going down toward the

river end of the dock? A Yes, sir.

Q And, during the two or three hours that you were there, those officers never came back? A They did not.

Q Well, they couldn't very well get back, without your seeing them? A Hardly.

Q Hardly? A Yes.

Q And you are willing to swear that three officers that went down that dock, that night, didn't come back, while you were there? A No, sir.

BY MR. CLARKE:

Q Could they have gone through that covered part of the dock? A No, sir. They used to sleep in those covered boats.

BY MR. LYNN:

Q Oh, they went down there to sleep; did they? A Yes. At least, that was our information, around there.

Q Well, we will get those three officers and see about that. Do you know their names? A No, sir.

Q Was that their boat, on that dock, after twelve o'clock? A I don't know where their boat was.

Q Well, it was on that dock, after twelve o'clock, that you saw them? A Yes, sir; it was after twelve o'clock.

Q What time did they go down on the dock? A Well, I know it was after 1:30. I don't know the exact time, because

it didn't concern my affair.

BY MR. CLARKE:

Q After the truck had come there? A No; I made a mistake. It was after 12:10, after O'Brien and Casey had finished their work with the barrel and the small box.

BY MR. LYNN:

Q Well, it was after twelve o'clock, midnight? A Yes, sir.

Q And that was the morning of the day of the 23rd?
A Yes, sir.

Q It was about ten minutes after twelve, when they went down the dock? A No. That was the time that the defendants were working. It was later than that.

Q Well, what time? A Well, I can't say exactly what time.

BY MR. CLARKE:

Q How long after these men disappeared inside of the market?

MR. LYNN: No. I'm not asking him about these men.

He's got these men all right. I am testing him by another rule, now.

BY MR. LYNN:

Q What time did you see them go down that dock, those officers? A Well, between twelve and one.

Q Well, was it nearer twelve than one? A I can't tell you; I don't know.

Q And you left there at 2:40? A Yes, sir.

Q And, during that time, the officers had still remained down at the end of the dock? A I didn't see them come back.

Q Didn't see them come back? A No, sir.

Q And I ask you, could they have come back without your seeing them? A I don't know; because they might--

Q Didn't you answer me, no, that they couldn't come down that dock, without your seeing them? A I think I did. But I might have been mistaken. I think I am mistaken, because they could walk over the oyster-boats in the rear, or other boats there, and they could walk direct to the ferry pier.

Q Then you are willing now to say that they possibly could come off the dock, because I said I was going to send for the officers, to my associates here? Didn't you say that they went down there to sleep, and couldn't get off the dock without your seeing them? A I said that they went down there to sleep, because I understand that they do so.

Q And you said that they couldn't get off the dock, without your seeing them? A Well, I knew they didn't come off the dock, as far as I saw. But I made a mistake, they

S-7

might have walked over the boats there to the ferry dock.

Q Did you see any watchmen there? A I didn't see any watchmen there. I saw a clerk of Mr. Moon.

Q During the hour and a half or two hours, that you worked there, no one was on the dock, but these three men? Answering the Recorder, you said that there was no one on the dock but these five defendants.

THE COURT: And the three officers, passing down, he said.

BY MR. LYNN:

Q Did you see the watchman, sir? A I did not.

Q Was there a watchman there? A I don't know.

Q Is there a watchman in Court, that belongs on that dock? A I don't know.

MR. LYNN: You have subpoenaed Mr. Benjamin; haven't you?

MR. CLARKE: No, sir; I have not.

MR. LYNN: Call Mr. Benjamin, outside in the hall.

BY MR. LYNN:

Q Don't you know that there is a regular watchman down there, by the name of Benjamin, who has been there a number of years? A No, sir, I don't.

Q This gentleman here (indicating)? A I never saw him before.

Q A man who has the confidence of everybody down there?

MR. CLARKE: I object to that statement of the counsel.

THE COURT: Objection sustained.

BY MR. LYNN:

Q Did you see him there? A No, sir.

Q Will you swear that he was not on that dock, covering all the period of time that you have sworn to here, sir?

A I can't swear to that.

Q Well, if he should testify that his duties led him up and down that dock, during every fifteen or twenty minutes, during the hours that you refer to, will you swear that he was not there? A I can't say that, I am sure.

Q Well, could you see him, if he was there? A Evidently I could, yes.

Q And yet you will not swear whether he was on the dock or not? A I didn't see him.

Q No. Did you see him? A No, sir.

Q You have told the learned Recorder that you could see clearly and plainly, and that there was a light on that pier, and there was no one on that pier, except the three policemen, who went down the pier, and that there was no one near the boxes except the five defendants? A Not in front of the window, as far as I could see; a space about fifty

feet distant.

Q Wasn't the market full of people? A I couldn't see very far into the interior of the market.

Q Couldn't you see the men moving around in the market? A No, sir; I could only see about forty feet inside of the market, near the entrance.

Q Weren't there thousands of barrels and boxes going through that market, on that morning? A Not while I was there.

Q What day of the week was it? A Well, it was the 23rd of December. I don't really know the day, unless I looked in the calendar.

Q Two days before Christmas; was it not? A It was.

Q And how do you fix the time, sir? A By memory.

Q By memory? A Yes, sir. I remember it.

Q Well, did you make any memorandum of it? A Oh, yes, I did. I took out my watch when various things occurred, and made a note of it, at the time, and turned my report paper to the light, to make the memoranda.

Q Well, what has become of that paper? A I destroyed that, I sent a proper report in, when I got home.

Q Well, wasn't the data that you made at the time better than any recollection afterwards? A No, sir.

Q Do you think that is so? A Well, I am quite sure of that.

Q And that is the reason for your destroying the memoranda that you prepared? A Well, I always take a copy from that, you see.

Q When did you compare the memoranda, during these operations? A Well, I did, at the time, the time I put down. And, as soon as I arrived home, I sat down, at half past three o'clock in the morning, and I made a note of what occurred, and kept it until I destroyed it.

Q Well, you didn't know these men prior to this time? A I never saw them before.

Q Well, in what way did your memory comprise them? Let us see now. I am not asking you--did you call them by name? A Not very well, because I didn't know their names then. I described the truck, and the time that it was driven on, and the description of the driver and the men that appeared, red hair, etc., and Kiersted with white hair, and a tall man, and O'Brien about 240 pounds, just his description as he is there (indicating).

Q Did you put that down on paper? A Yes, sir.

Q And you destroyed that paper? A Yes, sir.

Q And then you trusted, afterwards, to some one else giving you an identification of these men? A I don't quite understand you, sir.

Q Then you trusted to the opinion of some one else, two weeks afterward, to give you an identification of these men?

A No, no. I went down there myself, and picked them out, around the market.

Q When was that? A A few days after that.

Q Didn't you know that Mitchell was regularly employed on that dock? A I did not.

Q Didn't you know that O'Brien was employed there, to take these boxes off, and nail up broken ones, and pull them into the market? A I didn't know what his occupation was, at all.

Q Havn't you learned that since? A I have learned that since.

Q And didn't you know that Long and Kiersted was employed in assisting truckmen in bringing fish there and delivering them? A Not then.

Q Haven't you subsequently learned that fact? A I have learned it since then, yes.

Q And don't you know that those trucks go to different points, railroads and ferries and bring there case loads of fish, and dump them off on the dock, and these men wheel them into the market on hand trucks, and repair cases if they are broken, and put the fish in other cases if they are too bulky? A No, sir; I don't know that. I thought they were truckmen and platform men. I didn't know what their names were then.

Q There were three policemen at the end of that dock, that night, that you saw going down, at a certain hour, and those three officers were down at the end of the dock at the time you saw the commission of all these various acts. Did you call these officers, or make a search for them, to apprehend these men? A That was not my instructions.

Q I am not asking you what your instructions were. I am asking you what you did? A No, sir; I didn't call them.

Q Well, after the supposed box of fish had been carried into the market and a box like it had been taken, as you believe, the same box, but which you couldn't see, had been taken, on a single truck across the street, still in your vision, fifty feet away from you, did you get an officer to take the property and control it, after that? A I did not; because it wasn't my instructions.

Q Did you take any steps to take into your control that property, which you saw, or believed you saw, taken from this dock, fifty feet across the street? A No, sir, I did not.

Q You went home? Is that the fact? A Yes; I went home.

Q And, in other words, you abandoned your employers' property there, upon the highway.

THE COURT: No, no.

MR. LYNN: Well, that is substantially what he said

he did.

THE COURT: No. It has not been shown that he was employed by the owner of this property.

BY MR. LYNN:

Q You hadn't been drinking that night? A No, sir.

Q That's good. I'm glad to see a man that doesn't drink. But you smoke? A No, sir, I don't.

Q Or indulge in my bad habit of chewing? A No, sir.

Q Well, did you have any refreshments in the way of food, furnished you, while you were there? A No, sir, I could very well fast that long. I didn't get hungry. I have been in the army too long for that.

Q Well, will you say that those fish were not strong, rotten fish? A Well, we didn't smell them.

Q Well, were you on the windward or leeward side?

A I can't answer that question. I don't know.

Q Well, would you risk an opinion as to whether they were fresh or rotten fish? A Well, they didn't look decayed.

Q Had you been over to the car from which they were taken, in Jersey City? A No, sir.

RE-DIRECT EXAMINATION BY MR. CLARKE:

Q Now, you say you destroyed your memorandum? A Yes, sir.

Q Did you make your report before you destroyed it?

A Yes, sir.

Q So that from what source did you take the facts that you put in your report? A I took them from the memorandum

Q And then you inserted your own memory of it, together with the memoranda? A Yes, sir.

Q And then destroyed the memorandum? A Yes, sir.

MR. CLARKE: Now, do you want the report?

MR. LYNN: Well, I want the original memorandum, that he made, that night.

BY MR. CLARKE

Q Well, when did you make that report? A When I got home, in the morning, I wrote the report, and, the same morning I went to the office, and turned it in.

Q Where was this "Uncle Ben," during the two hours that you were there? A Why, he was inside of this little office, like.

Q Well, was he there all the time? A Well, he would come out occasionally, and look out of the window, and say, "Anything doing? Has it started yet?"

Q He looked out of the window, too? A Yes, sir, occasionally.

MR. CLARKE: Now, I want to offer this plan in evidence. It may facilitate matters. We have an architect's plan here, not only showing the dock and the market, but the elevation of the oyster-boats, and the windows

of the oyster-boats.

MR. LYNN: If it will assist in any intelligent analysis of this case, I have no objection, your Honor.

(It is marked People's Exhibit 3.)

CHARLES N. POST, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CLARK:

Q What is your business, Mr. Post? A Truckman.

Q What is the name of your firm? A Z. Post, Son & Co.

Q And where is your place of business? A Fulton Fish Market.

Q What is the nature of your business? Trucking fish, for various firms.

Q Now, do you know the defendant, Clarence Mitchell?

A Yes, sir.

Q You know him? A Yes, sir.

Q Do you know O'Brien? A Yes, sir.

Q He is the large man, who sits next to him (indicating)?

A Yes, sir.

Q In whose employ are they? A They were in my employ, then.

Q On December 23rd, were they in your employ? A Yes, sir.

Q Did you send them to get some fish for Chesebore Bros.,

Halibut? A I sent Mitchell.

Q Where was the fish? A At the Erie Railroad?

Q Where is that? A Over in Jersey City.

Q How many cases was he to get? A Well, I can't just exactly say, but he brought 18 on his load. He is supposed to bring 18 on a load.

Q What were his duties? A To bring them over, and deliver them on the dock, with O'Brien to help him unload them.

Q In order to prove that he had delivered them, what was he to do? Get a receipt?

THE COURT: No. What did he do?

MR. CLARKE: Well, Mr. Post was not there, that night, your Honor.

BY MR. CLARKE:

Q What is the duty of a driver who delivers fish at the market, as to getting evidence that he has delivered them? A Well, he has delivered them on the dock, and my night receiving clerk is in a little house there, and he had to report to him.

Q What is his name? A George E. Moon.

Q And is he there at nights? A Yes, sir.

Q And was he there on the night of the 23rd of December?

A Yes, sir.

Q And what was O'Brien's duty? A To assist him unload.

Q He is a platform man? A Yes, sir.

Q And his place of business is where? He stays there on the dock; doesn't he? A Yes, sir, right on the dock, where my office is.

Q Now, state whether or not it is any part of the duty of these men to open cases of fish, delivered in the early morning hours to Chasesboro Brothers? A No, sir.

Q Did you authorize them to open any of these cases? A No, sir.

Q Are Anderson, Long and Kiersted in your employ? A No, sir.

Q It is no part of their duty to help any one truck your goods? A No, sir.

Q And did you authorize them to have anything to do with these 18 cases of Halibut? A No, sir.

THE COURT: Mr. Clarke, how many cases did the last witness testify were opened?

MR. CLARKE: Fourteen. Eighteen were put on the dock, and only fourteen were opened.

THE COURT: Four remained unopened?

MR. CLARKE: Yes.

BY MR. CLARKE:

Q Now, your firm had charge of the delivery of the

whole carload; had they not? A Yes, sir.

Q From Jersey City to Chesebore Brothers? A Yes, sir.

BY THE COURT:

Q Do you mean a railroad car load, or a truck load?

A A railroad car load, the entire consignment.

BY MR. CLARKE:

Q Well, were they all delivered that night? A I am not sure; but, if they were, it is on that ticket (indicating).

THE COURT: Then do not say, Mr. Post, if you do not know.

BY MR. CLARKE:

Q Now, you know a halibut, when you see it; don't you?

A Yes, sir.

Q And have you seen this plaster cast (indicating)?

A No, sir, I haven't.

Q Now, look at that plaster cast, what is the color of the fish? A Black on one side and white on the other.

Q What is the size? A Well, various sizes. They run in various sizes, all the way from fifteen pounds to fifty pounds; and all sizes.

Q Well, I show you that plaster cast, and ask you about what weight that would be, if it were a halibut (indicating)? A About thirty pounds, I should think.

Q Have you seen them as large as that? A Yes, sir.

Q How much would you say that weighed? A What is that?

Q How long is that? A Well, I couldn't say exactly.

Q Well, is that a large or small halibut? A Well, for a Western halibut, it is a good sized halibut.

Q Now, are you familiar with the Fulton Fish Market?

A I think so.

Q Do you go there a good deal? A Every day, pretty near.

Q Are you there, at night? A Very seldom.

Q Do you know about the oyster boats there? A Yes; I know the one.

Q And it is there right along? A Yes, sir; to the best of my knowledge .

Q And whose boat is that? A The first one belongs to E. C. Strong & Co., I believe.

Q They are oyster people, are they? A Yes, sir; they are oyster people.

Q Are you related to the other Mr. Moon-- Oh, No, your name is Post. Excuse me. A Yes, sir. Post is my name.

Q Now now are the halibut shipped, usually? A Well, they come in carloads.

Q I mean, as to the boxes? A How many in a car?

Q No. What is the size of the boxes? A Well, I

couldn't exactly say what the size of them are:

Q Well, how many pounds of fish in a box? A They run, I suppose, five hundred pounds or a little over.

Q Do they ship them with ice in them? A Yes, sir; with ice in them.

CROSS EXAMINATION BY MR. LYNN:

Q Mr. Post, how long has Mr. O'Brien and Mr. Mitchell been with you? A Well, Mr. Mitchell has been with me, I guess six or seven years.

Q Six or seven years? A As near as I can recollect.

Q A steady worker, during those years? A Right along.

Q You know nothing about this particular charge they are making here, in reference to the facts, do you, other than what you have heard? A Just what I have heard.

Q just what you have heard? A Yes, sir.

Q Well, during those years, did he perform his work fairly well and decently?

MR. CLARKE: Objected to.

THE COURT: Objection sustained.

MR. LYNN: I thought I might utilize this gentleman as a witness. Here is his employer on the stand.

THE COURT: I do not rule upon that point against you. I will permit you to prove it by him, in the usual way.

