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I N D E X

## FOR THE PEOPLE:

Direct Cross Re-Direct Re-Cross

Frank Luedeke	2	3	4	4
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George W. Oldenstadt

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Michael T. Murphy

9 12 18

Peter J. Duffy

20 23

## FOR THE DEF'T:

Hirsch B. Seliger

25 29 42

William M. Perry

43 44

Otto Lichtenstein

47 50

Joseph Harris

50 54

## IN REBUTTAL:

Michael P. Murphy, recalled

59 63 64

George W. Oldenstadt,  
recalled

67 69

Frank Luedeke, recalled

70 72

John C. Hale

73 76

The Verdict,

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COURT OF GENERAL SESSIONS OF THE PEACE  
IN AND FOR THE COUNTY OF NEW YORK

PART I

685

THE PEOPLE OF THE STATE OF NEW YORK

VS.

JOSEPH HARRIS and HARRY SIMON, implead-  
ed with HIRSCH B. SELIGER, otherwise  
called E. B. Seliger

Indictment filed, January 19, 1905.

Charge: Burglary in the Third Degree, Grand Larceny in  
the First Degree, and Receiving.

New York, February 7, et seq., 1905

Tried before Hon. JOSEPH E. NEWBURGER, J., and a Jury.

APPEARANCES:

ROBERT TOWNSEND, Esq., Asst. Dist. Attorney, for the People;  
MOSES A. SACHS, Esq., for the Defense.

George F. Flack,

Official Stenographer

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

DIRECT EXAMINATION BY MR TOWNSEND:

Q What is your occupation? A Commission produce.

Q Whereabouts? 650 Hudson Street.

Q How many storied building is that? A There is a tene-  
ment on the top.

Q It is a brick building? A Yes, sir.

Q And with a ground floor? A Yes, sir.

Q And the ground floor you use? A Ground floor and base-  
ment.

Q You are engaged in the egg and butter business?

A Yes, sir--and lard.

Q Did you have any property in that place on the afternoon  
of the 16th of January? A Yes, sir.

Q What did you have there? A I could not tell you.  
About 1,000 cases of eggs and about three or four hundred tubs  
of butter.

Q Did you lock the store on that afternoon? A No. My  
brother-in-law did.

Q Who locked it? A There were two locks. I have got a  
lock in my pocket.

Q What is the name of the firm C. H. Luederke & Sons.

Q Were there butter and eggs in your place on that after-

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noon? A Yes.

Q Whereabouts in the store? A The eggs were in the front and the butter in the rear--about the center of the store.

Q What time did you leave the store? A About half-past three.

Q And what time did you return? A I did not return that afternoon.

Q What time did you hear of any loss? A Between 11 and 12 o'clock that night I was called to identify the goods.

Q Where did you see the goods? A In Seliger's store.

Q Which of the defendants is Seliger? A He is not on trial.

Q Do you know these two defendants (indicating defendants Harris and Simon)? A I saw them in the police court.

Q Did you ever see them before? A No.

CROSS EXAMINATION BY MR SACHS:

Q Where is it that you are in business? A 650 Hudson Street, corner of Gansevoort.

Q And you say you saw some goods in Seliger's store?

A Yes, sir.

Q What street is that on? A On Greenwich.

Q How far from Hudson is it to Greenwich at that point?

A From their place to our place?

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Q Yes? A I guess about three miles.

Q Have you any idea as to what time your place was closed for business that day? A Five o'clock.

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

Q How long have you been in the produce business? A My father has been in the business since 1878.

Q And how long have you been? A Twenty-one years.

Q You are pretty well acquainted with the customers of the plaintiff? A Yes, sir.

Q Did you ever buy any empty egg cases? A No, sir.

Q Never? A No, sir.

RE-DIRECT EXAMINATION BY MR TOWNSEND:

Q You saw property in Seliger's? A Yes, sir; 26 cases of eggs, 60 tubs of butter and 6 tubs of lard--did not identify the lard.

Q What did you identify? A 60 tubs of butter and 26 cases of eggs.

Q What was the value of the eggs? A About between \$1,000 and \$1,100.

Q And they were in your store on the 7th of January?  
A Yes, sir.

RE-CROSS EXAMINATION BY MR SACHS:

Q Outside of the 6 tubs of lard, you identified every-

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thing in Seliger's store as your property? A No; there were  
ome eggs that I did not identify.

Q How many cases of eggs? A I couldn't tell you.

Q How did you identify them? A By the cards and sten-  
cil on the sides.

Q The stencil was the name "Luedeke"? A "C. H. Luedeke  
& Sons.

Q And the cards bore different names? A The eggs had  
been candled that day by our candler.

Q Were there any marks on the eggs? A Yes. I have  
got the cards in my pocket.

Q Are those the cards the cards that were taken from the  
eggs? A Yes, sir.

Q Do you know if anything was left in the place outside  
of the lard? A What place?

Q In Seliger's place? A I see some eggs in there.

Q You don't know what names were on the boxes?

A No.

Q Do you know what names were stenciled on the sides of  
the boxes? A No.

Q Did you see any cards on the sides of those boxes?

A No.

Q I pick out this card (showing); what do the numbers 62  
and 74, mean; what do they mean? A That means the weight on

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the butter.

Q And what does 74 mean? A 74 is the gross weight and 62 is the net.

Q Those ~~xxx~~ the candler affixed? A No, sir, the cards of the man that packs the eggs, and the stencil and the man's name is on there who candled the eggs, and showing what the eggs are.

Q You never saw these men before (indicating defendants)?  
A Not except in the police court.

Q And it is three miles from your place to Seliger's place? A Yes; from 14 Duane Street; you know about how far that is.

Q Did you read the complaint in the police court?  
A Yes-I didn't read it; it was read to me.

Q You heard every word that was read to you? A Yes.

Q And did you put your signature to it? A Yes, sir.

Q And is this (indicating on paper) your signature?  
A That is my signature; yes.

RE-DIRECT EXAMINATION BY MR TOWNSEND:

Q Look at these boxes and state whether those are the boxes that you saw in Selinger's? A That (indicating) is one of them, yes.