BY MR. LYNN:

Q How long has O'Brien been with you? A I guess, about four or five years, as far as my recollection goes.

Q Well, you know them both pretty well; don't you?

A Well, yes.

Q They are pretty steady fellows?

MR. CLARK: Objected to.

THE COURT: Objection sustained.

BY MR. LYNN:

Q Well, what is their general reputation, Mr. Post, for men who are fairly honest and decent, and doing what they are put to do by you and others, and among others who know them?

MR. CLARKE: Objected to.

THE COURT: I sustain the objection to the form of the question.

BY MR. LYNN:

Q You considered them good enough and steady enough and straight enough to keep them in your employ until the time of this trouble?

MR. CLARKE: Objected to.

BY MR. LYNN:

Q Well, they were in your employ, one for five years, and the other for seven years? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. CLARKE:

Q Who are the large shippers of halibut in this country?

A The receivers?

Q No. The large shippers? A Cheseboro Brothers.

Q I mean the shippers of it, who send it on here from the Pacific? A That I don't know.

Q But Cheseboro Brothers are the largest consignees of it? A Yes, sir.

RE-CROSS EXAMINATION BY MR. LYNN:

Q Is it not a fact that, where ship are in a box, and the box becomes broken so that the box itself permits the fish to run out, or the cover is off, that either Mitchell or O'Brien might use hammer or nails, to put them together?

A Well, if in handling roughly they bust them, they do that; but, if they handle them carefully, they don't.

Q And is it not a very frequent thing that cases do get into that state, from rough handling, either on trains or otherwise, coming from where they do come from; that they are in a case where they need some repairing; isn't that a very frequent thing? A Well, sometimes it happens.

Q Well, haven't you known of cases where fish broke all over the dock, and had been gathered up and put back in the boxes? A Yes.

BY MR. CLARKE:

Q Well, did you ever know of a case where, out of eighteen cases, fourteen cases had to be repaired in that way?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Would these men be authorized to take fish out of a package of fish consigned to Cheseboro Brothers?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

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

DIRECT EXAMINATION BY MR. CLARKE:

Q What is your business, Mr. Leary? A Truckman, sir.

Q What is your firm? A Bedell & Leary.

Q Where is your place of business? A Number 4 Fulton Market.

Q And what is your general business? A Oysters, clams and fish, trucking them.

Q Now, do you know the defendant, Kiersted? A Yes, sir.

Q Is he in your employ? A He was in my employ.

Q In december last? A Yes, sir.

Q What was his business there? A What was his business?

Q Yes? A He was night man.

Q What were his duties? A Driver.

Q And what else? A Taking care of all the steamer stuff.

Q He was a driver of one of your trucks? A yes, sir.

Q A single truck? A Yes, sir.

Q And do you know the defendant, Anderson? A Yes, sir.

Q Is he in your employ? A He was, sir.

Q December, 1903? A Just the same. His work was Long Island work.

Q To bring fish from Long Island? A Yes, sir.

Q To the Fulton Market? A Yes, sir.

Q Now was Michael Long in your employ? A No, sir.

Q Was he ever in your employ? A No, sir.

Q Now, on the night of December 22nd, 1903, and the early morning of December 23rd, had you given Kiersted any orders to go to Fulton Market? A I always give him orders, yes.

Q What was he doing, that night? A He was riding stuff out of the freezer, for George T. Moon.

Q Who is he? A A man at Number 2 Fulton Street.

Q When you say "riding", do you mean trucking? A Yes, sir.

Q Where was he taking the stuff from? A From the Bridge Freezer, to Stand Number 2, Fulton Market.

Q And in what sort of cases was it? A In small boxes, about that high (illustrating).

Q And Anderson's job, what was that? A I think he was over at the Long Island Railroad.

Q Well, he should have been over there? A Yes, sir.

Q What doing there? A Riding stuff from over there.

Q Now, did you authorize either of them to assist in unloading any halibut, consigned to Cheeseboro Brothers?

A No, sir; I knew nothing of that.

Q Well, do you carry Halibut for that firm from the Erie Railroad over to Fulton Fish Market? A No, sir.

Q Did you take any, in December, 1903? A No, sir.

Q Now, who occupies the premises 105 South Street there? Who has a fish man there? A Robbins & Mulke, a stand out on the sidewalk.

Q Is it there day and night? A No, sir; not day and night. It is only there in the early part of the morning, until certain hours of the day.

Q Where is their other place of business? A 109.

Q And what have they there? A A store.

Q Who are they, Robbins & Mulke? What is their business?

A Fish men, fish business.

Q Retail fish dealers? A No, sir; wholesale fish dealers.

Q What time of day do they open up the temporary fish-

stand? A About five o'clock, I should judge.

Q And they have a market at 109? A Yes, sir.

Q Now, do you do any trucking for them? A Yes, sir.

Q Now, did you give Kiersted any orders to carry a large case of halibut and a small box of fish and a barrel of fish there, that morning, to that firm? A No, sir.

Q Did you have any such job on hand? A No, sir.

Q Were you trucking for Robbins & Mulke on that morning?
A No, sir.

Q And did you know that Kiersted did take on his truck a case of fourteen halibut, and deliver it at that place, on that morning? A No, sir.

Q Did he report it to you? A No, sir.

Q Or, Anderson either? A No, sir.

CROSS EXAMINATION BY MR. LYNN:

Q Mr. Leary, how long has Kiersted been working for you? A About two years, sir.

Q How long has Anderson been working for you? A Well, he has been working about six months.

Q About six months? A Yes, sir.

1

Q You say, on the night in question, that Anderson and Kiersted--that Anderson had the Long Island work? A Yes, sir; the Long Island work.

Q And were you there to see him do his work, or are you only supposing this? A I was not there to see him do his work, no.

Q You had a horse laid up at that time, didn't you? A Yes, sir, I did.

Q One that was sick? A Yes, sir.

Q And your other horse was trying to cover both places? A Yes, sir.

Q Both routes or systems? A Yes, sir.

Q You didn't know that Long here helped out Anderson, whenever he could? A On one night, sir.

BY MR CLARKE:

Q What night? A I couldn't tell you the date.

BY MR LYNN:

Q Was it not that night? A I couldn't tell you the date, sir.

Q So that Kiersted and Anderson were your regular men, and you know that Long, now and then, substituted, or kind of filled in occasionally, to help? A Yes, sir, that's right; one night, to my knowledge, he was in there helping him.

Q But you don't know the night? A No, sir.

Q Long Island? When you say Long Island, what do you mean? A Long Island City, sir; the Long Island Railroad.

Q Where is that? A That is situated over in Long Island City, one portion, and the other portion is up around Catherine Street.

Q James Slip; is it not? A Yes, sir.

Q And when fish come in, your carts go over to Long Island City by the 34th Street way? A Yes, sir.

Q And, if they have occasion to go to the James Slip way, they go by South Street? A Yes, sir.

Q Now, was there any shipments that you know of that your truck was required to get from the Long Island City side that night? A I don't believe there was; no, sir.

Q Well, doesn't your books show? A Well, I haven't got nothing on the books for that particular night.

Q Eell, don't they have to go there even if they don't get any freight? A Yes, they have got to go.

Q To meet the trains? A Yes, sir.

Q Now, was there any freight that came in at James Slip that night? A No, sir.

Q Now, what is the usual time for your trucks to be in Long Island City? A Between eleven and twelve o'clock.

Q It would take more than an hour, wouldn't it, to come down from Long Island City, crossing the 34th Street ferry,

3

and walking a horse downtown? A It would take you an hour and a half, at least.

RE-DIRECT EXAMINATION BY MR CLARKE:

Q Well, do you know of anything that would take them---

BY MR LYNN:

Q Oh, let me ask you; what is the reputation for honesty of Anderson and Kiersted?

MR CLARKE: I object to coupling them together.

Take one at a time.

BY MR LYNN:

Q Well, take Anderson? A Well, while he was in my employ everything went on straight.

THE COURT: No, no. That is not the question.

BY MR LYNN:

Q Is his reputation for honesty good or bad? A Well, as far as I can understand, I never heard anything wrong about the man.

Q You know that he is a married man and lives home, and does his work regularly?

MR CLARKE: Objected to.

THE COURT: Objection sustained.

BY MR LYNN:

Q Now, about Kiersted? A Well, I know Kiersted all my

lifetime, and never knew him to do anything wrong.

Q Well, how long is all your life? A Well, that's pretty near thirty-five years. I have ate and drank and slept with him.

Q Now, don't you recall, Mr Leary, of your driver, Anderson, being ailing and sick at one time? A He was sick, yes, with rheumatism. He complained of the rheumatism.

Q And don't you recall the fact that during that time-- which was about this very time too---that this sickness, or rheumatism was on him? A It was in that week, Christmas week.

Q Yes, in Christmas week? A Yes, sir.

Q Now, do you recall the fact that Anderson came to you, and told you that his doctor had advised him that the night work he should avoid and to get a substitute? A He came to me one time---

MR CLARKE: Objected to.

THE COURT: Objection sustained.

MR LYNN: As matter of fact, I will make the statement your Honor, that I intend to prove by this testimony, that Anderson was on that dock at all that night, but was at home, sick, that night. That's the reason why I ask this question.

THE COURT: Objection sustained.

5

BY MR LYNN:

Q Did Mr Anderson ask leave to absent himself from his nightwork during that week?

MR CLARKE: Objected to.

THE COURT: Oh, no, this is not proper testimony at all.

MR LYNN: Now, you see, they fix him on that dock, and I want to disprove it.

MR CLARKE: He could easily say he would be off sick that week, and still be at the dock.

BY MR CLARKE:

Q Now, you say that you understand that Long took Anderson's place one night? A Yes, sir; because he came and told me.

Q When was that? A With a horse and truck. I can't remember when it was exactly, except it was in Christmas week.

Q Well, Anderson told you that too, didn't he? A Yes, sir.

Q When? A The next day.

Q Didn't he tell you so after he was arrested in this case? A Yes, sir. He told me so, too.

Q Are either of these men now in your employ? A No, sir.

Q Were they discharged? A Yes, sir.

THE COURT: Oh, no.

MR LYNN: That is the work of the Fish Association. They had to do that. Otherwise they couldn't get any work. But these men are all working now, and have got just as good jobs.

THE COURT: No, that is not a proper statement.

BY MR CLARKE:

Q Now, did you pay Long for that substitution? A No, sir.

Q Now, on the morning of the 23rd of September, was there are work of yours that required Anderson and Kiersted to be on that dock? A Well, freezer stuff had to come off the truck, for one or two stands on the dock, but I don't know whether they took it off on the dock or in front of the market.

Q Where was it to be taken to? A To George T. Moon, Fulton Market. This stuff came down from the Bridge Freezer, and was to be taken to the Market.

Q And then the only work that Kiersted had to do that night, was to drive the truck from the Bridge Freezer down to the market? A Yes, sir.

Q And when was he to do that? A That was his own time. I trusted it all to him.

Q And what kind of packages were they? A Small boxes like that (illustrating).

Q And then he could go home, couldn't he? A No, sir.

He had to wait there until "The Centennial" come in.

Q What is that? A The Boston stuff, the stuff that comes in from Boston.

Q Is it a train? A No, sir; it comes down on a boat from Harlem.

Q When does it come in? A About four or five.

Q And so that their duties were to remain on that dock?

A Yes, sir.

Q And they had no further work for you until "The Centennial" came in? A No, sir.

Q And Long was not working for you that night, was he?

A No, sir.

GEORGE E. MOON, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR CLARKE:

Q What is your business, Mr Moon? A I am night clerk for Post & Co. I attend to their night business, and take charge of their trucking business.

Q And where are you stationed? A I am stationed in the office on the platform of the Market, in front of No. 5.

Q At the Fulton Fish Market? A Yes, sir.

Q You have a little booth there? A Yes, sir.

Q Where is it? A It sets out in front of No. 5.

8

Q Now, were you on duty on that dock, on the night of the 22nd and morning of the 23rd of December, 1903?

A Yes, sir, I was.

Q And did you see the defendant Mitchell? A Yes, sir. I heard a truck come down Beekman Street in the neighborhood of two o'clock.

Q What did he have on it? A He had on it a halibut.

Q In the morning, do you mean? A Yes, sir.

Q And did you have anything to do with them? A I did, sir.

Q What were your duties? A I went out and took the account of the load that he had on, eighteen boxes, and went back to my office, and made the check out for it, which I have in my pocket. I believe that is it, sir (indicating).

Q Well, who were these halibut consigned to? A Chesebore Brothers.

Q They have a fish stand there at the market? A Yes, sir; No. 1.

Q Now, had you had anything to do with sending this halibut to the Erie Railroad? A Yes, sir, I give Mr Mitchell the orders to go over, and get eighteen boxes.

Q That is, acting for Post & Co.? A Yes, sir.

Q Who were trucking for Chesebore Brothers? A Yes, sir.

Q And, in accordance with your instructions, he brought those boxes there? A Yes, sir.

Q And you checked them off? A Yes, sir.

Q And in what condition were they? A They were in good condition, as far as I know. They were a straight load of eighteen boxes of halibut, and, of course, I didn't stay there to see them all taken off. If they had been a mixed load I would have stayed there and checked each box.

Q What is a straight load? A A load consigned all to one firm.

Q And, while these boxes were being unloaded, where were you? A In my office, attending to my business.

Q Where is your office? Indicate on the map? A The fifth stand in the market, from the Beekman Street end.

Q You mean that you are under the cover? A Yes, sir, I am under the cover.

Q In what part of this building, shown in People's Exhibit 2, are you? A Well, mine is a little further that way (illustrating).

Q Further in here (indicating)? A Yes, sir; further inside.

Q In the front part of the market? A Yes, sir, down on the edge of the street.

Q Well, you looked these cases over, didn't you, general-

ly? A Yes, sir; and I generally do.

Q Were there any lids missing? A No, sir. And, if there are any out of order, Mr O'Brien gets a hammer and nails and nails them up, which it is his duty to do.

Q Were any of them out of order? A Not that I know of.
BY THE COURT:

Q Do you mean the eighteen cases that were on Mitchell's truck? A Yes, sir. They appeared to be in good condition. If they had been in a bad condition I should have heard them nailing them up.

BY THE SIXTH JUROR:

Q Were the cases single, on the bottom of the truck?
A They stood up, on their ends, endways, like that, the same as I would stand like that (illustrating).

Q And could you see through the cases? A No, sir; they were all close together.

Q But you saw the back and front of some? A Yes, sir.

Q And they appeared to you to look how? A All in good order, when I looked at them.

BY MR CLARKE:

Q Did you smell anything? A Why, I smelled fish.

Q And did you smell any decayed fish? You know the smell of decayed fish? A Well, you can smell lots of decayed fish around there.

Q But as to these cases here? A No, sir; they were not decayed; they were not decayed at all.

Q Now, did you see any of these eighteen cases taken off the truck? A Yes, sir; I think they had taken off two.

Q Where were they? A I stood in the doorway, Cheseboro's doorway, as you go out on the dock.

Q Now, did you see Klersted or Anderson there? A No, sir.

Q Or Long? A No, sir.

Q But you saw Mitchell and O'Brien? A Yes, sir, the helper and the driver.

Q And they worked for your concern? A Yes, sir; and they were the ones to be there.

Q And at any time did you see the other three men?
A I did not.

Q Now, who did you see take the cases off? A I saw Mitchell and O'Brien take two cases off.

Q Are you sure that they took two cases off? A As nearly as I can remember, they did.

Q And what did they do? A Put them on the hand truck and put them alongside of the stringpiece, the same as they always do.

Q And you are sure of that? A Yes, sir.

Q And then you went inside? A Yes, sir.

Q And mightn't you have gone inside?

MR LYNN: Objected to.

THE COURT: Objection sustained.

BY MR CLARKE:

Q Now, did you see Kiersted working over any barrels there, taking fish out of them? A No, sir, I did not.

Q Are you familiar with the rules of the Fulton Market there? A I am, sir. I ought to be. I have been there fifty years.

Q Fifty years? A Yes, sir.

Q Is there any rule in regard to people opening packages, during certain hours there?

THE COURT: No. I do not think that is competent, unless the defendants are shown to have been apprised of it.

BY MR CLARKE:

Q Well, did you see any halibut taken out of any of these boxes? A No, sir.

Q And did you see Kiersted with his truck with three packages on it, later? A No, sir.

Q Well, where were you? A Well, sir, I would walk around the market, to see if Cheseboro's stuff was all in good order.

Q Well, did you see the eighteen cases? A Yes, sir; on the other side of the string piece.

Q At what time of the night did you see them? A Somewhere in the neighborhood of three o'clock; between two and three.

Q And did you go out there at the time while the men were working over the cases? A Only while I was there, that the two cases were taken off. I didn't go out again while they was unloading them. I had no occasion to.

Q Well, was there anybody there when you came out? A Only Mitchell and O'Brien, the driver and the loader.

Q Kiersted and Long and Anderson were not there? A I did not see them.

Q And did you see any ice scattered around there? A I did not, sir.

Q It was all clean? A As far as I know. Of course, it isn't my business to examine the dock.

Q Well, were you there all night then? A Yes, sir.

Q Did you sleep in this little office? A Do I sleep?

Q Yes. A No, sir.

Q What were you doing in there? A I sleep daytimes, and keep awake night times.

Q You were working on your books there? A Yes, sir.

Q Entering up different goods? A Yes, sir.

Q And what did Kiersted bring there that night? A I have nothing to do with him there, sir. He has as much right to bring stuff there as we have. I only keep track of what my drivers do, Post, Son & Co.'s drivers, what they do.

Q And do you know Robbins & Mulke? A Yes, sir.

Q Where is their place of business? A 109 South Street.

Q What is their business? A Fish dealers.

Q And do you know about this stand that they have there at 105? A I know that they have a stand out in front of a gin mill there, where they sell lobsters.

Q And what time do they set up the stand? A About five o'clock in the morning.

Q Do they sell halibut? A I couldn't answer to what they sell. They sell all kinds of fish.

Q They deal in fish? A Yes, sir.

Q And did you deliver any fish for Post & Co. to them that morning? A No, sir.

Q There was no halibut consigned to them, was there?
A No, sir.

MR CLARKE: I offer in evidence this little memorandum, made in the course of business that night, by the witness.

THE COURT: Show it to Judge Lynn.

BY MR CLARKE:

Q Is this in your own handwriting? A Yes, sir.

Q Made by you on the spot? A Yes, sir.

Q What do you call it? A A receipt for stuff from the Erie Railroad, a slip that I take account of the load on, and I put it on a file, so as to show what we received, and what driver brought it there.

MR LYNN: I don't make any objection to it, sir.

(It is marked People's Exhibit 4.)

(Mr Clarke reads the Exhibit to the jury.)

THE COURT: Mr District Attorney, ascertain from the witness what is the distance between, or, what are the relative positions of the office where he was engaged, and the place where the witnesses were watching, the two first witnesses?

BY MR CLARKE:

Q Now, where was the truck when you saw it? A It was on that side of the dock (indicating), with the horses' heads towards Beekman Street.

Q Just as they are in this picture (indicating)?

A Yes, sir.

Q And how far away is that from the office where you were? A That is about a hundred feet.

Q And have you a door there? A I have a window on

that side and a doorway on the other side (indicating).

Q Well, you go in and close your door, don't you? A No, sir. I close the bottom door, and have the upper door open.

Q That faces in what direction? A That faces towards the Fulton Street side. My window faces toward the Beekman Street side.

Q And you were about 100 feet away? A Yes, sir.

Q And in under the covered market? A Yes, sir; where I could see what transpired.

Q And you tried to keep a watch out? A Yes, sir. I looked out after the interests of the men that I worked for, and always did.

Q Well, did you know that any of these cases were broken open? A No, sir. Only by hearsay, newspaper talk.

CROSS EXAMINATION BY MR LYNN:

Q Mr Moon, you told Mr Clarke, that, if there had been any nailing there that night you would have heard it?

A I would, sir.

Q Your hearing is fairly good, then? A Yes, sir; eyesight, poor, but hearing good.

Q So that, if there were any boxes that had been opened and had been nailed up again, with a crowbar, or a hammer, you would have heard it? A I would, sir.

Q When you came out on the dock that night, were you

on the open part of the pier? A I was out under the front platform there (indicating).

Q How near did you go to the truck, to inspect? A I go within about ten foot. There is the doorway, and here stood the tail of the truck, righthere (illustrating).

Q And this Strong barge, where these private detectives were, the truck was between you and it? A Yes, sir; between me and the scow.

Q And so that any one looking out from the scow, could see you standing on the dock? A Yes, sir.

Q And you stood there while they took two of the cases off? A Yes, sir. And I think I said, "Be careful, and don't break any of them." I always cautioned them to be careful.

BY MR CLARKE:

Q Who did you say that to? A O'Brien and Mitchell.

Q And the other three defendants were not there at the time? A No, sir; I didn't see them at all during the occurrence.

BY MR LYNN:

Q How long a time did it take you, Mr Moon, coming out of your office there and walking over to the truck, and standing within ten feet, to count and inspect the truck load?

A Oh, it didn't take over a minute or two; just to walk out

and back, one hundred feet.

RE-DIRECT EXAMINATION BY MR CLARKE:

Q Did you hear any pounding there? A I did not, sir.

Q Will you swear that these men were not pounding on these boxes? A I will swear that I didn't hear them.

Q Well, you were a hundred feet away and inside of your office? A I was a hundred feet away, and I heard no pounding. If I had I should have gone out to see what was the matter, as I always do, when I hear any pounding.

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

DIRECT EXAMINATION BY MR CLARKE:

Q How old are you, Benjamin? A I was born in 1840.

Q What is your business? A Well, I am an oysterman, in general.

Q In general? A Yes, sir.

Q And who do you work for? A Kelly, Strong & Green.

Q And where do you work? A On Scow No. 2, Fulton Market.

Q On the scow of E. C. Strong & Co.? A Yes, sir.

Q And what do you do there? A I do the marking now. I mark oyster baskets, and stencil the barrel covers. I used to open oysters.

Q And do you sleep on the barge? A Yes, sir, and have been for three years.

Q Does any one else sleep there at night? A No, sir.

Q And they call you Uncle Ben, don't they? A Yes, sir.

Q And you were there on the night of the 22nd of December and the morning of the 23rd? A Yes, sir.

Q Do you remember any one coming there? A The detectives came there.

Q Do you remember them? A Yes, sir.

Q Have you recognized them as they have been witnesses here? A Yes, sir.

Q Mr Stewart Coles and Mr Roser? A Yes, sir.

Q What time did they come there, do you remember?

A Well, about nine, and left just before three, just about three.

Q Was there any light in the barge that night? A No light in our barge. We wouldn't have any light in the barge.

Q Did they come there together? A Yes, sir, the watchman let them in.

Q And you were upstairs in the back room, weren't you?

A Yes, sir.

Q You don't know whether the watchman let them in or not? You were not down at the door? A Well, the door was locked, and--

Q Well, you mean the door had been left unlocked?

A Yes, sir.

Q And they went in? A Yes, sir.

Q Now, were you at the door when they came in? A No, sir; I was upstairs.

Q And then you don't know who let them in? A Yes, sir; I know the watchman let them in, unlocked the door and let them in.

Q Now, you were up in the back room; were you? A Yes, sir.

Q You had a light in your room? A I had a light in my room, but the door was shut all the time. I was marking baskets.

Q Well, when you first saw the detectives, where were they? A They were back, in the otherpart of the scow.

Q You have got to go away back, to the rear of the scow, to go upstairs, haven't you? A Yes, sir.

Q And you saw them first when they were upstairs? A Yes, sir.

Q And what did they do when they got up there? A Well, they attended to their business, you know. I had nothing to do with the detective business, you know.

Q What did you see them do, Uncle Ben? A I saw them looking out of the window.

Q Is there a little window at the side of the oyster float, up by the sign there? There is a little window up there, is there not (indicating)? A Well, here is the window (indicating). That is not our scow, is it? There is two windows there, and they was looking through the window, and they could see through the window where they were, but I couldn't see what the men were doing through the window where I was.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess for one hour.)

MR CLARKE: Will your Honor caution the witness not to speak to any one during the recess?

THE COURT: You are under oath now, and you must not speak to any person about your testimony, either that which you have given, or that which you may give, during the recess of the Court. You understand?

THE WITNESS: Yes, sir.

THE COURT: You must not speak to any person, or allow any person to speak to you, about your testimony.

THE WITNESS: Yes, sir.

MR LYNN: Will your Honor indulge the defendants in allowing them to go on their parole?

MR CLARKE: No objection. I consent.

AFTER RECESS.

BENJAMIN GRAHAM, his direct examination being continued, testified as follows:

DIRECT EXAMINATION CONTINUED BY MR CLARKE:

Q Now, you say that you saw the two detectives there on the night in question? A Yes, sir.

Q And where were they? A Upstairs in the loft.

Q What were they doing? A Watching out, I suppose.

Q Well, what did you see them doing? Looking out of a window? A I didn't watch them particularly. I was working inside. But I know they were looking out of a window. That's a sure thing.

Q And looking out of the window on the side of the market? A Yes, sir.

Q And how long were they looking out of that window? A Well, they came in about nine o'clock, and left pretty near three o'clock.

Q And they were in there all the time, were they? A Yes, sir.

Q Were you in the room all the time? A Well, I was in and out. I had to go in and out and downstairs, and attend to my business.

Q Well, whenever you came out of your room into this

big room did you see them there? A Yes, sir.

Q Well, were they together? A Well, sometimes, and sometimes they were looking out in front, too. You see, there is a front there too.

Q Well, they were at one of the windows during all the time that you saw them? A Yes, sir.

Q Did you go over to the windows once or twice? A Well, I went to the window opposite me, and I had to go there, you know, because---

Q Now, one moment. Did you go over to the window where the detectives were standing? A Yes, sir; once or twice.

Q And you could see out on to the dock, could you not? A Oh, yes.

Q Was it light? A Oh, yes.

Q An electric light? A Yes, sir; there is an electric light there, all along.

Q Well, did you see Mitchell's truck out there? A I couldn't tell you the name of the truck. I saw trucks there.

Q One or two-horse trucks? A I couldn't tell you that.

Q Well, did you see men working out there? A I see them every night.

Q I am speaking of this night? A Yes, sir.

Q At the time these detectives were there? A Yes, sir.

Q But you didn't take any particular notice? A No, sir.

Q Do you know any of these defendants? A (No answer.)

Q You know them, don't you, these gentlemen here (indicating the defendants.) A Well, I saw them before, some of them, but very little.

Q Well, you know them too, as working around that dock?

A No, sir; I don't.

Q You don't know any of them? A No, sir, I don't.

Q You are in the oyster business? A Yes, sir; and they are in the fish business, see.

Q Now, when the detectives went away, did you see them go?

A Yes, sir.

Q Did you lock up, after them? A I couldn't lock up because the watchman had the key, and it locks from the outside.

Q And they lock you in there every night, don't they, Uncle Ben? A Yes, sir, every night.

CROSS EXAMINATION: None.

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

DIRECT EXAMINATION BY MR CLARKE:

Q What is your business, Mr Ashcroft? A Night watchman, Fulton Fish Market.

Q Have you anything to do with the oyster boat moored alongside of the pier there? A Yes, sir.

Q What is your business there? A Night watchman.

Q Have you the key to the door?

A Yes, sir.

Q What sort of a lock is it?

A A padlock on the outside.

Q Now, do you recognize either of the detectives that were on the stand, Mr Coles or Mr Roser? Stand up, please (indicating)? A Yes, sir.

Q When did you see them?

A I saw them just before Christmas.

Q Now, do you remember the night of the 22nd of December, 1903? A Yes, sir.

Q Did you see them that night?

A Yes, sir.

Q What time? A Around nine o'clock.

Q What did you do? A I unlocked the door and let them in.

Q Did they go in there at that time? A

A I left the door unlocked.

Q Where were they? A They were over on the corner.

Q Had you had some conference before? A Yes, sir. They asked me would I unlock the door and let them in. And I was ordered before that, to unlock the door, if they came, and let them in.

Q You got such orders from the firm of E. C. Strong & Co.?

A Yes, sir.

Q And did you go in with them when you unlocked the door?

A No, sir. I went in there, after they went in, at one time.

CROSS EXAMINATION: None.

A M O S G . C H E S E B O R O , a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR CLARKE:

Q Where do you live, Mr Cheseboro? A 649 Putnam Avenue, Brooklyn.

Q What is your business? A Wholesale commission fish dealer.

Q What is the name of the firm? A Cheseboro Brothers.

Q And have you a stand in the wholesale fish market?

A Yes, sir.

Q In the Fulton Fish Market? A Yes, sir.

Q Now, does your firm handle halibut?

A Yes, sir.

Q Now, will you just explain to the jury where you get it, and in what amounts?

A Well, they are shipped to us from Tacoma, Washington, by the International Fisheries Company. It is a company that produces halibut in large quantities and ships them to us, in carloads, and we handle them in such amounts as they have to ship to us.

Q Well, in what form do they ship them?

A Well, if the halibut are boxed, in boxes about like this one that is here (indicating), and I am not sure whether that is one of our boxes originally, or not. There is another company on the West Coast that uses about the same sort of box. I have never examined the two boxes.

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Q Now, what is the size of the boxes, and how many fish are there in a box, and so on? A Well, they come about four hundred pounds in a box.

Q And iced? A Yes, sir; very heavily iced.

Q And how many pounds of ice? A We never weigh it, and I could only estimate that. I presume there is from one hundred and fifty to two hundred pounds put in the box originally.

Q Now, did you have a carload of halibut consigned to you in December, 1903, from this Fisheries Company? A Yes, sir.

Q And it came by way of the Erie Railroad? A Yes, sir.

Q Now, did you see any of this halibut, on the 23rd of December, after it had been delivered there? A Yes, sir.

Q How many cases? A Well, I don't take account of that.

Q Well, a number? A Yes, sir.

Q As many as eighteen? A Yes, sir.

Q And what was done with the halibut? A Handled in the usual way.

Q Well, what was found as to its condition? A You mean the condition of the fish?

Q Yes? A In good condition.

Q Now, taking one of those boxes, such as have been described here, which are the usual boxes that you say you

have seen the fish in--about four and a half feet long; are they? A yes, sir; about that.

Q How deep? A Probably, two feet.

Q And how wide? A. I should think, something less than two feet wide.

Q Now, are you able, ~~with~~ your experience as a fish-dealer, to say how many pounds of halibut such a box would contain? A You mean, without ice?

Q Yes, without ice? A At least five hundred and fifty pounds.

Q Now, have you bought and sold halibut, and other kinds of fish? A Yes, sir.

Q How many years have you been in the fish business? A I have been connected with the business fifteen years, and been in business for myself, thirteen years.

Q Do you know the market price of halibut? A Yes, sir.

Q And what was the market price of halibut, such as you have described as being shipped to you by the International Fisheries Company, on the 23rd of December, 1903?

MR. LYNN: Objected to, unless it is shown that the witness is able to identify the particular property which is charged in the indictment. It seems to me that he is going to surmise now on the quantity and quality.

BY MR. CLARKE:

Q Now, did you receive any other halibut, on the 23rd of December, except that which came by way of the Erie Railroad from the International Fisheries Company? A No, sir.

Q Who were the truckmen for that lot of fish? A Post & Co.

Q Now, I repeat the question, as to the market value of Halibut of that description, on the 23rd of December, 1903?

MR. LYNN: The same objection, your Honor.