Q Those are the boxes that were in that store on the 10th of January? A Yes.

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Q You positively identify that? A Yes, I positively identify that. They were to go out the next morning.

BY THE COURT:

Q That is you identify the boxes? A Yes, with the wire and stencil on them.

Q The stencil mark on them? A Yes, and the dates of the candler's examination.

BY MR TOWNSEND:

Q And the tag is on? A The name is on the butter. They were to go out early the next morning, at half-past six.

RE-CROSS EXAMINATION BY MR SACHS:

Q Do you know of your own knowledge whether any boxes containing the eggs and butter in question had been opened since the time you saw them in Selinger's place? A This box (indicating), not yet. The other boxes we have got and sold them.

Q The police returned them? A Yes.

Q And you made use of them? A Yes, sir; they have been sold.

Q They were in your possession? A After the police delivered them to us.

Q Did the policemen ever deliver that box (indicating)?  
A No; they put it in cold storage.

Q It was put in cold storage by whom? A The police.

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Q And never put in your possession? A No.

Q How many packages do you identify, in your possession?

A Those two.

Q One box of eggs and one tub of butter? A That is all.

Q Those are the only boxes they did not give to you?

A Yes.

GEORGE W. OLDENSTADT, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR TOWNSEND:

Q Where do you live? A 26 Bethune Street.

Q What is your business? A Bookkeeper.

Q For what firm? A Luedeke & Son.

Q No. 650? A Yes, sir.

Q Where? A Hudson Street.

Q Were you so employed on the afternoon of the 16th of January? A Yes, sir.

Q What time did you leave that store on that day?

A Five o'clock.

Q How about closing the store? A First turned the key in the bolt lock and then put on the hang lock.

Q On the door? A Yes, sir.

Q Leading from the street to the front hall? A The front

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of the store.

Q When did you return to the store? A The next morning.

Q And how did you find the lock laying, then? A The police had closed it. They put a lock on the inside. We had to break out way through.

Q What number will it lock? A That (indicating) was not on.

Q That was off? A Yes.

Q Was the door broken? A Yes, the door was broken.

CROSS EXAMINATION BY MR SACHS:

Q How long have you been employed by the Luedeke's?

A Seven years.

Q When did you first see these defendants? A Never saw them before.

Q Did you ever see them in the neighborhood of Luedeke's place? A No, sir.

M I C H A E L T . M U R P H Y , called as a witness in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR TOWNSEND:

Q What precinct are you connected with? A The 8th Precinct.

Q And you were on the afternoon of the 16th of January?  
A Yes, sir.

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Q Did you see these defendants? A Yes, sir.

Q Where? A In front of 324 Greenwich Street.

Q You saw the three defendants? A Yes, sir.

Q And what were they doing? A They were taking eggs and butter into 324 Greenwich Street, into a basement.

Q Were all engaged in carrying them down? A Yes, those three, with two others that escaped.

MR SACHS: I object.

THE COURT: Strike that out, and the jury are instructed to disregard it, the remark of the policeman.

BY MR TOWNSEND:

Q Are those (indicating) the packages that were being unloaded, a portion of them? A Yes, sir.

Q And what did you say to them? A I asked them where they got the stuff. I asked this man over here (indicating).

Q What is his name? A Harris--I asked him where he got the stuff, and he said he had taken the stuff from 324 Greenwich Street, at half-past four that afternoon. I asked him where he had taken the stuff to, and he told me to 102nd Street and First Avenue. I asked him to whom, and he said to a man by the name of Goldberg. I asked him the number of Goldberg's concern, and he said he didn't know. I asked him if he had taken that stuff there without any knowledge of the number, and he said he was taking it to Goldberg. Then I asked him if he had any re-

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ceipt to show that he was to deliver that stuff there, and he said no.

I said, "All right." In the meantime the man on the other side there---

Q What is his name? A Simon--came from the basement and I told him not to move, and knowing that they were fly people taking the stuff into the basement, I hollered down the basement and said, "Who is down there?" And Seliger said, "I am here;" and I told him to come up and asked if he was the proprietor of the place; and he said, "Yes".

I asked him how he came to receive that stuff at that time of the night; and he said it was his. I asked him where he got the stuff, and he said, "From Brown & Rittenhouse, at 139 Reade Street that afternoon."

I asked him where he had sent those eggs; and he gave me a number in 126th Street; also a number on West 29th Street, and another on Eighth Avenue. I saw right away---

MR SACHS: Objected to.

BY MR TOWNSEND:

Q Never mind what you saw. Just tell us what was said?

A I told him that the driver of the wagon had told me a different story, and that he should come with me.

In the meantime there was one box of eggs going down in the basement, which I have got in my possession; and it bore the



name of Luedeke & Son. Afterwards I turned it over to the Sergeant and it went to Detective Duffy, and they found him---

MR SACHS: Never mind now. You know a little too much. I ask that the answer be stricken from the record.

THE COURT: Yes; strike it out.

BY MR TOWNSEND:

Q Go on; what happened, then? A I brought them to the station house and they were detained there, to find out for what one tag which I had taken from one of the boxes of eggs amounted to.

Q And what did you get there? A The books that were taken from Selinger's place, 324 Greenwich Street.

Q Not connected with this case? A The buyer that appeared from Seliger's place told me---

MR SACHS: Objected to.

THE COURT: Strike it out.

CROSS EXAMINATION BY MR SACHS:

Q Did you read the affidavit of Luedeke in the police court? A No, sir.

Q Did you hear it read to you? A I did, yes, sir.

Q And didn't you sign an affidavit stating that you had heard read the affidavit of Frank Luedeke, and did you sign that?

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A I signed one I made myself.

Q Yes; an affidavit of Michael T. Murphy; that (indicating) is your signature? A Yes.

Q And everything that Luedeke says in this affidavit is true? A Well, to Mr Luedeke, it is.

Q Mr Luedeke says in his affidavit that, "deponent"--

MR TOWNSEND: I object to reading what he said.

THE COURT: Objection overruled.