THE COURT: Well, I do not know what you mean, Mr. District Attorney. What do you mean? Per pound or per fish?

MR. CLARKE: Per pound.

THE COURT: The witness can state the market value of halibut, on that day.

MR. LYNN: I take an exception.

A The market value of this carload of halibut was nine cents.

BY THE COURT:

Q Nine cents, what? A Nine cents per pound.

Q Now, you saw the halibut that came out of some of the cases that were left on the string-piece of that dock, that night? A Yes, sir.

Q Were you there when they were opened? A yes, sir; some of them.

THE COURT: We have knowledge only of eighteen.

MR. CLARKE: Yes, sir. But there were others.

BY MR. CLARKE:

Q Did you see some of those cases the next morning?

A Yes, sir.

Q Had they been brought in from the string-piece, when you saw them? A No, sir; they were on the dock, presumably where they were left by the truckmen.

Q On the string-piece, near the oyster barge? A Yes, sir.

Q And did you see them afterwards? A Why, what do you mean by seeing them? After they were brought in from the dock?

Q Yes? A Well, they were brought into the stand, on the hand truck, and opened and weighed. That is our custom.

Q Well, you sell them in large quantities; do you? A Yes sir; large and small quantities.

Q By the case? A Yes, sir.

Q And so, as you sold a case, you opened it, so that the customer could inspect them? A Yes, sir.

Q And you were present? A Yes, sir; in some instances.

Q Now, just give us an idea of how the fish ran as to size. How large fish were they? A Well, I should give it as my judgment that these were fish that would average thirty-five to forty pounds.

Q Now, as to the size, about how large were they? A A fish like that (indicating the cast).

Q As large as that cast (indicating)? A Yes, sir. Some larger, and probably, some smaller.

Q And what would that fish weigh, if it were a halibut (indicating the cast)? A About thirty pounds.

Q And was such halibut worth nine cents a pound on that day? A Yes, sir.

Q And you say that an empty box, such as these were, without any ice in it, would hold how many pounds? A 550.

Q Now, about the weighing of the fish. When they are billed to you, is the weight given? A No, sir.

Q Simply the number of cases? A Yes, sir.

Q And how is the weight ascertained? A Only as we weigh them. Our weight is taken.

Q Do you weigh them? A Yes, sir.

Q And pay the shippers according to the weight that you ascertain? A Yes, sir.

Q They don't send you word how many pounds they are sending you? A No, sir.

Q Well, why is that? A Well, sometimes, they have to put up these fish in a great hurry.

Q Well, isn't it on account of the ice melting? A No, sir. They have to be put up in a hurry to catch the train.

There is only one train a day that they can go by, and it would not be practicable to weigh them.

Q Are you connected with the Fisheries Company? A Yes, sir.

Q In what capacity? A Stock-holder.

Q Now, are the fish shipped with their heads on or off?

A Off.

Q Always? A Yes, sir.

Q And were they, in this case? A Yes, sir.

Q And what is the color of the halibut? A White on one side, Western halibut, all white on one side and dark on the other side.

Q Now, you employed Post & Co., as I understand it, by whom the defendants Mitchell & O'Brien were employed, to truck these cases from the Erie Railroad over to your place? A Yes, sir.

Q Did you give them any instructions to open any of the boxes? A No, sir.

Q Did you know that any of these boxes had been opened? A No, sir.

Q Did Kiersted or Long, or Anderson have any connection with you? Were they working for you? A No, sir.

Q Did you authorize them to open any of these cases? A No, sir.

Q Or, take any fish out? A No, sir.

Q Now, what are the business hours of Chesebore Brothers there, at the Fulton Fish Market? A Why, the Market is supposed to be formally opened at a quarter to six in the morning, and our men get there anywhere from half past three to four o'clock.

Q And what are the business hours? A From a quarter to six in the morning until four o'clock in the afternoon.

Q Now, is there any opening of fish or exposing of fish for sale, after four o'clock in the afternoon? A No, sir.


Q Just the bringing of fish there? A That's all.

Q And is anybody authorized to open packages of fish, from four o'clock in the afternoon until six o'clock in the morning? A I think it has been a custom there for the watchmen, I think to--

THE COURT: No, no. Strike that out.

CROSS EXAMINATION BY MR. LYNN:

Q Oh, you didn't see the fish that has been referred to in this testimony, Mr. Chesebore, as having been taken out of some boxes and put into another box? A No, sir.



GEORGE T. MOON, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CLARKE:

Q Mr. Moon, what is your business? Wholesale fish business.

Q What is your firm? A George T. Moon.

Q Now, do you recognize these witness, Coles & Roser?

A I do.

Q Are you connected with the Fish Mongers Association?

A Yes, sir.

Q What capacity? A As a stockholder and^a director.

Q What is the Association? A The Fulton Fish Market Mongers Association is a stock company, authorized for the purpose of erecting and maintaining the building over the slip between piers 22 and 23, East River, and sub-letting to the stand-holders and tenants.

Q Now, as a member and a director of that association-- what committee are you a member of, of that Association?

A I am a member of the Executive Committee, and a director of the Fulton Market Fish Mongers' Association, but the committee that has the jurisdiction, or partial jurisdiction, in this case, is not a part of that association.

Q Well, what is that committee? A That is known as the

Watchmen's Committee. It is appointed by the stand holders, entirely independent of the Association.

Q And are you a member of that? A Yes, sir.

Q And was it in that capacity that you had to do with these detectives? A Yes, sir; the Association having nothing to do with this case.

Q Did you employ these two men? A In conjunction with Post & Co., I did.

Q When? A About the middle of November, I think they went on.

Q How many were employed? A Oh, then, they were laid off for a while and went on again, during the month of December.

Q And how many were employed; do you know? A I think--

THE COURT: No. Confine it to these two witnesses.

BY MR. CLARKE:

Q Well, were these two men employed? A Yes, sir.

Q These two witnesses? A Yes, sir.

Q And did you know that they went there on the 23rd of December, 1903? A Yes, sir; they went there by my orders.

Q Did they report to you? A Yes, sir; through their principal.

Q How soon after? A The next day.

Q Now, how did you come to employ these detectives?

THE COURT: No.

MR. CLARKE: They don't object; do they?

MR. LYNN: No. I leave it to the Court, to pass upon such a question. I have too much self respect to object to such a question.

THE COURT: No. It is not competent or material to the issue here.

MR. CLARKE: I think that is all.

Cross examination none.

MR. CLARKE: The People rest.

MR. LYNN:

I have a defence, and I purpose to call five individuals, sturdy and honest fellows, that have been working all their lives, and this is the first time that they have been accused of any crime, and never have been in State Prison or ever been arrested.

But I think, this time, your Honor, I think I can make a suggestion to your Honor, in the way of a motion.

If your Honor will recall the first witness, Coles, you will remember that with particularity, he described

the doings of each of the defendants, save and except Long, which he emphasized partaking of or doing no act during all of the times he watched, at that particular moment.

In fact, Mr. Clarke summed it up by asking, "What did you see Long doing?" "I saw him do nothing, except watch," and your Honor struck the word "watch" out.

The second witness called by the State, Roser, with more particularity, beginning at the first box, under your Honor's direction, told how the driver Mitchell, unloosened the rope; how the defendant O'Brien had taken from the truck a box, from the hand-truck, and how Casey, or Kiersted, took a crow-bar, and opened the box, and failing to open one end successfully, that O'Brien opened the other end with the crow-bar.; and that Kiersted would take fish therefrom, and hand it to Anderson, and Anderson would pass it to Long, and Long would put it in the box. He repeated that act of Long's, throughout the entire fourteen transactions.

MR. CLARKE: Oh, I think not.

MR. LYNN: Then I am mistaken.

MR. CLARKE: I think you are. He said, I think, that he did that sometimes, and watched some times.

MR. LYNN: Well, I think not; and, if I am error, the

Court will correct me.

Both were witnesses to the same transaction, at the same time, and watched the same subject matter, and was within the visual view of each, and we have a variance in the testimony, particularly as to Long.

The third witness called by the State, and who was on the same pier at the same time, swears that he saw the first and second cases taken off the truck, and saw Mitchell take therefrom the first box, assisted by O'Brien, and likewise the second box; and that he counted the other sixteen boxes on the wagon.

And he also said, in answer to your Honor's questions, none of the other three persons, to wit, Anderson, Kiersted or Long, were present.

Now, that is a part of the People's case, your Honor.

And it does seem to me that, where testimony is offered by the People such as the witness, Moon gave, a gentleman of fifty years' standing, a man with an acute sense of hearing, a man whose observation is clear, and whose honesty is unquestioned, and whose testimony might be taken with far more credence in this case, because it is above suspicion, that that testimony of his, touching the transactions on that night, is far preferable to that of the detectives.

He even went further, and said, "If any nailing had been done, that night, I should have heard it, and there was no nailing."

Now, there is a conflict, your Honor; and, upon the testimony offered by the People, that leaves an inference of innocence, at least, of three of the defendants, so far as Mr Moon's testimony is concerned, and supplemented largely by the first witness, who says that Long was there but done nothing.

With this conflict, it seems to me that it doesn't seem that these defendants should be put on their defense,

in order to establish their innocence; that, in this case a remarkable spectacle is presented for the People not offering a change of proofs in evidence, that an inference could be fairly drawn, that a probability of guilt could even be suggested, but that one of innocence could as well be inferred from the testimony, as one of guilt.

That is the motion in the case.

If your Honor thinks that the jurymen ought to try it, and hear this whole case, I am quite content to do so.

THE COURT: I am of opinion that the whole question be submitted to the jury.

MR LYNN: Very well, sir. Now, on this whole question, if your Honor has followed the proofs, we have the attempt to prove value, only an attempt.

There is not a suggestion offered here as to what the value of the property in question was worth. There is a guess that they are worth so much, that they are fish, to wit, and may have weighted 400 pounds in a box; that no weights were taken, and, therefore, no man knows the weight but, by examining other fish, at other time, he would suppose that those cases contained 400 pounds of fish, supplemented with 150 to 200 pounds of ice, making in all 500 or 600 pounds weight/ Eliminating the ice, and taking

the reduction to fish pounds, and multiplying it by 9, you have the inference simply, thus drawn, that there might have been \$36 worth of fish in that box.

And it does seem to me that the count of grand larceny, in the indictment, should not be submitted to the jury.

And, so far as petit larceny is concerned, in fact, there is no proof that I think the Court should have as to the value of the property.

Fourteen fish were taken from a box, and put in another box, and they were taken, supposedly, across the street, after going through the market, and were subsequently found, not in the possession of these defendants, but in the possession of these complainants, your Honor, where they had every opportunity of weighing the fish, on the night in question, and taking them out of this box and weighing them, and bringing to this Court the fair evidence and statement as to weight.

Now, they had this fish, and they were in their control, and they were their property; and it does seem to me that you should ask them to, at least, to bring to your Honor better proof than they have offered in this general way.

Now, Mr Clarke will not deny my statement, when I say that the fish was there, in their possession, came

into their possession and remained in their possession, and from the time it was taken out of the fourteen cases, and from the time it was dropped across the street. They did not have the fish.

THE COURT: Were those fish traced?

MR CLARKE: If your Honor please, it appears sufficiently in the evidence, I think, that these detectives were working there for several nights. We have selected this night to get the evidence before the jury, because here we can identify certain particular fish, owned by certain persons.

But, in this particular case, what became of the fish was not traced by the detectives; but simply that it was taken over to 105 South Street, where a certain firm kept a fish stand and opened up at five o'clock in the morning. But, of course, it was out of the possession of the owners, Chesebore Brothers.

THE COURT: Is there any evidence that any fish, similar to the ones described as being contained in this case, were found at this South Street place?

MR CLARKE: Not these particular fish.

THE COURT: Well, is there any evidence to show that there was halibut found that morning in this fish store in South Street?

MR CLARKE: Not that morning. That is the unfortunate part of the evidence. They didn't trace them beyond that fish stand. But we claim that the larceny was committed when the fish were taken out of the boxes on the dock.

MR LYNN: That is technically correct, your Honor. But the fish disappeared. Well, I have made a statement, Your Honor, and I think the jury may get the point that I am in error. I make the assertion that the particular fourteen fish that were packed in that box that night, subsequently came back into the possession of Cheseboro Brothers.

THE COURT: Well, that is why I asked my question.

MR CLARKE: There is no such evidence whatever.

MR LYNN: I know that, and that is the trouble with the case.

THE COURT: Well, I have nothing to do with it. That is the reason why the statement was somewhat startling to me because I did not remember anything in the evidence in the case of that kind.

MR LYNN: Yes. But if your Honor is informed of the facts by counsel for the defendants, that the property came into the possession of the person who was supposed to have lost it, then your Honor would, I think, put them

to the proof of the reasonable value of the property.

THE COURT: No. I can only pass upon the questions suggested by the evidence.

MR LYNN: But I know that your Honor is not bound by the narrow confines of the evidence. If it were shown that no fish were stolen at all, and these men should not be convicted then your Honor would intervene; and I contend that no fish were stolen that night.

THE COURT: I deny your motion.

MR LYNN: I take an exception, your Honor.

THE TESTIMONY FOR THE DEFENSE.

CLARENCE MITCHELL, one of the defendants,
being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR LYNN:

Q Where do you live, Mr Mitchell? A 1462 Bishwick
Avenue, Brooklyn.

Q And what is your business? A Truck driver.

Q And how long have you been truck driving? A For the
last nine years.

Q And who do you work for? A For Z. Post, Son & Co.
And I have worked for Dan Leary, Leary & Bedell, now.

Q Who do you work for now? A And now for Sweezy & Co.,
Exchange Place.

Q Have you ever been convicted of any crime?

THE COURT: No.

A No, sir.

BY MR LYNN:

Q Now, do you remember carting a carload of halibut, on
the night of the 23rd of December, 1903? A Yes, sir, I do.

Q And how many boxes did that carload contain? A Well,
I don't remember signing for that particular car. There are
about fifty boxes in a car, as cars run.

Q When were you arrested, Mitchell? A On the 13th of January.

Q Where were you arrested? A I was coming over from Brooklyn, and was going down on the dock, to hitch up my horses, and a detective came up to me, and he said, "Is your name Mitchell?"

MR CLARKE: Objected to.

THE COURT: Objection sustained.

BY MR LYNN:

Q Now, do you remember the last load of fish brought from that railroad that night, in Christmas week, in December, eighteen boxes? A Yes, sir, I remember.

Q Now, do you remember what the date was? A Well, it was on the 23rd, by the time I got into the market. But, when I started it was the 22nd.

Q This slip that has been put in here, by Mr Moon, just look at that. Is that yours, or did he make that out?

A No, sir, I don't make out any slips. I just give him the amount that I bring in and he makes out the slip.

Q What time did you go to work that morning? A What? From Brooklyn, over?

Q Yes. A Well, it was in the neighborhood of eleven o'clock.

Q That you left the house? A Yes, sir, as near as I can

judge.

Q Where were your horses and truck? A Over in Vine Street, back of the Eagle Warehouse, in Brooklyn; and I got my horses and started for New York, over the Fulton Ferry.

Q Now, do you know what time, or about what time you got to New York that night? A Well, as near as I could judge, about eleven o'clock.

Q On the evening of the 22nd? A Yes, sir.

Q Now, where did you go to? A I went down the dock and hitched up my horses, and drove up in front of the Market, to the little office that we had there, Post & Son, and our acting foreman, at nights, Mr Moon, was there, and he is generally there before we get over there; and I drove up to him in front of the market, and went in, and asked him what the orders were, and he gave me the orders to go over to the Erie Railroad in Jersey City, and get a load of halibut.

Q And you did so? A Yes, sir.

Q And what boat did you catch, in Jersey City, if you recall? A Well, it was eleven o'clock when I got over there. We have two colored loaders, to load us over in the Erie Railroad, and we take them from New York at the corner of Murray and West Streets.