BY MR SACHS:

Q (Quoting) Deponent is informed by Officer Michael F. Murphy, of the 8th Precinct, that at about the hour of 7:30 P. M. on the same day, he caught these three defendants in from of 324 Greenwich Street." Now, did you, in any part of this hear any statement about two other men? A I told the clerk of the court---

Q Did you hear read from this affidavit any statement about two other men? A I told---

BY THE COURT:

Q Now, Officer, why don't you answer yes or no? A No, sir, I did not.

BY MR SACHS:

Q Now, all the other facts are true, are they? A All the other facts are true, yes, sir.

Q Then you arrested these defendants at 7:30 P. M.?

A Yes, sir.

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Q How long did it take you, Officer, and how many men helped you to carry out the goods from Seliger's place?

A There were two others than myself.

Q How long did it take you to carry out the goods?

A About twenty minutes.

Q That was at twelve o'clock at night? A Yes, sir.

Q And there was no one to disturb you at all, was there, in the carrying out of those goods? A There were lots of people on the street.

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

Q On Greenwich Street? A Yes, sir.

Q Or did anybody disturb you or hinder you? A No, sir.

Q You did it uninterruptedly? A Yes, sir.

Q And you say you were able to do it in twenty minutes, being helped by two other men? A Yes, sir, about that.

Q And did you at any time see the defendant Harris on the wagon? A On the wagon?

Q Yes; yes or no? A No.

Q Did you at any time see Simon on the wagon? A At the time I was bringing them to the station house, yes; I ordered the four of them on the wagon.

Q This means before the arrest. Did you see Harris or Simon on the wagon? A I saw Harris.

Q On the wagon? A On the wagon.

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Q How long before you arrested him? A About five or ten minutes.

Q How long did he remain on the wagon? A He was to go right on and get the eggs and take them right down.

Q He would get on the wagon and--- A And push the eggs and butter back.

Q And then get off and pitch them into the place?  
A Yes, sir.

Q Did you see Simon do that? A He remained on the street.

Q Did Simon take anything down? A He took stuff from the wagon into the basement.

Q Then he did not remain on the street all the time, did he? A He was in and out of the basement.

Q He was not on the street all the time, was he? A No.

Q He was carrying eggs into the basement? A Eggs and butter into the basement, yes, sir.

Q Did you watch the wagon while all the goods were being taken down? A Not all; no.

Q About how much of the goods that were on the wagon had been taken down when you made the arrest? A Well, I saw about thirty tubs of butter and about fifteen cases of eggs while I was there.

Q And did you see the wagon drive up to Selinger's; did you? A No.

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Q The wagon was already there? A Yes, when I saw it.

Q How long did you stand watching while these men were taking the goods in? A About ten minutes.

Q Had taken off half or less of the goods? A Well, perhaps a little more than half.

Q Were there some good on the truck when you arrested them? A No, sir. I let them put all the goods into the basement.

Q And you stood watching them ten minutes? A Well, practically. It might not be fully ten minutes. I should judge it was about ten minutes.

Q And when you first saw the truck you say it was a little less than half filled? A Yes; about half filled; yes, sir.

Q And the truck was entirely empty when you arrested these defendants? A Yes, sir.

Q How far were you from the truck? A Well, about fifteen feet.

Q From the place where you stood did you see any name on the tubs of butter? A I passed it up and down about fifteen minutes.

Q Well, kindly answer my question. From where you were standing did you see any name on the tubs of butter? A Not on the butter; no.

Q Did you see any number on the case? A Yes; I took a



tag from one of the boxes of eggs.

Q When? A This man Simon had a box of eggs taking it into the basement.

Q And you took the tag from it? A Yes; from the end of it.

Q Do you know how many boxes had the name of Luedeke on them on that wagon? A No.

Q Do you know how many tubs of butter had the name Luedeke on them? A No.

Q Will you swear now that there was one tub of butter with the name of Luedeke on it? A No.

Q Can you swear that there was one box of eggs with the name of Luedeke on it? A Yes; I can swear that there was one box of eggs.

Q And that was the box of eggs you saw in Simon's hands? A Oh, no.

Q What box was it? A This was one of the boxes of eggs and tubs of butter that were brought into the station house.

Q I am not asking you that, Officer, I want to know if you swear that there were any tubs of butter or cases of eggs remaining on the wagon had the name of Luedeke on them? A I can swear that one box of eggs that I took the tag from had the name of Luedeke on it.

Q And that box of eggs you took from whom? A From Simon.

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Q More than that you cannot swear to? A No, sir.

Q And you say you saw Simon take that case of eggs from the wagon? A Yes, sir.

Q And that was the only case of eggs or tub of butter that you know bore the name of Luedeke? A Yes, sir.

RE-DIRECT EXAMINATION BY MR TOWNSEND:

Q What was done with the property that you took that night? A Turned it over to Luedeke.

Q And did you see Luedeke at the time? A Yes, sir.

Q And he identified it? A Yes, sir.

Q The very property that you saw in the possession of these defendants? A Yes, sir.

MR SACHS: I object on the ground that the officer has stated that he cannot swear that any of the property bore the name of Luedeke.

THE COURT: He does not swear that now. He simply swears that the property that he saw in the possession of the defendant that night was afterwards identified by Luedeke; that is all he says. He does not say that he identified it.

BY MR SACHS:

Q You say that the property that was in the basement was identified by Luedeke? A By Mr Luedeke, yes.

BY THE COURT:

Q Was any property on the wagon identified by Luedeke?

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A I allowed it all to go downstairs.

Q Oh, you allowed it all to go downstairs? A Yes.

BY MR SACHS:

Q You are not prepared to state just now how many boxes that were in the basement were really on the wagon? A No, sir.

Q And, as you said before, you cannot swear that any of the boxes on the wagon--except the one case of eggs, bore the name of Luedeke? A That was the only one I got a tag from.

MR SACHS: I think then that my objection is sound.

Among other places that the defendant Harris said he was to deliver the property was No. 276 Sixth Avenue.

THE WITNESS: No, sir.

BY MR SACHS:

Q Do you remember his giving you the name of ~~Max~~ Addicks?

A No, sir.

Q Do you remember his telling you that he drove up to 101st Street and could not find the place? A 102nd Street he told me he drove to.

Q And did he tell you that he drove there and came back?

A Yes, sir.

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

DIRECT EXAMINATION BY MR TOWNSEND:

Q What precinct are you connected with? A The 8th Precinct.

Q When did you first learn of this trouble? A About 8 P. M. on January 16th.

Q Where did you go then? A I went then to 650 Hudson Street.

Q Whom did you see there? A I saw in charge of the place two officers from the 9th Precinct.

Q Did you see the door? A Yes, sir.

Q What was the condition of the door? A The hasp was broken off the front door.

Q At 650 Hudson Street? A Yes, sir.

Q What did you do then? A I then took the card that Officer Murphy gave me---

Q Where is the card? A Officer Murphy has it.

Q The last witness? A Yes, sir.

Q What did you do, Officer? A I went down to the basement of 324 Greenwich Street and saw the eggs and butter that were alleged to have been stolen there. I notified the officer of the 9th Precinct that the butter and eggs were in our possession and to notify Mr Luedeke that he could find it down at

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the 8th Precinct.

Q Then what did you do? A Then I came back to the station house and had a conversation with the two defendants.

Q With which one? A With both of them.

Q Simon and-- A And Harris.

Q Yes. A Harris told me that he got the stuff at Seliger's place, 324 Greenwich Street; that he was to bring it only to one place, and that was to the Harlem market. He said he brought it up there and the place was closed, and that then he brought the eggs and butter back, and was returning them into the store when he was arrested by the officer. This other man, the other defendant, said that he was just passing the place, and that he asked the defendant, Harris, if he was going across town, and if he would give him a ride. He said that that was all he had to do with it.

Q Did you go and make any investigation about that?

A Yes, sir.

Q Where did you go? A I then talked with Mr Seliger, the man of 324 Greenwich Street.

Q Was the defendant present? A Yes, both defendants were present.

Q State what was said? A I asked him if he ever bought any stuff off of Luedeke & Son. He said he never bought a dollar's worth off him.

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I said, "What if Luedeke's stuff was found in his place, what could he say?" And he said he couldn't say anything.

Q What further did you do? A That is all.

Q You went somewhere else that day, did you not; to Brown & Rittenhouse? A Yes, sir.

Q How do you expect me to know it if you don't remember?

A (No answer.)

Q Why did you go to that place? A Went down there to find out if he had sold---

Q Did the defendants say anything? A Yes, sir.

Q What did they say? A They had bought some stuff.

BY MR SACHS:

Q Who? A Seliger.

BY MR TOWNSEND:

Q In the presence of these two defendants? A Yes, sir.

Q State it? A That he had bought some eggs down at Brown & Rittenhouse's the day previous.

Q You found out---

MR SACHS: Objected to.

THE COURT: Objection sustained.

BY MR TOWNSEND:

Q Did you go there? A Yes.

Q Whom did you see? A Mr Brown.

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## CROSS EXAMINATION BY MR SACHS:

Q Did the defendant mention the name of a Mr Addicks at all? A Which defendant?

Q The defendant, Harris? A No, sir.

Q Or the number 276 Sixth Avenue? A No, sir.

Q Were you present at Seliger's place when the goods were removed from there? A No, sir.

Q Were you in Seliger's place after the goods had been removed? A Yes.

Q When were you in Seliger's place? A The next morning.

Q Did you see anything there? A Yes, sir.

Q Any cases of eggs? A Yes.

Q Any tubs of lard? A Yes.

Q How many cases of eggs did you see? A I should judge that there were about eleven cases of eggs there.

Q And six tubs of lard? A And six tubs of lard.

Q Anything else? A That is about all.

Q You are not positive, but you think that is about all?  
A Yes.

A And those eggs, did they bear Luedeke's name? A No, sir.

Q Or any other name? A They had some stencil marks on them.

Q You say eleven cases of eggs and six tubs of lard?

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A Yes, sir.

Q Were the tubs similar to that which you see here in court? A That is butter.

Q But I mean the tubs? A Just the same as that, but they had no red mark on the top of them.

THE PEOPLE REST.

MR SACHS: If your Honor please, in premising my motion for a dismissal, I ask that your Honor will take into consideration the fact that there is no evidence that the defendant, Harris had at all any possession of any case of eggs or any tub of butter with the name of Luedeke marked upon it. The only evidence in this case that either one of these defendants had possession of any cases of butter with the name of Luedeke, was the statement by the officer that he saw the defendant, Simon carrying one case of eggs.

I also ask your Honor to consider the fact that Duffy has just testified that when he went into the place the next morning after the goods had been taken to Seliger's place, he found eleven cases of eggs and six tubs of lard, which might have been the property that was on that wagon.

THE COURT: There is sufficient to put the defendants to their explanation. Motion denied.

MR SACHS: We respectfully except.

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## THE DEFENSE.

MR SACHS: I will call as the first witness, Mr Hirsch B. Seliger.

THE COURT: Is it with the consent of his counsel that he is called?

MR L. LEON BRANDMARKER: I am not ready to say that, but I have advised him as to his rights and that he may refuse to answer certain questions.

THE COURT: Does he understand that?

MR BRANDMARKER: I suggest that your Honor ask him again.

BY THE COURT:

Q Do you understand what your lawyer has told you, that you are not compelled to answer any questions that might tend to degrade or incriminate you? A Yes, sir.

Q You understand that? A Yes, sir.

H I R S C H B . S E L I G E R , sworn as a witness on the part of the defense, testified as follows:

DIRECT EXAMINATION BY MR SACHS:

Q Your name is? A Hirsch B. Seliger.

Q And where is your place of business? A 324 Greenwich Street.

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

Q How long have you known him? A About five or six weeks before I got arrested.

Q Do you know what his business is? A He is a truck driver.

Q Has he ever done any work for you before the 16th day of January? A Yes, sir, a few times.

Q Did you send for him on the 16th day of January?  
A Yes, sir.