Q And then you proceeded to the car in Jersey City? A Yes

sir; I went over the Erie Ferry from the foot of Chambers Street, to Jersey City.

Q And how far was the car in which the fish was, from the landing? A Well, I should say a mile and a half anyway.

Q Well, do you remember what boat you got, returning to New York? A Well, after twelve o'clock they run every half-hour.

Q After twelve o'clock it is half-hours? A Yes, sir. Before that it is on the---

Q Well, you didn't get loaded before twelve o'clock, did you? A No, sir; I think I got the twelve boat over.

Q And how long did it take you to go a mile and a half, to the Erie freight sheds, get eighteen boxes, such as has been described, and get back to the ferry, about, Mitchell? A Well, I am just thinking about how long it would take me.

Q An hour and a half or an hour? A It wouldn't. It wouldn't take me over ten minutes to drive up there, and then load on the stuff; about three-quarters of an hour.

Q And what boat did you get coming back? A Well, I won't be sure. I think it was somewhere in the neighborhood---I think it was the half-past one boat back.

Q And the boat before that would be the one boat? A Yes, sir.

Q And the boat after that would be the half-past one?

A Yes, sir. If you lost a boat you would have to wait a half hour for a boat.

Q And how long would it take the boat to cross the river? A Well, at that time I should think it would take all of fifteen or twenty minutes, because there was more or less ice in the river.

Q Now, after you had crossed the river, and reached the foot of Chambers Street, that would be about 1:45 or 1:50?

A No; it wouldn't be quite as late as that. Ten or fifteen minutes anyway.

Q Well, if you got the half-past one boat, that would be 1:45, when you reached the New York side? A Yes, sir.

Q Now, how long would it take you to drive from Chambers Street, with eighteen boxes, containing nearly four ton of fish, to the foot of Fulton Street, the Fish Market? A Well, I had a pretty good pair of horses, and I had the largest truck in the Market at that time. It was a new truck.

Q Well, how long would it take you? A Well, close on to half an hour.

Q That would bring you then up to after two o'clock?

A Yes, sir.

MR CLARKE: A quarter after two o'clock he says.

BY MR LYNN:

Q A quarter after two o'clock when you got to Fulton

Market? A Yes, sir; somewhere around there.

Q And who did you see when you got to the market? A Well, I drove right over through Warren Street and drove down to the Market, and swung around, and backed my horses up, and O'Brien was there.

Q Was anybody else there? A No, sir; nobody else. O'Brien generally helped me to take off my load. That is what he was paid for.

Q And he was there to meet you? A Yes, sir, and I got down off the truck, and he said, "Mitch, we'll have to move a couple of trucks to make room for the halibut." Trucks that is run in there during the night, that is in use during the day.

Q Well, did you proceed to do that? A I jumped down, and threw the blankets on my horses and give O'Brien a hand to move two trucks down the dock. And I backed up, then, right under the dock platform, where the dock commenced, probably down to the middle of the dock, because I couldn't back on the sides, because there were trucks there.

Q Where were the trucks, between you and the scow? A Between the scow and my truck, on the dock.

Q Those empty trucks were between you and the scow? A Yes sir.

Q The scow that is owned by Strong? A Yes, sir.

Q Now, what did you do then, Mitchell? A Well, I got down, and I helped to move two trucks, and we moved them down the dock.

And I then untied my rope, and O'Brien and myself put the hooks in the sides of the boxes, and let them down easy, because they are liable to break, if you don't, and the truck was high; and we put a box on the hand truck, and took it down about ten or fifteen feet, to make room for all the eighteen.

Q I see. A And we put it up against the string piece, and O'Brien helps me take off another box of halibut.

We take off a box of halibut, and down comes our foreman, the acting foreman that night, Mr Moon, the old gentleman.

Q The old gentleman that was on the stand? A Yes, sir. He is our foreman nights.

And he came down, and he said, "Mitch., how many have you on?" And I said, "Eighteen, George", and he said, "All right."

Then we go to work and take off another box, and so on, until we take off the whole eighteen.

Q O'Brien and you took them all off? A Yes, sir.

Q Were Anderson or Kiersted or Long there that night, pulling these boxes off? A No, sir.

Q Did you open any boxes and take any fish out of any of them eighteen boxes, Mr Mitchell, that night? A I did not.

Q Did you do any hammering or nailing that night?

A I did not.

Q The boxes were in good shape, were they? A They were in good shape, but there is times, though when you have to nail them.

MR CLARKE: I object to that.

THE COURT: Objection sustained.

CROSS EXAMINATION BY MR CLARKE:

Q Do you say that Kiersted and Anderson and Long were not on that dock at all that night? A They were not; not while I was there.

Q Well, you were there at 1:25, weren't you? A No, sir.

Q You swear to that positively? A Yes, sir; because it was half-past one when I came over the Erie Ferry.

Q Then you got there soon after half-past one? A No, sir; it would take fifteen minutes for the boat to come over to New York.

Q But you said it was half-past one after you got over the ferry? A I did not. I don't remember if I did.

Q Are you sure you took the one o'clock boat? A Well, they run every half-hour. I didn't say the one o'clock boat.

Q Well, which one did you take? A The half-past one.

Q Didn't you take the 12:30? A No, sir.

Q Or the one o'clock? A No, sir; the 1:30.

Q Well, how do you know that so surely? A Well, they run every half hour.

Q Now, you heard the detectives say that you came there, at 1:25? A Yes, sir.

1 Q Do you deny that? A Yes, sir.

Q Do you carry any watch? A No, sir.

Q Well, how do you figure out the time, then? A Because I only went over there at half past twelve, or so, and I could not load up in that time, and get back to the ferry.

Q Now, you say that the Erie car-shed was about a mile and a half, don't you? A Well, perhaps a quarter of a mile. That was my estimate.

Q Now, you don't deny that you got to that pier, with eighteen cases of halibut; do you? A No, sir.

Q And that is a good representation of a halibut, is it not, that cast (indicating)? A Yes, sir, that is one size.

Q Now, were these fish rotten? A I don't know. I could n't say whether they were or not.

Q Did you notice any odor? A No, sir, I didn't, I didn't look at them.

Q Now, you say that you got two cases off the truck, before Mr. Moon came out. A yes, sir; two boxes.

Q And then he came out and made out the slip? A I didn't see him make out the slip. He asked me how many I had, and I said eighteen.

Q And then he went back into his office? A yes, sir.

Q And he was not out on the dock again, during the rest of the night; was he? A I don't know. He wasn't there, while

we were taking off the rest.

Q Now, wasn't Kiersted there, with a truck? A I didn't see him.

Q Didn't you say to Kiersted, when you came up: "Draw out, and let me in?" A No, sir.

Q And you didn't see him that morning at all? A No, sir.

Q Or Anderson or Long? A No, sir.

Q Well, how do you remember so distinctly that you didn't see them? A Well, because I put my mind to work on it.

Q Was there anybody else to work on the dock but you?

A No, sir; but O'Brien and me.

Q No watchman? A No, sir; only Mr. Moon came out there.

Q And no policeman? A No, sir; I didn't see any.

Q And you are sure that these two men and Mr. Moon were the only two men in sight? A I am positive that me and O'Brien unloaded the truck, and Mr. Moon came out, and asked me how many I had.

Q And how long did it take you to unload these eighteen cases? A Well, I should judge, about half an hour.

Q Well, when did you begin? A Well, shortly after I got there.

Q Well, what time? That's plain English; isn't it?

A Well, probably, a quarter after two.

Q And then you finished at a quarter to thrse; didn't you? A Yes, sir; if we commenced at a quarter after two. And I then put the feed bags on my horses, and went to get something to eat, at the restaurant at Fulton and South Streets.

Q Now, you have heard the two detectives tell what happened there? A Yes, sir.

Q Now, I want to make it clear that you deny that that ever happened, or that it happened on that day? A I deny all that I heard them say.

Q That never happened, on any day? A No, sir.

Q That's all I want to get at. You say that the circumstances that they have narrated of you five men working there, never occurred on that day, or any other day?

A No, sir.

MR. LYNN: As far as he is concerned, of course.

BY MR. CLARKE:

Q And you never saw any cases of halibut opened in the way they have described, and one taken out, on any occasion?

A No, sir.

Q Now, you know Kiersted; don't you? A Yes, sir.

Q And you have worked with him a hundred times; haven't you? A Well, I have worked with him, I guess, for six or seven years.

Q And he is around the Fulton Fish Market, all the time?

A Yes, sir.

Q And you heard his employer say that he had some fish to take from the Bridge Freezer to the dock, that night?

A Yes, sir; I heard that said.

Q And that it was his duty to stay there until, the "Centennial" came in, with Anderson? A No, sir.

Q And did you stay there until "The Centennial" came in? A Yes, sir.

Q And you swear that neither of those two men were there? A I'll swear that Anderson, Kiersted or Long wasn't on the dock, from the time I struck the dock, until I went away.

Q Were there any other men there, helping you?

A No, sir; only myself and O'Brien.

Q There were no five men working on that dock?

A No, sir.

Q Now, what did you do, after you got six of the cases off? A We took the rest of them off.

Q Did you change your methods after you got six off?

A We did not.

Q Didn't you stay on the platform yourself, and pull them off, until you had got six off? A Did I stay on the platform?

Q Yes? A I had to get down, every time I pulled a box off.

Q Now, you heard what the detectives said, that you were down on the ground with the other men, until you got six off, and then you got on the truck, and pushed the others to the end of the truck? A Who says this?

Q The detectives? A Yes, they say so. But I was on the truck, until I got all the 18 boxes off, that is, up and down, helping him take them down. While he was trucking up against the string beam I was pushing the next box down to the tail end of the truck.

Q Well, they weighed 500 pounds; didn't they? A Yes, sir.

Q And then you let them down easily? A Yes, sir; we let them down on the dock first; easy, and then pushed them over on the hand truck, and O'Brien takes the hand truck and the case, and puts it down against the string beam, and I am up again on the truck, to pull down another box, to have it ready, when he gets back.

Q Now, you used to work for Sharpe & Co.; didn't you?
A Yes, sir.

Q Who are they? A I don't know about them, only they were Sharpe & Co.

Q Were they truck men? A Yes, sir.

Q Why did you leave them? A I don't know, I'm sure.

Q Weren't you discharged? A I was.

Q And you don't know the cause of it? A No, sir.

Q Not to this day? A No, sir.

Q Didn't they tell you why you were discharged?

A They did not.

Q When were you discharged by Sharpe & Co? A Oh, I don't know how long ago it was.

Q Well, was it a month before this, or two months?

A Oh, no; I should judge, something like a year or two.

Q Weren't you discharged for opening packages of fish?

A Not that I know of; no, sir.

Q Well, you know; don't you? A Well, I tell you I don't know what it was for. I was discharged, and only told that my services was no longer required.

Q Now you know Robbins & Mulke; don't you? A Yes, sir.

Q And they have a fish-stand across from the Fulton Market? A Yes, sir; at 109.

Q And where is their fish-stand? A Yes; at 109?

Q Well, havn't they one at 105? A Well, a little one. I thought you meant their place of business, their market.

Q And when did they take that away? A Yes, sir; right in front of a saloon.

(Question repeated) A Well, I'm not much around there. Driving a truck, I am away, but I know they have a place there.

Q And it is only there during business hours, and it is taken away, after that? A Yes, sir.

Q Now, you didn't see a single fish taken over and left in front of that saloon; did you? A I did not.

Q Did you hear any truck around there? A Yes, sir; there are plenty of trucks around there every night.

Q Well, were they there, that night? A Yes, sir.

Q On the dock? A No, sir; none on the dock, only mine. But there is trucks going in and out, all night..

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Q Do you mean to say that you did trucking for Robbins & Mulke while working for Post & Co.? A Yes, sir; I delivered stuff there.

Q Halibut? A No, sir, no halibut.

Q Well, what did you deliver? A Well, say, for instance the Old Dominion steamer--

Q Did you take any in December? A No, sir.

Q Did you leave it down there in front of 105? A No, sir. I always go to 109, with deliveries, such as shad, and the like of that.

Q Now, your truck is a yellow truck, isn't it? A Yes, sir.

Q And has a diamond P on the dashboard? A Yes, sir.

Q And your horses have yellow blankets with red stripes? A Yes, sir; I had a pair of gray horses.

Q And you got down off your truck and took the ropes off? A Yes, sir.

Q And hung them on the sides, didn't you? A No, just united the rope, and throwed it down on the ground.

Q Now, did you bring any other load of eighteen cases there that night? A No, sir; not that I remember.

Q Did you see any other trucks bring there eighteen cases? A No, sir; not that night.

Q That was the only load of fish that you saw unloaded there that night? A Yes, sir; of halibut. But there is lots

of fish comes in there every night, you know.

Q No. Did you see any other fish brought there that night? A Well, no, sir. But there were Long Island express trucks and other trucks up in front of the market.

Q While you were working there? A Well, I didn't notice them while I was working there.

Q While you were unloading the eighteen cases, were there any other people there? A No, sir.

Q Or trucks? A On the dock?

Q Yes. A No, sir.

Q And there was nobody else around there, unloading fish anywhere around there? A Well, I don't know anything about that, I didn't see any.

Q Did you see five men unloading fish from a truck?

A I did not.

PATRICK O'BRIEN, one of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR LYNN:

Q O'Brien, where do you live? A 13 Duffield Street, Brooklyn.

Q And what is your business? A Well, I am a driver, as a general thing, but I was a platform man for Post as a laborer.

Q Well, how long did you work for Mr Post? A Nearly eight years.

Q And what do you do now? A I work alongshore, now.

Q And what did you do before you worked for Post, seven years ago? A I was a watchman.

Q How long did you work as a watchman? A Two years.

Q And, before that, what were you? A A truck driver.

Q How long have you been working, in all your life?

A Since I was thirteen years old.

Q Have you ever been in prison in your life? A No, sir.

Q Now, on December 23rd, what were your duties, down there, O'Brien? A My duties is to go on the platform; when the trucks comes along, to load them or unload them, if it is necessary.

Q Yes. A Whatever the question may be. To help the drivers put on or take off the load; because the fish is heavy stuff.

Q Now, when were you arrested, O'Brien? A I was never arrested.

Q I mean in this case? A This case, oh.

Q Yes. A On the 14th of January.

Q The day after Mitchell? A Yes, sir.

Q And where were you on the 13th of January? A I come to the market a little late. I stood home a little late.

MR CLARKE: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Objection sustained.

BY MR LYNN:

Q Well, on the 14th, you were arrested? A Yes, sir.

Q Now, what time did you go to work, the morning of the 22nd, or the evening of the 22nd of December? A I didn't go to work that evening. I started to work on the 22nd, but I landed on the New York side pretty near the 23rd. I came over to New York on the quarter to one boat.

Q And that brought you to the Fulton Ferry when? A Well, it takes about seven minutes for the boat to come over.

Q And what time did that bring you to the market? A Well, I don't generally walk to the market. If I find there are no trucks there I usually go over and get a cup of coffee.

Q No. That night, when did you walk into the market? A Well, just about ten minutes after one.

Q Now, was Mitchell there at that time? A No, sir.

Q When did you first see Mitchell's truck that morning; about what time? A Well, I should judge it was about between twenty minutes past two--just about twenty minutes past two--when I see it.

Q Well, he came there with what? A What did Mitchell come with?

Q Yes. A With eighteen boxes of halibut, on the truck.

Q And what did you do? A Well, Mitchell came up on the street, and he swung around, and I says to him, after he backed down, "Mitch, I guess we will have to move a couple of these trucks, to put the fish in against the stringpiece."

Q And did you move the trucks? A Yes, sir.

Q And what did you do then? A Took off the load.

Q The eighteen cases? A Yes, sir.

Q Did these men, Kiersted and Long assist you in unloading the truck that night? A No, sir.

Q Did you need any assistance in unloading the truck?

A No, sir; I never need any assistance.