Q How far is Harris' place of business from where you are doing business? A About half a block or one block.

Q On the 16th day of January did he drive up to your place?  
A Yes, sir.

Q After you had sent for him? A I did not---

Q Did you send for him on the 16th day of January?  
A Yes, sir.

Q And how long after did he drive up to your place; did he come to your place with his wagon? A Yes.

Q How long afterwards? A Between four and five o'clock.

Q And did you give him any goods to deliver? A Yes, sir.

Q Now, Mr Seliger, did the defendant, Harris know where you had bought or purchased <sup>the</sup> goods that you requested him to deliver?

MR TOWNSEND: I object. How does he know?

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THE COURT: Objection sustained.

BY MR SACHS:

Q Did you inform the defendant, Harris, where you had purchased or from whom you had received the goods you gave him to deliver? A I don't understand what you mean. I told him to deliver in certain places the goods.

Q That is all you told him? A Yes.

Q You did not tell him where you had bought those goods?

A No, sir.

Q At the time that Harris drove up to your place with his wagon, did you see the defendant, Simon? A No, sir, I didn't see nobody. I was downstairs.

Q Did Harris drive away from your place with some goods in his wagon? A With the orders?

Q Yes. A Yes, sir.

Q Did you give him a direction to go to Mr Addicks?

A Yes, sir.

THE COURT: Had you better not ask him where he told him to go?

BY MR SACHS:

Q Where did you tell the defendant to go? A Up to Harlem with twelve cases, and three cases of eggs he was to deliver at 140 West 28th Street, and three cases he ought to deliver to 276 Sixth Avenue.

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Q Three cases where? A Three cases at 140 West 28th Street.

Q What is the name of that man? A Mr Kasofsky.

Q And three cases where else? A Three cases to 276 Sixth Avenue.

Q To whom? A Frank Addicks.

Q That accounts for six cases? A That accounts for eighteen. Twelve cases up to Harlem.

Q Go on. A And two cases to 666 Third Avenue, near 42nd Street.

Q Is that all? A That is all--twenty cases.

Q Do you know what time the defendant got back? A Yes, sir.

Q About what time? A Between seven and a quarter past seven.

Q How many cases had he delivered? A Only two cases.

Q To whom had he delivered those three cases? A To the first place, 276 Sixth Avenue, the nearest place.

Q Did he tell you why he did not deliver the other cases? A Yes, sir, he came back and he told me he thinks it is too late to go up so far, and that those stores is eight o'clock stores, so he did not want to go up to these stores so far; so he brought them back.

Q Did you make an agreement with the defendant as to how

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much he was to get for his work? A Ten cents a package.

Q Is that what you usually paid? A Yes, sir.

Q And then he was arrested at your place? A Yes, sir.

Q And you were arrested? A Yes, sir.

Q When did you first see the man, Simon? A The first time was when I got arrested. I never saw this man in my life.

Q Never before? A No, sir.

Q Did you hear any conversation between Simon and Harris?

A No, sir.

The Court admonished the jury according to Section 415 of the Code of Criminal Procedure.

RECESS TILL 2:15 P. M.

AFTER RECESS.

MR TOWNSEND: I ask that the witnesses for the defense be excluded.

THE COURT: Yes; all witnesses in the case should be excluded from the court room.

CROSS EXAMINATION BY MR TOWNSEND:

Q What is your name? A Hirsch B. Seliger.

Q Did you ever go under the name of Hirsch B. Seliger?

A Yes, sir.

THE COURT:

That is what he says is his name.

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BY MR TOWNSEND:

Q Hirsch B. Seliger? A Yes, sir.

Q And E. B. Seliger, who is he? A I am him; that is what I am; Hirsch B. Seliger.

Q How big a place have you got down there; how large is it? A I could put in three or four hundred packages.

Q How many feet wide is it? A I didn't measure it.

Q About ten feet? A Ten or twelve feet.

Q And how broad?

THE COURT: You asked him how wide.

BY MR TOWNSEND:

Q How long? A How long?

Q Yes. A About 30 feet, or more than that.

BY THE COURT:

Q How long have you been in this place? A For the last three months.

BY MR TOWNSEND:

Q What business were you in before? A The same business.

Q Where? A Before, in 25 Harrison Street.

Q Downstairs? A Downstairs, yes.

Q In the basement? A In the basement.

Q What made you move from there? A Well, I took a better place. I got it cheaper now; a little bit cheaper; and I

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took a better place.

Q A better place? A Yes, sir.

Q Now, did you ever buy any goods of Mr Luedeke? A No, sir.

Q What? A No, sir.

Q Where did you get these 50 or 60 tubs of butter?

MR SACHS: If your Honor please, on behalf of the defendants, Harris and Simon, I object to the question on the ground that the witness on the stand has testified that the defendant Harris had no knowledge as to where Seliger obtained the goods that Harris was to deliver.

THE COURT: Objection overruled.

MR SACHS: Exception.

MR J. LEON BRANDMARKER: I want to interpose an objection on behalf of this witness on the ground that this is not proper cross examination that the District Attorney can only examine as to what was brought out on the direct examination, as this witness was called for a specific purpose. He is not on trial now.

THE COURT: I know; but he has no right to the benefit of counsel at this time. I will instruct the witness, however, that he need not answer these questions if he will say that his answers might tend to incriminate or degrade him.



BY THE COURT:

Q Do you understand? A Yes, sir.

MR BRANDMARKER: As to his ruling of the court, that he is not entitled to the benefit of counsel at this time, I wish to say that I have only advised him to go on the stand, and have advised him to protect his own rights.

THE COURT: The court is here for that purpose.

MR BRANDMARKER: I respectfully except.

THE COURT: Yes.

THE COURT: Read the question.

(The stenographer complies.)

BY THE COURT:

Q Now, you understand that you need not answer if your answer will tend to incriminate or degrade you? A I am willing to answer.

THE COURT: All right; then answer.