Q You can handle a pretty good case, can you? A Yes, sir.

Q Now, were you unloading directly on the dock? A Yes, sir, directly on the dock.

Q How long did it take you, about, to unload these eighteen cases? A Well, somethinglike twenty or thirty minutes.

Q Well, you got them on the hand struck and wheeled them over to the string piece? A Well, the first six cases you can get off easy, without getting up on the truck.

Q Now, then, you put all the eighteen on the pier?

A Yes, sir.

Q Now, did you see any one on that dock that night?

A No, sir, only Mr Moon, the old gentleman, "George" we call him.

Q Well, he came out there; did he? A When we had put two boxes off, I should judge.

Q Now, where was Long and Anderson and Kiersted? A That is more than I know. I don't know.

Q They weren't there taking these boxes, were they?

A No, sir.

Q These men, up in the scow, floating in the water, at a peep hole say that you and Mitchell pulled boxes off the truck that night, and that you and Kiersted opened them, with a crow-bar. Did you do that? A No, sir.

Q Did you steel any fish from any box that night?

A No, sir.

Q Did you see any one else do so? A No, sir.

Q Would you know, if there was any fish stolen there from any of those boxes that night, after they came to the dock, brought there by Mitchell? A No, sir. I didn't stay there and watch them? I aint supposed to watch them.

Q Your duties ceased? A Ceased as soon as I got the load off; and then I walked away.

Q Now where did you go after you had unloaded the eighteen boxes? A Well, I walked down to the shanty, and I said to George, "Well, they are all done."

Q Then where did you go? A To the restaurant.

Q And you don't know how many other wagons or trucks may have come on the fish dock after that? A Oh, no, sir; I don't pay any attention to that.

Q Was there any other trucks with any fish on it?

A No, sir.

Q Now, you saw many trucks at the bulkhead at the street line? A Yes, sir; empty trucks. They are all strung along there; and other trucks goes on the dock and unloads, and unloads on the other end.

Q So that there might be twenty or thirty trucks or wagons, delivering fish down at the other end of the fish market? A Yes, sir.

Q How many feet is that from the point you were standing at? A Across?

Q Yes. A Forty feet. Well, I hardly judged his that much.

Q It wouldn't be the width of this room? A From the scow to the market?

Q Yes. A Well, I should judge it is about thirty foot, I guess, or something like that.

Q And that is the point where the other wagons were delivering fish, if there were any? A Yes, sir.

CROSS EXAMINATION BY MR CLARKE:

Q Now, do you remember being there on the 29th of December, 1903, on the dock? A The 29th?

Q Yes. A No. I was not on the dock on the night of the 29th.

Q At any time? A No, sir.

Q Or the morning of the 30th? A On the morning of the 30th?

Q Yes. A On the 29th I was on the dock in the morning. I think we unloaded some boatloads of halibut that night.

Q Do you remember being there about midnight on the 29th? A No, sir.

Q Or the 28th? A No, sir.

Q Weren't you there with Kiersted and Long and another man? A There was no one on that dock that night, except Mitchell and a man named Plunkett. They came there with a load of fish.

Q Well, you remember at 2:10 on that night, you were there, and wheeled out a case in front of Cheseboro's stand, and that Kiersted brought out a small crowbar, and, while you stood there he ripped off the top of the case there? A No, sir, I did not.

Q You have seen Kiersted around the docks, haven't you? A No, sir.

Q Now, on the night in question, did you see Kiersted taking fish out of a barrel and putting it into another barrel or box? A No, sir; I never did at any time.

Q Or out of a box? A No, sir.

Q Or Long? A No, sir.

Q Or Anderson? A No, sir.

Q And you never took a fish out of a box? A No, sir; unless I took them out to change them to another barrel, when they were broke.

Q So that it is an unusual thing to see men taking fish out of a barrel? A Yes, sir; because there is watchmen on the platform, and you can't do it.

Q And you truckmen are not employed to handle the fish at all? A No, sir; not unless it is necessary.

Q And you had never seen any of these defendants taking fish out of a barrel or box, and putting it in another barrel or box? A No, sir. Some of these boxes are used five or six times, and they fall apart, and men has to nail them.

Q Do you know Dick Foley? A Yes, sir.

Q He works around there, doesn't he? A Yes, sir.

Q And Michael Cronin? A Yes, sir.

Q Now, weren't you there on the 22nd of December, the day before this alleged larceny? A I must have been there.

Q Did you see Kiersted and Long there that night?

A Well, I aint got no recollection whether I saw them there or not.

Q Well, didn't you take off the lid of a case, and take out fish, and walk over, and put it in a box, near the stringpiece? A No, sir.

Q Isn't it true that, during the entire month of December, you and others have been breaking into fish boxes and taking out fish? A No, sir.

Q You know Robbins & Mulke? A Yes, sir.

Q Did you truck for them? A No, sir, Post & Co. trucked for them.

Q Now, did you go on duty at eleven o'clock that night?

A Well, I haven't any recollection of that. I go on duty at different times.

Q Well, your employer, Mr Post has been here, and he says that your duty was to be there at eleven o'clock? A Well, it wasn't my regular time. I had no set hours of work. When these truckmen would come there I would work, whenever they would be there.

Q Now on which side of the dock was Kiersted's truck?

A I don't know.

Q Now, wasn't Kiersted delivering some fish, with his truck, on the dock, on the night in question? A I don't know,

sir. I don't bother myself about him or his business.

Q Well, whose were the trucks that you moved? A The empty trucks?

Q Yes. A I don't know. Every truckman that is in the fish business puts their truck up at the dock. That's the place to put them.

Q Well, who moved these trucks? A I and Mitchell.

Q Now, you say that in getting the cases off Mitchell's truck you used a hook? A Yes, sir.

Q How many men used them? A Oh, I could let one of them down myself; pull it over and steady it down with the hook, and my hand on the other side.

Q Did you get down yourself? A Yes, sir.

Q First? A Yes, sir.

Q And you both were on the truck? A No, sir; on the dock.

Q And then what happened? A And then Mitchell would jump up and throw the box down, and I would ease it down with him, and he would get down off the truck; and, as soon as we got the box on the ground, I would run over the hand truck, and handle the boxes.

Q Now, are you sure you did not see Kiersted there, with a shovel and broom, shoveling ice? A I didn't see Kiersted that night at all.

MR LYNN: He said that it was O'Brien that did that.

BY MR CLARKE:

Q Did you see any sweeping there that night? A No, sir; I had no occasion to.

Q Did you ever sweep off that place there? A The dock?

Q Yes. A Well, I'll tell you. We did if we had any snow around there, When we used to leave the stuff on this side of the dock, or dirt; we might get a shovel and rake it away from there.

Q Now, don't Long and Anderson and Kiersted work around that dock? A I don't know. They worked for a man named Leary, as I understand.

Q Well, don't they work around the Fulton market?

A Yes, sir.

Q And do you mean to say that you were there two or three hours that night, and didn't see them at all? A I didn't see them.

Q Well, weren't they there? A I don't know whether they were or not. I come over on the quarter to one boat, and I went to the shanty and I didn't stay there long, because I didn't propose to stand there all the time, and get cold. After I get through Mr Moon comes in and gets a telephone for "The Centennial", and I go and get my load on that train. I saw Kiersted on "The Centennial" dock.

Q Then you want to change your testimony that you didn't see him that night? A Not on that dock.

Q Well, it is the same dock, is it not, but on the other side? A Yes, sir. I must have seen him because he goes down on that dock every morning. That is his duty, just the same as I had.

A D O L P H A N D E R S O N , one of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR LYNN:

Q Anderson, where do you live? A No. 12 Lawrence Street.

Q In Brooklyn? A Yes, sir.

Q What is your business? A Truck driver.

Q How long have you been a truck driver? A Well, about twenty-three years, I guess; since I was a boy.

Q How old are you? A Thirty-eight.

Q Then you started in when you were about fifteen?

A Yes, sir; about that.

Q Who are you working for now? A I am working for John Hennessy.

Q And you have worked for him since this matter? A Yes, sir; but I have been laid off there since, Judge.

Q And how long did you work for Mr Leary? A About six or seven months, I guess.

Q And do you recollect last December, Christmas week?

A I do.

Q And were you in the employ of Mr Leary at that time?

A I was.

Q What were your hours? A Well, in the hot weather, that is, in the fall---

Q No. At that time? A Well, I would say---I would leave the house at one o'clock in the morning.

Q Yes. A And come over and go to Long Island City.

Q That was your trip the first trip you made, the Long Island trip? A Yes, sir.

Q That is, to pick up any fish consigned to any fish market dealers? A No, sir; only to two.

Q To whom? A George F. Moon and Horace Stillman.

Q Now, during Christmas week had you been performing your duties? A No, sir.

Q For what reason? A Because I was laid up with rheumatism.

Q And you were not working nights that week? A No, sir.

Q When did you cease working nights that week? A On Monday night. That was the night I was supposed to turn out, to go to work.

Q And who took your place that night? A Mike Long.

Q And Saturday was Christmas that week, I think?

A Yes, sir.

Q And the 23rd would be Wednesday night? A Yes, sir.

Q And, Monday night, you employed Michael Long? A Yes, sir.

Q Tuesday night, then and early Wednesday morning, were you working that night? A No, sir. Early Wednesday morning?

Q Yes. A Oh, yes. I would go over in the morning and take a truck off him. I hired this man to do three nights' work for me, during that week.

THE COURT: I think this is wholly immaterial, what he did with another person.

BY MR LYNN:

Q Now, where were you at five minutes past twelve o'clock on the 23rd? A Home, in bed.

Q And where was your home then? A No. 12 Lawrence St.

Q And who were you home with? A My wife and mother.

Q Your wife and mother? A Yes, sir.

Q Now, when did you leave your home and your bed that morning, if you left it at all on the 23rd? A I left my home about half-past five, between five and six.

Q In the early morning? A Yes, sir.

Q And you proceeded where? A To the Long Island Railroad.

Q Where was that? A Foot of James Slip.

Q New York? A Yes, sir.

Q How did you come over? A Well, sometimes--one morning I may be--

BY THE COURT:

Q No. That morning. A On the Bridge, on the Smith Street car.

BY MR LYNN:

Q And you took the trolley car over the bridge? A Yes, sir.

Q And then you walked to the Long Island ferry? A Yes, sir.

Q And your truck was there? A Yes, sir.

Q And were you the regular driver of that truck? A I was the regular driver; yes, sir.

Q And you had asked Long to take---

MR CLARKE: Objected to as leading.

BY MR LYNN:

Q Well, who was the truck in charge of, that night, then? A The truck was in charge of Long.

Q Long is the last man there (indicating)? A Yes, sir.

Q Now, did you find him there on the truck? A I did.

Q And you took charge of the truck then? A I did.

Q Were you in Fulton Market at the fish dock, near a barge, where some one by the name of Strong does business, at any of these hours after twelve o'clock? A I was, not.

Q Up to four o'clock? A No, sir.

Q Where were you? A Home, in Brooklyn.

Q And you don't know what Long may have done during the night? A No, sir.

Q Except what he may have told you? A Yes, sir; that's all.

CROSS EXAMINATION BY MR CLARKE:

Q Well, you were there the next night, weren't you?

A No, sir.

Q Sure about that? A Sure about it.

Q You are known as "Red" sometimes, aren't you?

A That's right.

Q And is it not a fact that you, "Red", at 1:30 A. M. of December 24th, were there on the Fulton Market dock, with Casey or Kiersted? A No, sir.

Q Positive of that? A Yes, sir.

Q Didn't you bring some fish out there on the docks, and put them in a large case? A No, sir.

Q You have never taken any fish out of any packages at any time, have you? A No, sir.

Q On the docks there? A No, sir.

Q And put them into other boxes or receptacles? A No, sir.

Q You have never handled the fish themselves? A Well,

I---

Q It isn't part of your duty to open the cases and handle the fish, is it? A No, sir.

Q Didn't you put these large fish, about four feet, six inches---or, at least the case was--don't you remember that?

A No, sir.

Q And Kiersted taking the box and delivering it over to 109 South Street? A No, sir; I don't remember anything about that.

Q Now, that's the next day to the day in question?

A No, sir.

Q And is that equally true of all the nights and mornings of December, 1903; that you were never around the docks there, taking the covers off of barrels or boxes, and taking out fish? A No, sir.

Q At no time? A No, sir.

Q Or, take Monday, December 21st. Didn't you drive on the dock there---no. At 12:30 A. M. on Tuesday, December 22nd, didn't you drive a single truck, with a chestnut horse?

A No, sir.

Q How do you know that you didn't? A Because I wasn't out that Christmas week.

Q You keep your horses in Kiersted's stables, don't you?

A In Casey's stables?

Q No, the same place where he keeps his? A Yes, sir; in the same place.

Q Now, didn't you bring out an empty barrel on the morning in question? A No, sir.

Q Wait a minute. Who is "Whitey", anyway? A There is no one called "Whitey" that I know of.

Q Isn't Long called "Whitey"? A Not that I know of.

Q Do you know Phelan? A No, sir.

Q And didn't Phelan come out, a stout, flatfooted man, on that morning? Isn't he the watchman there? A Yes, sir; I know him, certainly.

Q And didn't he rip open a case, and throw fish into a barrel right while you stood there? A No, sir.

Q And, after the case was nailed up, didn't you and "Whitey" wheel it back into the Market? A No, sir.

Q You had nothing to do with opening any cases or barrels? A No, sir.

Q It is all a case of mistake? A Yes, sir.

Q You were at home in bed all the time? A Yes, sir.

Q The whole week? A The whole week, up until five o'clock in the morning; every night that week.

Q For whom were you working? A Mr Leary.

Q Did you report to Mr Leary that you were at home every night in bed? Did you tell him that? A Yes, sir.

Q That you were at home in bed, every night of the Christmas week? A Well, it isn't necessary for me to tell him every night that I was at home, in bed.

Q Well, did you tell him? A It wasn't necessary. He left the work in my charge.

Q Well, did you tell him at the end of the week that you hadn't been working at all, that week? A I took the truck in the morning, and worked up until about twelve o'clock or one o'clock.

Q Now, after you were arrested, then, you told your employer that you had laid off for a couple of days, didn't you?

A He knew that I didn't lay off for a couple of days.

Q You told him three days; didn't you? A I took the truck at six o'clock in the morning every morning that week.

Q Didn't you say, "They have got me wrong. I was off for three days"? A Yes, sir.

Q You told that to Mr Leary? A Yes, sir.

Q After you were arrested and out on bail? A Yes, sir.

Q And why did you say three days? A He knows that I had Michael Long---

Q You were out the whole week? A Yes, sir; during the night.

Q Then why did you tell him that you were off for three days? A He knows that I was off every night, until seven

o'clock in the morning; he knows that.

Q You can't give any reason; can you? A Well, he knows I was off until seven o'clock in the morning.

Q Did you ever see those eighteen cases of fish there?

A No, sir.

Q But you went there the next morning? A I did go there the next morning.

Q Well, weren't there eighteen cases of fish there?

A I didn't go on that dock at all.

Q You didn't? A No, sir.

Q And you have never seen any of those cases of halibut? A I have seen a case of halibut, yes.

Q But of this carload? A No, sir; not to my knowledge. I may have seen lots of cases of fish around there.

Q Did you ever deliver cases of fish to Robbins & Mulke?

A Yes, sir.

Q And did you ever leave them on the sidewalk for that firm? A Yes, sir.

Q At what hours of the night? A At all hours of the night.

Q And you left them there for Robbins & Mulke? A Yes, sir.

Q Right on the sidewalk? A Yes, sir.

Q And you have taken fish that were consigned to them

and left them on the sidewalk at 105 South Street? A Yes, sir.

Q Many times? A Yes, sir; many times.

Q Did you deliver any fish that month in that way?

A In December?

Q Yes. A I think I did:

Q And left them out on the sidewalk? A Yes, sir.