BY MR TOWNSEND:

Q Where did you get them? A I am buying butter and eggs from different people. I am buying from all; from Sergeant & Kern; from Brown & Rittenhouse, and from all merchandise dealers; from George M. Rittenhouse, and others, and I have always got forty or fifty tubs on hand. The last time, when they took me in the station house I had nearly sixty cases down in the

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cellar. I always got eggs on hand. I am in the market; I am all the time in the market, and if I strike a bargain, and strike ten or two tubs, I always buy them.

Q Have you got any bills or receipts?

Objected to. Objection sustained.

Q Do you keep any books?

MR SACHS: Objected to.

THE COURT: I will allow that.

A Keep books--can't keep everything. The books are for my customers.

THE COURT: Now stop.

BY MR TOWNSEND:

Q You testified in your direct examination, did you not , that you did not send out any butter that afternoon? A That is right.

Q Did you hear Officer Murphy testify that he saw between twenty and thirty tubs of butter unloaded from that express wagon and carried into your place?

MR SACHS: I object; the officer did not testify to that at all.

THE COURT: I do not recollect the officer stating that.

BY MR TOWNSEND:

Q What time did you engage the expressman that afternoon?

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A Between four and five o'clock; about half-past four.

Q About half-past four? A Yes, sir.

Q And what did you put on his wagon? A Twenty cases of eggs.

Q No butter? A No, sir.

Q You swear now that there was no butter? A No butter.

Q On the wagon, and no butter carried into the store and from the wagon that night? A Sir?

Q Do you swear that there was no butter carried from the wagon that night when the officer made the arrest? A Yes, sir.

Q You swear to that? A Yes, sir.

Q You told the officer that you had never bought any goods of Luedeke, is that right? A Yes, sir.

Q You were there when Mr Luedeke and the other gentlemen identified the property--came into the store that night.

MR BRANDMARKER: I object to that.

THE COURT: I will allow that.

MR BRANDMARKER: It was not brought out on the direct.

THE COURT: I will allow that.

A Mr Luedeke was not in my store.

BY MR TOWNSEND:

Q Was not Mr Luedeke in your store at 12 o'clock that night? A I didn't see him.

Q You were under arrest then? A May have been.

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Q What time were you arrested? A About half-past seven.

Q Half past eleven? A Half-past seven.

Q Where did you buy that tub of butter (indicating)?

MR BRANDMARKER: I object to the question.

THE COURT: Objection sustained.

MR TOWNSEND: It is cross examination.

Q Where did you buy this box of eggs?

THE COURT: He has already testified he bought a lot of eggs.

MR TOWNSEND: But I am asking him about this particular box of eggs.

MR BRANDMARKER: Objected to upon the ground that it is not proper cross examination at this time.

THE COURT: I do not think it is. I will sustain the objection.

BY MR TOWNSEND:

Q You say that you sent him out with twenty cases of eggs and that he returned with seventeen cases; is that right?

A Yes, sir.

Q What time did he start to go to Harlem? A Five o'clock.

Q At five o'clock? A Or ten minutes of five; something like five o'clock.

Q He did not deliver any in Harlem? A No, sir.

Q Where else did you send him besides Harlem? A To 276

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Sixth Avenue, near 18th Street, with three cases; with three cases to 140 West 28th Street; and two cases to 666 Third Avenue near 42nd Street; and in 102nd Street, Harlem, to William H. Brown & Co.

Q And in what places did he deliver any goods? A At 276 Sixth Avenue.

Q That was the only place? A That is all.

Q And who was there; what was the name of the gentleman?  
A Frank Addicks.

Q Had you ever sold him any eggs before? A Yes; for the last seven or eight months.

Q When, before this night had you sent him any eggs?  
A Last week--Tuesday or Wednesday.

Q Before you were arrested--that is, got arrested--when were you arrested? A Five or six days before I delivered him the goods.

Q How many cases of eggs did you deliver before? A Always two or three.

Q Can you tell me what day it was that you delivered him the last consignment of eggs? A The last boxes of eggs was on January 16th.

Q No; I mean before this day--before the 16th? A I can't exactly remember; it must have been the 12th or 13th of January.

Q The 12th or 13th of January? A Yes, sir. Of course I

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delivered twice a week to this man.

Q Twice a week you sent him eggs? A Yes.

Q And you say that the 12th or 13th was the last time before the 16th? A Yes, sir.

Q And you sent him three cases that day? A Yes, sir.

Q Now, can you recollect, before the 12th or 13th, what day it was? A I can't really remember what day. I can say that it was a week; I always delivered him Monday or Tuesday, and Thursday or Friday again; that is every week; twice a week

Q Now, these other people--did you sell eggs to them?

A Yes, sir.

Q How long before had you delivered them any eggs?

A Since I am in business; for the last eight or nine months.

Q Before the 16th, when had you delivered any to them?

A Every week.

Q Can you fix any date? A Well, I delivered to No. 666-- I delivered--the 14th I delivered two cases of eggs and a tub of butter.

Q 666 what? A Third Avenue.

Q Did you deliver any to him that day? A Yes, sir, this day the 16th of January, two cases of eggs.

Q Two cases of eggs? A Yes, but he did not deliver them.

Q Why didn't he deliver them? A He didn't feel like going up.

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Q He didn't feel like going up? A I don't know--he told me that he had a poor horse, and was afraid to go up so far; that it was too far.

Q Did he say how far up he had got; did he say where he had got to? A I don't know.

Q Did he say how far he had got with the eggs when he turned around? A I can't understand.

BY MR SACHS:

Q Did he say how far uptown he went before he came back to your place? A How far?

Q Yes. A Till 18th Street; he did not deliver more than to Mr Frank Addicks.

BY MR TOWNSEND:

Q How many tubs of butter did you have in your store that night? A I had over 50 tubs; had 52 or 53 tubs of butter, and had five or six tubs of lard. I didn't take stock the same day. I couldn't say for sure.

Q When did you get those three tubs of butter? A What three tubs?

MR BRANDMARKER: I object to that at this time.

MR SACHS: The question has already been answered.

THE COURT: Yes; I will sustain the objection.

BY MR TOWNSEND:

Q You have known Harris, you say, for sometime? A Yes;

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for a few weeks before.

Q How long? A For a few weeks before.