Q And who told you to do that? A The man I was carting for.

Q Who is he? A Michael Cronin.

Q Who is he? A A carman.

Q And he told you to leave them outside on the sidewalk there? A Well, there is where he told me; he told me to leave them there; and, if 105 was blocked up, you would take them to 109.

Q And you left them right on the walk in front of the liquor saloon at 105? A Yes, sir.

RE-DIRECT EXAMINATION BY MR LYNN:

Q And that is the proper way to leave them, is it not?

A Yes, sir.

Q And you don't put boxes of fish, weighing 600 pounds in a bureau drawer, do you? A No, sir.

THE COURT: That will do on that subject, gentlemen.

I think that subject has been exhausted.

MR LYNN: Well, I want to show where fish men leave fish, your Honor.

MR CLARKE: Yes; and that is where our fish went.

CARRIE ANDERSON, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR LYNN:

Q You are the wife of the last man who was on the stand here? A Yes, sir.

Q And you live over in Brooklyn with him? A Yes, sir.

Q Now, Mrs Anderson, do you recall the Christmas week of last year? A I do.

Q What was your husband's health at that time? Was it good or bad? A Bad. He was complaining.

Q Well, now, do you remember whether he remained home during that week, or whether he went out and done his night work, as he had been previously doing? A Well, because he was home every night that week.

Q He hadn't been home before that week, had he? A Always.

Q What had been his usual time of going out of the house, before he took sick?

MR CLARKE: Objected to.

THE COURT: Objection sustained.

BY MR LYNN:

Q What time that week, did he leave the house, if you remember? A Christmas week?

Q Yes.

MR CLARKE: Objected to, as too indefinite.

THE COURT: Objection sustained.

BY MR LYNN:

Q Monday, the 23rd, that was two days before Christmas, do you remember what time of the day he left the house, then? A He left at half-past five; about half-past five in the morning.

Q Well, was that about the time he had left the day before? A Yes, sir.

Q And was that about the time he left the day before, the 21st?

MR CLARKE: Objected to.

THE COURT: Objection sustained.

Q What time? Did you say 5:30? A Yes, sir.

Q Did you get up, in the morning? A Yes, sir.

Q And did you prepare anything for him? A Yes, sir.

MR CLARKE: This is all objected to, as leading.

THE COURT: Now, Judge, you are leading the witness very palpably.

MR LYNN: Well, Mr Clarke has lead throughout this case. He has taken a team of trotters and trotted right

through this case.

BY MR LYNN:

Q Now, did you prepare anything? A Yes, sir; a cup of coffee for him.

Q You boiled the water, did you? A Yes, sir.

Q You saw him drink the coffee? A I did.

Q Do you know---

THE COURT: Now, we must draw the line on this style of examination somewhere, Judge Lynn.

BY MR LYNN:

Q Now, how long had he been in the house on the night of the 22nd and the morning of the 23rd? A He was in the house all night.

Q From what time? A Well, he come from his work, on the 22nd--

Q About what time did he reach home? A Eleven o'clock in the morning.

Q What time did he get home the night before? A The same time, about, I should judge.

Q About what time was that? A About eleven o'clock.

BY MR CLARKE:

Q In the morning? A Yes, sir.

BY MR LYNN:

Q And then he would remain in the house until when?

A Until half-past five the next morning.

Q You occupied the same room? A Yes, sir.

Q He couldn't have stolen out of the house at one or two o'clock in the morning and made his way to New York, to steal fish, without your knowing it, could he? A No, sir.

CROSS EXAMINATION BY MR CLARKE:

Q Now, would you swear that your husband was not on the Fulton Fish market dock, on the 26th of December? A Yes, sir.

Q At no time? A At no time that week.

Q The 26th of December? A Yes, sir.

Q Not there? A Not there.

Q Home all the time? A Home every night until half-past five in the morning.

Q At exactly the same time, every morning? A Well, I can't say about that.

Q And the same cup of coffee and the same hot water?

A Yes, sir.

CHARLES D. KIERSTED, one of the defendants,
being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR LYNN:

Q Mr Kiersted, where do you live? A 22 Lee Avenue.

Q How old are you? A Fifty-three.

Q What have you been working at during those years of

your life? A Driving a truck forty years.

Q And worked for various people? A I worked for C. M. Post, for about twenty years.

Q That is the gentleman who was on the stand here?

A Yes, sir.

Q And his father before him? A Yes, sir; and I worked for---

Q Have you ever been arrested and put in jail and charged with crime, at any time of your fifty-three years? A No, sir.

Q What are you doing now, Kiersted? A Well, I haven't been doing anything lately, since this case has come up.

Q Since this trouble? A Yes, sir.

Q Now, go back, if you will, to Christmas week. It is charged here that on the morning of the 23rd, testified to by two men, looking from out of a window, five inches wide and eighteen inches long, that they saw you break open boxes with a crowbar; that they saw you take fish therefrom, and put fish in a box, laid on the dock, unloading fish from the wagon of Mitchell, on the morning of the 23rd? A No, sir.

Q Where were you that morning, or what were you doing that night, Kiersted? A Well, sir, I left the house about eight o'clock in the evening.

Q Yes. A It is generally my time to leave in the winter-time. And I come down to the stable, and the boss, Mr Leary

sends word over to the stable, and leaves it on the collar, whether there is any freezer stuff, or anything of the kind, or some order on the Penn road, or some clams coming on a steamer, with an initial on.

Q Now, can you fix the night, two nights before Christmas?

A Yes, sir.

Q That is the night this charge is made against you?

A Yes, sir.

Q Now, what did you do that night? A I went down to the stable and got my truck and came over to New York and went to the Old Dominion, and from there to the Penn Railroad; and from there I come back to the Market. It was then about twelve o'clock, and I went up then to the Bridge Freezer.

Q That is a storehouse that freezes fish under the Bridge? A Yes, sir.

Q Under the vaults of the Bridge? A Yes, sir. And I got fifteen boxes.

Q Who was with you? A Nobody.

Q And you drove the truck alone? A Yes, sir.

Q Now, was there a horse of Mr Leary's sick that week?

A Yes, sir.

Q So that the horse that you were driving that night was the horse that either Anderson or Long would have to drive when you got there? A Yes, sir.

Q Now, go on and tell what you did? A I fetched the fifteen boxes down to the Market and delivered them on Moon's stand.

Q This was the morning of the 23rd? A Yes, sir. And then I concluded what I had to do that night, until Anderson came over; but, instead of Anderson coming over Long came over; and I was in front of the market there, and he asked me if I was done.

Q Long came over with Anderson's truck? A No, sir; came over to me, with no truck, and said that Anderson had sent him over.

Q Now, what time was that? A Well, I should judge about twenty-five minutes past one.

Q Now, after that, what did you do? A I delivered the truck to him and went over into the restaurant.

Q That is you delivered it to long? A Yes, sir.

Q When you went over to the restaurant? A Yes, sir.

Q Now, just tell us what followed that? A And then I come over from the restaurant to Post's place, once in a while, to talk to Mr Moon, and then, after two o'clock, I would go over to the other restaurant.

Q And when did he come back with the truck, Anderson? A He come back to me to see if I wanted it on "The Centennial", along about five o'clock.

Q Had he done anything with the truck? A Nothing, from the time I delivered the truck, as I know of.

Q And where had he been with the truck? A Up at the Long Island railroad, foot of Jane Street.

Q Now, at what time must they be there to take the fish from that slip there, the Long Island slip? A The floats comes in all hours.

Q You turned over the truck to him, and didn't see the truck or him again, until near five o'clock? A Yes, sir, about five o'clock.

Q Did you open any boxes on that dock that night and steal fish, Mr Kiersted? A No, sir.

Q Did you take from a barrel of fish the half of it, and put it in another barrel, and then take fish from a number of other barrels that night? A No, sir.

Q You don't steal fish, do you, at all? A No, sir; I am a little too old for that?

Q You can earn an honest living, can't you? A Yes, sir.

Q And you have done it for forty years, haven't you?
A Yes, sir.

CROSS EXAMINATION BY MR CLARKE:

Q What are you receiving \$15 a week? A Yes, sir.

Q And you own some real estate, don't you? A Well, if you call owning it, I have paid a little money on a couple of lots

out in Bay Shore, twenty-five dollars a lot, if you call that owning real estate.

Q Well, don't you own more real estate? A No, sir. They have given me credit for owning a house worth \$7,500, but I wish I did.

Q Do you remember the 20th of November, 1903, being on that dock on that day? A No, sir.

Q With these other men? A No, sir.

Q A month before this occurrence? A No, sir.

Q Oh, by the way, you didn't know there were any detectives on board that oyster boat that night, did you? A I had no occasion.

Q And you didn't know it on the 20th of November? A No, sir; and it didn't bother me.

Q And isn't it true that, on the night of the 20th of November, that you, assisted by these other men, took thirty barrels of fish and opened them, and put the fish into empty barrels there? A No, sir.

Q And that you had three single trucks come on the dock there and opened barrels off those trucks? A No, sir.

Q And then that you put the barrels on hand trucks and wheeled them to the second stand in the Market? A No, sir.

Q Who keeps that stand? A George T. Moon.

Q Have you evertaken things over and left them on the

sidewalk, in front of 105 South Street? A Yes, sir.

Q And didn't you do that every morning? A No, sir.

Q Who were you delivering them to when you left them on the sidewalk? A Robbins & Mulke.

Q And that is where they received goods, is it not?

A At times.

Q Now, when you have goods that you want Robbins & Mulke to get, you sometimes use their cards and put them on the case, don't you? A If their cards are on them, I generally deliver them.

Q You recognize these cards as Robbins & Mulke's cards (indicating). A Yes, sir.

Q Do you recognize that "K" on there (indicating) A No, sir.

Q Did you put that there? A No, sir.

Q Doesn't it indicate Kiersted? A It could indicate a great many things.

Q (Question repeated) A I don't know, sir.

Q And wasn't that put on cases of stolen fish, which you delivered there for Robbins & Mulke, at 105 South Street, so that they would know you did it? A No, sir.

Q Didn't you put that "K" there? A No, sir.

Q Didn't you make tags for goods? A No, sir; not unless tags was left off, and I would nail them on again.

Q Now, do you remember the 25th of December? A Not to my recollection.

Q At 1:30 A. M., December 24th, weren't you on the dock there with "Red"? A No, sir.

Q Who is "Red"? A I don't know.

Q You don't know who "Red" is? A No, sir.

Q You swear to that, on your oath? A Yes, sir.

Q You never heard this man Anderson called "Red", in your life? A No, sir.

Q And you are never called "Casey", I suppose? A I am.

Q And now, isn't it a fact that you and Anderson were on that dock that morning at 1:30 A. M., and that you brought out fish and put them in a large case on the dock, and then you put it on your truck and delivered it to 109 South Street? A No, sir.

Q And whose is the place there? A Robbins & Mulke. There is two firms in there.

Q How many times have you delivered goods there? A I couldn't say.

Q Weren't you taking goods there right along? A I have, off "The Centennial", and, if I pick up any of Post's stuff, at the "Fast Freight" or the Old Dominion, I fetch it over, if I haven't any of my own.

Q And you have delivered halibut there, too; haven't you?

A No, sir.

Q Now you have heard these two detectives swear that they saw you take fish out of packages there, on that pier?

A No, sir, I didn't.

Q Well, you were handling some there that morning, weren't you? A I had only to deliver some stuff from the Bridge Freezer to Moon's, in small boxes.

Q Now, there were barrels just outside of that dock door weren't there? A I don't know about that.

Q Did you see an empty box standing about fifteen feet from the oyster barge on the dock? A No, sir.

Q Now, did you see Mr George Moon there that night?

A No, sir.

Q Why, weren't you there at all that night? A Yes, sir.

Q Well, then, where was Moon? A I don't know.

Q When you delivered to Moon, George T. Moon, you drove on the dock, didn't you? A No, sir.

Q Where did you drive? A In front of the market.

Q Isn't it true that you stood there, at the time that Mitchell arrived? A No, sir.

Q And he asked you to drive around in front of the market, and you did so? A No, sir.

Q Well, you had your single truck there that night,

didn't you? A Yes, sir. Backed in front of Moon's, to deliver fifteen boxes of frozen stuff.

Q And how long did it stay there? A Till Long came over to take it up to the Long Island Railroad; and he said that Anderson had sent him over.

Q And where were you after he went away? A In the restaurant.

Q Eating from one to three o'clock? A No, sir. I generally go over there to sit down.

Q Have you ever talked with Robbins & Mulke, or either of them? A At times.

Q During December? A No, sir.

Q Now, do you remember November 19th? A Not as I can remember.

Q What? A No, sir.

Q That would be really, November 20th. At 12:10, weren't you seen coming down Beekman Street with a single gray horse, and a box wagon? A No, sir; I didn't drive a gray horse.

Q You never drove one? A Yes, sir.

Q You never did? A Yes, sir.

Q Didn't you on that day? A No, sir.

Q In November? A No, sir.

Q A month before this matter arose? A No, sir, I don't think I did then. I think I had the roan horse for three or four months.

Q Now, didn't you and some other men there, at 1225 A. M. roll some barrels to the furthest end of the dock, and open them, and take out fish, and put them into an empty box or barrel that was standing there? A No, sir.

Q And the Police Sergeant came along? A No, sir.

Q And, when he came along you all dropped out of sight behind the boxes, until he got past? A No, sir.

Q You don't remember that little incident? A No, sir.

Q And then the load was put by you and another man into your box wagon and you drove across South Street, and you delivered the boxes and barrels at 105 South Street, placing them in front of the saloon? A No, sir.

MR LYNN: What are you reading from? The reports of these private detectives?

MR CLARKE: Yes; from them, certainly.

Q Do you remember having a conversation with Mr Moon and some of the other gentlemen interested in this matter, on December 27th? A In Mr Moon's office?

Q Yes. A Yes, sir.

Q And they asked you to tell what you knew about this matter; didn't they? A I didn't know what they was talking about then.

Q And where did you go then after leaving them? A Right over where I worked.

Q Didn't you go right to Robbins & Mulke? A No, sir.

Q And haven't you been there often since you have been arrested and released on bail? A No, sir. But I have been into 105. There is a liquor store there.

Q Did you ever see anybody representing Robbins & Mulke there? A No, sir.

Q And you have never talked with him? A No, sir.

Q And you have never sold any fish to them? A No, sir.

Q Of any kind or description? A No, sir.

Q Or delivered any to them? A Yes, sir; for Bedell & O'Leary, and Post.

Q What were you delivering for Post? A What I picked up along the North River.

Q Were you asked to do it? A It has been generally the habit of night trucks to help each other, and I will pick up a load on the North River, if they are there, if I haven't any load of my own.

Q Did you deliver any freight for your own employers during that month, to them? A No, sir.

Q But you delivered anything that you could pick up?
A That is, off the steamers, for Post, if he had anything there that I could put on my truck.

Q Do you know Mr Ortolano? A No, sir.

Q You don't know a fish dealer by that name? A No, sir.

Q Isn't it a fact that you have sold fish to him yourself? A I don't know the gentleman, not to speak to. I have seen his wagon, and seen him in his wagon.

MR LYNN: I would like to finish this case, to-night, if your Honor please. If the District Attorney has nothing else in rebuttal, I will cut off here, and not ask Long to go through the same denials as the others; and I will submit this case on your Honor's charge now.

MR CLARKE: Oh, no, I have something to say to the jury.

MR LYNN: Then I will rest now, and let you take the burden of it, Mr Clarke. There is a limit to my time. Mine is valuable, but yours is not, because you are paid well.

MR CLARKE: I will rest, also.

MR LYNN: Then I will not make any address in this case, your Honor. I think the evidence is fresh in the minds of the jury, and it is such a confused state of testimony regarding these five men, that I probably would not be capable of going over, in detail, all the stuff, and I will trust to the conscience and memory of the jury.

MR CLARKE: I will say a few words, your Honor.