Q Had you ever employed him? A I don't employ him; I give him--I always give him, two or three times in a week, a chance to deliver some goods for me. He always stands on a corner near me, at Greenwich and Washington Streets, not far from me, and I always give him a show to deliver some goods for me.

Q Where did he deliver the last goods prior to the 16th of January? A At the same place.

Q What place? A He was delivering in 2354 Eighth Avenue; he was delivering in 745 Seventh Avenue--to all my customers; I got thirty or forty customers.

Q He had delivered the goods for you? A Yes, sir.

Q On how many different days had you employed him?

A Well, all I employ him was five or six times.

Q Five or six times? A Yes, sir.

Q Who had your business before that? A Sir?

Q Who delivered goods for you before that? A Trucking?

Q Trucking, yes. A Well, Silsby's Transfer Company.

Q Where is his place of business? A He has got his office at the corner of Greenwich and Moore.

Q What made you give him up? A He didn't treat me right; so after I took all business away from him. He has got his office at 141 Reade Street. I took all kinds of express. He didn't

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treat me right, so I left him.

Q Where is Harris' office? A I don't know if he has got an office. He always stands with a wagon at the corner of Duane and Washington Streets.

Q You don't know where he stables his horse? A No, sir.

Q He is not the proprietor? A What?

Q He is not the owner of the express? A I don't know; I guess not. He is only the driver.

Q A man by the name of Lichtenstein, is he the owner, do you know? A I believe so.

Q Do you know whether there was any name on this express wagon?

MR SACHS: I object, if your Honor please.

THE COURT: I will allow that.

MR SACHS: As long as he has his license number--

THE COURT: That makes no difference.

A I didn't look on the names. I looked---

BY THE COURT:

Q You have stated enough. You say you did not see any names. A I didn't see no names.

BY MR TOWNSEND:

Q Have you ever been convicted? A No, sir.

Q Where were you when the officer arrested Harris and Simon? A I was downstairs in my office.

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Q Did you see these two other men who the officer said went away? A I didn't see the two other men that the officers said went away. When he called me out he says that I should lock the door and make out the gas and go up with him.

Q What were you doing down in the store when you were arrested? A I was in the office. I was fixing some bills, and so forth in the office.

Q That was about what time? A Between seven and half-past seven.

Q If I understand you correctly, all that you sent out that afternoon and all that the truck had on was twenty cases of eggs? A Yes, sir.

Q And that when you were arrested it had on seven cases, is that it?

MR SACHS: Oh, no.

BY MR TOWNSEND:

Q How many did it have on when you were arrested?

A When I got arrested the eggs were down in my place, fifteen or twenty minutes already.

Q All the eggs? A Yes, sir.

Q And the wagon was unloaded? A Yes, sir.

Q Nothing left on the wagon? A No, sir--about twenty minutes ago, already.

Q When was it that you bought, prior to the 16th, the last

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lot of butter?

MR SACHS: The question has already been answered.

THE COURT: Objection sustained.

MR TOWNSEND: He did not give the time.

THE COURT: No; I think I will sustain the objection.

It is not proper cross examination.

RE-DIRECT EXAMINATION BY MR SACHS:

Q Mr Seliger, did the defendant bring back to you a receipt from Addicks?

MR TOWNSEND: Objected to.

THE COURT: I will allow that.

BY MR SACHS:

Q Did Harris bring you a receipt from Addicks? A No, sir.

Q How many cases did he deliver to Addicks?

MR TOWNSEND: Objected to as already answered.

MR SACHS: All right.

Q How long do you think it would take to unload twenty cases of eggs from a wagon?

MR TOWNSEND: Objected to as calling for an opinion.

Objection sustained. The jury can determine that.

MR SACHS: All right, sir.

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WILLIAM M. PERRY, called as a witness on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR SACHS:

Q What is your business? A Manager for a restaurant on Sixth Avenue.

Q What name? A Addicks' Quick Lunch Company.

Q And as Manager of Addicks' Quick Lunch Company, do you know from whom the company purchased its supplies? A I do all the purchasing.

Q Do you, or did you at any time purchase of E. B. Seliger any eggs? A I have.

Q Do you remember when E. B. Seliger made his last delivery to you? A It was on Monday the 16th of January.

Q At about what time was that delivery made? A Sometime in the evening; I should judge between six and half-past six, or perhaps half-past six or a quarter to seven.

Q Where is Addicks' Quick Lunch Company? A 276 Sixth Avenue.

Q And between what streets is that? A 17th and 18th.

Q How many times prior to the 16th day of January has E. B. Seliger delivered goods to your place? A I couldn't tell you that.

Q Five times? A Oh, yes, a good many.

Q And he used to deliver butter and eggs? A That is all

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I buy from him.

Q Have you ever seen the defendant, Joseph Harris, this man (indicating) before? A I couldn't swear as to that. Those cartmen all look alike to me. I don't pay much attention to them. I saw a man that resembles him, but whether he is the gentleman or not, I couldn't say.

Q Do you recollect whether or not he delivered any goods to you on the 16th of January?

MR TOWNSEND: Objected to. He says he don't remember.

THE COURT: Objection sustained.

BY MR SACHS:

Q But you say that goods were delivered to you on the 16th day of January, about 6:30 o'clock? A Yes, sir.

Q From Seliger's place? A Yes, sir.

CROSS EXAMINATION BY MR TOWNSEND:

Q When was the last delivery from Seliger's made to you prior to that, Mr Perry? A It was either on a Thursday or Friday preceding.

Q What day of the week was the 16th on? A On a Monday.

Q How many boxes of eggs did you get at that time?

A Two cases of ages and one tub of butter.

Q And before that? A About the same quantity. He used to come in twice a week, as a rule.

Q What days did he deliver on? A Either on a Monday or a



Tuesday and a Friday or Saturday.

Q Have you ever been in Seliger's place? A No, sir.

Q How did you get acquainted with Seliger? A He came along one day, as hundreds of salesmen do, and left his card, and quoted me some price. I told him I would see what I could do for him, and he came in a few days afterwards and I gave him a trial order.