THE COURT'S CHARGE.

Gentlemen of the Jury,

The first count in the indictment charges the defendants with the crime of grand larceny in the second degree, in that they stole fourteen halibut fish, described as halibut, killed for food, of the value of nine cents each pound, of the total value of \$2.85 each, 440 pounds of halibut fish, of the goods, chattels and personal property of Theodore Meserole and Charles M. Post, copartners in trade, then and there doing business in and by the firm name and style of Z. Post, Son & Co.

The second count charges that Clarence Mitchell, being then and there the servant and agent of Theodore Meserole and Charles M. Post, copartners in trade, then and there doing business in and by the firm name and style of Z. Post, Son & Co., feloniously appropriated to his own use the aforesaid fourteen halibut fish, weighing the same number of pounds with the intent to deprive and defraud his employers, Post, Son & Co., of that property, and that he was aided and abetted in that action by the four other

defendants.

328
204

The third count charges all the defendants with feloniously stealing the property mentioned, in the manner already described, it being the property of Samuel S. Cheseboro and Amos G. Cheseboro, copartners in trade.

Those are, briefly, the three counts in the indictment, charging the defendants with grand larceny in the second degree.

The crime of larceny is defined as follows, so far as the definition contained in the statute is applicable to the evidence in this case, because there are subdivisions in the statute which are not necessary for me to instruct you upon:

"A person who, with the intent to deprive or defraud the true owner of his property, or of the use and benefit thereof, takes from the possession of the true owner, or of any other person, any money, personal property or article of value of any kind, steals it and is guilty of larceny."

Larceny is divided into several degrees. The degree charged against the defendants is the second degree.

On the whole case, gentlemen of the jury, I am

of the opinion that there is not sufficient testimony in the case to warrant me in submitting it to you as grand larceny in the second degree.

There is no testimony before you showing, or tending to show, the value of the fish alleged to have been stolen.

The law requiring that proof is contained in this section where it says that a person is guilty of grand larceny in the second degree, under circumstances not amounting to grand larceny in the first degree, in any manner specified in this chapter, steals or unlawfully appropriates property of the value of more than \$25, but not exceeding \$500, in any manner whatever.

There is no testimony in the case tending to show that the value of the fish alleged to have been stolen, fourteen in number, was \$25, or over.

MR CLARKE: I think, if your Honor please, that there is some testimony.

MR LYNN: No; I think not.

THE COURT: No, gentlemen.

There is testimony, gentlemen of the jury in the case, that halibut, on that night, or on that day, was worth nine cents a pound, but there is no testi-

mony that the particular fish alleged to have been stolen was of any particular weight. The nearest approach to that testimony is, that fish, of the species or kind of the fish claimed to have been stolen, and consigned to the Messrs Chessboro, ranged from thirty to thirty-five pounds each, sometimes larger and sometimes smaller, sometimes heavier and sometimes not.

Now, in dealing with criminal cases, we cannot go by averages. There must be specific and definite proof as to certain alleged facts.

We cannot average things, or, to use a vulgarism, lump them. There must be proof as to specific, definite facts; and there is no proof here that any of the fish that are alleged to have been stolen, weighed any particular number of pounds; and we cannot, therefore, speculate as to any number of pounds that any one of those fish may have weighed.

Therefore, it would be, of course, impossible to build a speculation on another speculation. In a criminal case we cannot speculate. We must have a basis of facts; and, if we have a basis of facts, then we may infer from established facts what may be the natural and legitimate consequences of certain

facts or circumstances testified to. But we start with that condition, gentlemen, that there is no proof before you of the actual weight of any of those fish, or of the actual value of those fish, whether in size, or per pound.

Therefore, I will take from your consideration---

MR CLARKE: Hasn't your Honor forgotten a part of the testimony? Mr Cheseboro said that there were 550 pounds in each case, if the case was full; and the detectives testified that the case was full.

THE COURT: Well, I know, gentlemen, but the District Attorney's suggestion does not alter my opinion of the testimony in the case, and I will not send it to you for your consideration as a case of grand larceny in the second degree. I will submit the case as one of petit larceny.

And petit larceny may be established by proof from which a jury can infer that the stolen property was of any value, without regard to any specific value, if it was of any value whatever; and, if you are satisfied on this proof that the fish claimed to have been stolen, were, in fact, stolen, and that the fish were of any value, from one cent up to \$25, you will be justified in finding a verdict of guilty

of petit larceny.

Now, I trust, gentlemen, that that will be clear to you.

The second count in the indictment charges the defendant, Clarence Mitchell, with, while he was a servant or agent or trustee of his employers', Post & Co., he, as such servant, agent or bailee, misappropriated property entrusted to him, and in his charge and keeping; that he misappropriated it with the intent to deprive and defraud the true owner of the property, and that the four defendants aided and abetted him in that conversion.

The section of the statute that I have read to you, substantially, applies to the facts of the case, as far as Mitchell is concerned, but I will read it again to you, so that there will be no misapprehension on your part.

"A person who"--now, this applies to the charge against Mitchell--"a person who, with intent to defraud or deprive the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person, having in his possession the custody or control, as a bailee, servant, attorney, agent, clerk,

trustee of any person, authorized by agreement to hold or take such possession, custody or control, any moneys, property, or article of value of any nature, appropriates the same to his own use, or that of any other person other than the true owner or person entitled to the benefit thereof, steals such property and is guilty of larceny."

Now, under that section, gentlemen, I charge you that, if the defendant, Clarence Mitchell was in the employ of Post & Co., on that night, and, if he had in his possession as their employee or agent, any property belonging to Post & Co., property claimed to consist of eighteen cases of fish, and if, while he had such property in his possession, as their employee, claimed to be their truck driver, he took that property, or any portion of it, and appropriated it to his own use, or that of any other person, with intent to deprive or defraud his employers, or Messrs Cheseboro, the consignees of that property, of its use and benefit, then I charge you that he stole that property and committed the crime of petit larceny.

And if you find that the defendant Mitchell did that, then consider the further question: If the

other four defendants were present and aided and abetted and assisted him in that act of misappropriation, then they are equally guilty with him.

I will not refer to the facts in the case. I am sure that they are fresh in your recollection.

I have no expression to make regarding the question of fact. You are the exclusive judges. I instruct you upon the law, which you must accept from me, without question.

The prosecution claims to have established by evidence that, on the night of the 23rd of December, the defendant Mitchell, driving for the Messrs Post & Son, drove on or to the Fulton Market dock, with a load of cases of fish, which he had obtained in Jersey City, on an order from their clerk, for the purpose of carting those cases of fish from the railroad depot in Jersey City, and delivering them on the dock of the Fulton Market.

That he drove on to this dock, that when there, he was waited upon and joined by the defendant O'Brien who was employed by the same firm, and who has been described as a platform man, and whose duty it was to aid in unloading cases belonging to that firm, and loading, when it was necessary.

That these two defendants proceeded to unload these cases of fish, and that they were joined by the three defendants, the men referred to as Anderson, Kiersted and Long.

That then they proceeded to take the cases of fish off the truck; that Mitchell and O'Brien handed the cases down; and that then one of them took a crowbar and broke the end, or forced the end out of the case, and that the other took a fish, one fish out of that case, and that that fish was carried, and put it into an empty case that was lying on the dock.

And that then the case, which had been broken, was turned over, and nailed up, and put on end by the string piece of the dock. That that continued during the handling of fourteen cases out of the eighteen which were on the dock, and that out of each case of these fourteen cases, a fish was taken, and deposited in this empty case, which had been prepared and placed upon the dock by these defendants; and that the four remaining cases were taken off and put with the other fourteen cases. That then Kiersted, one of the defendants, came, with his truck, and took the case, which had been used as a receptacle for the fish on the dock, and which contained the

206
212

fourteen fish which had been taken from the fourteen cases respectively, and drove away from the dock, in the direction of South Street towards a fish stand, at No. 105.

MR LYNN: Your Honor will permit an interruption? They took a hand cart and went into the Market with it, and then they believed, they say, that they went out of the market and put it on the truck.

THE COURT: Yes. I do not pretend to go over the testimony, in detail. My memory must not govern you, gentlemen, at all, as to any statement of the testimony in the case; and you must entirely disregard my statement. If I am in error you must not be controlled by my erroneous statements. Your memory is what you must rely upon. But I simply give you my impression of the outline of the case claimed to have been established by the prosecution.

Now, gentlemen, that, in substance, is the case.

On that case, if it be established by the evidence beyond a reasonable doubt, I charge you that any person that broke open one of those cases, and took a fish therefrom, with the intent to deprive or defraud the true owner of it, stole that fish, and committed the crime of larceny.

If Mitchell took those cases, or any one of them, while they were in his charge, as an employee of the firm which employed him, and broke the case and took a fish out, with the intent to deprive or defraud his employers, or the true owner of the fish, then he stole the fish and committed the crime of larceny.

If the four co-defendants, indicted with him, aided and abetted him in that transaction, with a knowledge of his intention, and with an intention on their part, to participate in the criminal purpose, then each one of them is equally guilty with him.

The law defining the relations of a principal to a crime is very simple. It says that a person who aids, abets, assists or counsels another to commit a crime, is a principal in that crime.

And so, if you find, upon this evidence that the fish were stolen, and that each one of the defendants participated in the stealing of that fish, without regard to the particular act that each one may have done, but, if the five were engaged in the act, if they were concerned in the larceny, and if they aided and abetted and assisted each other, or

228
214

any one of them, then each one is guilty as a principal in the crime.

It matters not whether one broke open the case, and another watched, for the one that watched would be equally guilty with the one that broke open the case.

If two men go to commit a burglary, and one actually does the breaking into the house, while the second stands on the corner and watches, to give the alarm, in case of the approach of any one to disturb them, the man who stands on the corner to watch, and give the alarm, is equally guilty with the one who commits the actual breaking and entering, as guilty as the one who physically breaks into the building. I give you that illustration so that you will understand the principle that I have given to you as defined by law.

Now, on the question of the taking of these fish, four of the defendants have taken the witness stand, and each of them has denied that the case in question, or any of the cases, were broken up and fish taken therefrom, or that any fish whatever were stolen.

It is proper that I should call your attention to one phase of the case upon which there is an agree-

ment between the witnesses for the prosecution and the witnesses for the defense.

That phase is this: That the defendant Mitchell admits that he did take a load of fish, that night, from the Erie Railroad depot in Jersey City, consisting of eighteen cases, and that he drove on to the pier, with those eighteen cases; and the defendant O'Brien admits that he assisted Mitchell in unloading those eighteen cases.

Now, it is for you, as judges of the facts, to take that admission on the part of the defendants, in addition to the testimony of the night clerk, who made out what he calls a slip, a memorandum of the eighteen cases upon the truck, as Mitchell drove on the dock, into consideration, in view of the testimony of the witnesses for the prosecution, who say that they were watching through the window, and who were there for that purpose, to watch, that they saw a truck drive up, with eighteen cases on it.

There, of course, comes the line of dispute.

The prosecution, through its witnesses claims that fourteen of those cases were broken open; and the defendants who are accused of breaking open those cases, deny that they broke them open.

Now, gentlemen, you have to determine wherein the truth lies.

I do not wish to characterize any witness whatever, either for the prosecution or the defense. You are the judges of the credibility of each and every witness.

You are the judges also, of whether any witness has been actuated by a motive that would influence him, or prompt him to testify untruly; and that rule applies to the witnesses for the prosecution, and also applies to the defendants' themselves; because they have taken the witness stand in their own behalf, and, in doing so, they have become subject to all the tests that each and every other witness is subject to; and, when you look for motive that might prompt a witness to testify untruly, on the part of the prosecution, it is, also, proper that you should look for motive on the part of the witnesses for the defense that would prompt them to testify untruly.

I do not apprehend that anything remains for me to instruct you upon. I am sure that you have a clear recognition of the testimony in this case.

There is no room for sympathy, on either one side of the other. It is unnecessary, I am sure, for

me to tell you that, so far as the owners of this property are concerned, whether it be Messrs Chaseboro, the consignees, or Messrs Post, the truckmen, who took the cases in their charge to deliver to the consignees, that, by law, they are protected in the enjoyment of their property; and that no person has the right to take their property, without their knowledge and consent; and that if any person, be he employee or stranger, has taken their property, without their knowledge and consent, with the intent to deprive or defraud them of that property, that person has stolen that property, and has committed a crime.

Because the law protects every species of property that is subject to ownership; and no person, whether he be employee or stranger, has any right whatever to interfere with the enjoyment of property by another, no matter how trifling in value that property may be, no matter whether it be an article of food or an article of wearing apparel, or an article of ornament, or an article of luxury, it matters not, because all species of property are protected by law.

The defendants are entitled to the benefit of a reasonable doubt upon the whole case and upon the lack of evidence in the case. If you entertain such a reasonable doubt, give them the benefit of it, and acquit them.

You, I am sure, have a fairly clear comprehension of what a reasonable doubt consists of. It is sometimes more easy to define what a reasonable doubt is not, than what it is; because definitions may tend to confuse, more than to enlighten.

But the law contemplates a reasonable doubt to be just what the phrase expresses, a reasonable doubt; not any doubt, not a mere guess or conjecture or surmise or speculation, but a reasonable doubt, based upon the evidence in the case, and arising therefrom, and from no other source.

If you entertain such a reasonable doubt as the law contemplates, give the defendants the benefit of it, and acquit them. But, if, on the whole case, you believe, beyond a reasonable doubt, that the defendants committed the act of larceny charged against them, and if it be proven to your satisfaction, then it is your bounden duty to declare them guilty by your verdict.

It is within your power to convict all of the defendants, or to acquitt them all; and it is equally within your power to convict one or more of the defendants, or to acquit one or more of the defendants; or to convict any one, ~~and~~ acquit any one of the defendants.

Gentlemen, I submit the case to you.

MR LYNN: Your Honor will permit me to suggest that your Honor might refer to one question that your Honor has overlooked, not intentionally: that, where the conflict of testimony appears in the People's case, so flagrant, between the witness Moon, who was present at the taking off of two cases, and there was no one present at the opening of the two cases, or at the alleged opening of them, but two of the ~~defendants~~ and the two detectives say that the whole five defendants were there, I say that that discrepancy might be pointed out to the jury by your Honor.

THE COURT: No. The jury are entitled to consider all the evidence in the case.

The jury may retire.

The jury retired at 4:50 P. M.

(The jury returned to the court room at 6:20 P. M.)

THE COURT: Gentlemen of the Jury:

I have received a communication from you, in which you state that you cannot agree.

While I am very much disinclined to detain you, and subject you to any inconvenience, at the same time it is my duty to make use of all legal means, and to use such time as I thing may be used, in the interest of justice, that a jury should agree to its verdict, one way or the other.

I submitted this case to you on a plain, simple question of fact, and that was: Were the defendants or any one of them, guilty of a crime, and, if so, that crime could not be any other than petit larceny; and I instructed you, possibly not in as plain words as I am using now, that, if you found the defendants guilty, you could only find them guilty of petit larceny, and of no other crime, and, if you found them innocent, of course, your verdict should be not guilty.

And I again remind you that, if you believe that the fish were stolen, and that the defendants stole that fish, all participating in the stealing, or aid-

221
ing and abetting in the stealing of the fish, you
should find them guilty of petit larceny.

And, if you believe that the fish was not stolen
or that the defendants did not steel the fish, you
should find a verdict of not guilty.

So your verdict will be, either guilty of
petit larceny, or not guilty.

You may retire, gentlemen.

(At 6:30 P. M., the jury sent a message to the
Court, asking to see the two photographs in evidence.
Counsel for the People consented to send them to the
jury, but counsel for the defendants declined to con-
sent to have them sent to the jury; and the jury were
informed by the Court that, counsel not consenting,
the jury could not have the photographs in evidence.)

(The jury returned to the court room, at 7:10
P. M., finding the defendants guilty of petit larceny)