Q What did you pay for those cases of eggs? A I was under contract to Mr Seliger--made a contract with him for what butter and eggs I wanted for six months.

Q Well, what did you pay for them? A Paid 23 1/2 cents for the butter.

Q And what for the eggs? A 22 cents.

Q You paid 22 cents for those last? A That was the contract price for six months.

Q That was better than you could do anywhere else? A It was not any better at the time I made the contract, but I was quite certain that the market was going up, and I wanted to make a contract with some one for six months, and his price was a little lower than that of other people. That is the reason I gave him the contract.

Q When was your attention first called to this matter?

A Sunday--do you want to know when my very first attention was called to it?

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Q Yes. A When I telephoned down to this man, it was for some more goods.

Q When was that? A It was sometime in the week, beginning with the 16th. I wrote him a postal card. I think it was on a Wednesday that I wrote it, ordering some more goods, and they didn't come, and I telephoned down to him to know why they didn't come.

Q Did you see the goods delivered? A I received them myself.

Q Always received them? A Not always, but nearly all the time. Always when I was in the store.

Q Did you receive delivery of the goods prior to that day?  
A I think so. There is always a receipt given.

Q I know, but did you receive the goods yourself prior to that date? A I can't remember that; I received a great many goods from him and signed for them every time they were received.

Q Weren't they sent there and sometimes received by others than yourself? A The man in charge when I was not there would receive them, of course.

Q Why do you recollect this particular delivery? A Because we change watches at half-past seven every night, and I go home about that time, and that night my assistant had gone away and I was staying there until we changed watches.



OTTO LICHTENSTEIN, called as a witness on behalf of the defense, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR SACHS:

Q Where do you live? A 156 Monroe Street.

Q And what is your business? A Truckman.

Q Where is your stand or office? A I stand with my truck at Duane and Washington Streets.

Q How many trucks have you? A Two.

Q Do you know the defendant, Joseph Harris? A Yes.

Q How long do you know him? A Quite a few years.

Q Has he ever been in your employ? A Yes, sir.

Q Was he in your employ on the 16th day of January?

A Yes, sir.

Q How long before that was he in your employ? A About three months.

Q As what was he employed by you? A Driver.

Q What time did he usually come down to work? A About seven o'clock.

Q What time did he usually go home? A He would go home at four, and stay out till ten o'clock at night--no matter what time--till he gets through.

Q He attended to his duties until he was through?

A Yes, sir.

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Q That sometimes was at four o'clock and sometimes at ten o'clock? A Yes, sir.

Q What are you license numbers? A 396.

Q That is one? A Yes.

Q And what is the other? A 11,975. My license belongs to my brother, but I own the trucks.

Q Now, on the 16th day of January, what time did you leave Washington and Duane Streets? A What is that?

Q Where is your stand? A At Washington and Duane.

Q And what time did you leave Washington and Duane Streets on the 16th day of January? A Myself?

Q Yes. A About four o'clock.

Q And where did you go at that time? A Ludlow Street.

Q To what number? A I don't remember what number--to Jakey Bernstein's.

Q What did you deliver? A Barrels of apples.

MR TOWNSEND: Objected to.

THE COURT: I will allow that.

MR SACHS: Just to show his movements.

Q What did you deliver? A Apples.

MR TOWNSEND: That is what he did.

THE COURT: Yes.

MR TOWNSEND: Prior.

BY MR SACHS:

Q You say at four o'clock you left Washington and Duane



Streets? A About that.

Q Did you see Mr Seliger come down to your stand? A Seliger?

Q Yes. A No, sir. I don't know who he is.

Q That was after you went away? A Yes, sir.

Q When did you first hear of the defendants' arrest?

A The next morning.

Q How did you hear of it? A Down at market, my truck was away. I left there about four o'clock, and it was about that time; and I thought perhaps he had got a load and went to Harlem. I didn't know where he went. I waited till about ten o'clock; he stayed out once as late as that; and I waited till one o'clock and he didn't come back, and I telephoned to Police Headquarters and asked about it. They asked me what kind of horse and truck it was, and I described the horse and truck.

MR TOWNSEND: Objected to as immaterial.

(No ruling.)

A (Continuing) I described the horse and truck, and new set of harness on the horse; and they said they didn't know any-  
until the  
thing about it; and I couldn't go down to the market next morning, and then they told me that it was over to the Leonard Street station house; and I went over there.

Q Did you go to the station house? A Yes.

Q And you claimed the truck? A Yes, sir.

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Q And was the possession of it given to you? A Yes, sir.

Q How much did you pay the defendant? A \$10 a week.

Q And he had been in your employ about three months?

A Yes.

Q That is three months before the 16th of January?

A Yes, sir.

Q What did you usually charge for delivering a package like a box of eggs? A According to our---

Q Say from your place to Harlem? Ten cents; sometimes fifteen.

CROSS EXAMINATION BY MR TOWNSEND:

Q And you don't know Seliger? A No, sir.

J O S E P H H A R R I S , one of the defendants, called as a witness in his own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR SACHS:

Q Where do you live? A 12 Suffolk Street.

Q And what is your business? A Driver.

Q Whom do you drive for? A For Mr Otto Lichtenstein.

Q And did you work for him on the 16th day of January?

A Yes, sir.

Q How long did you work for him? A About three months.

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Q Did you see Mr Seliger on the stand? A Yes.

Q Have you worked for him, done expressing and trucking for him? A Trucking for him, yes, sir.

Q About how many times? A Five or six times.

Q When was the last time that Seliger engaged you to truck for him? A On Monday.

Q The day of your arrest? A The day of my arrest.

Q Where were you standing at that time? A On Duane and Washington Streets.

Q Where Mr Lichtenstein usually stood? A Yes, sir.

Q How many wagons has Mr Lichtenstein got? A Two.

Q And about what time did Seliger see you that day?

A About a quarter after four, between a quarter after and half-past four.

Q And did you drive up to his place? A Yes, sir.

Q What did you get from his place? A Twenty boxes of eggs.

Q Did you deliver any on that day to a place on Sixth Avenue? A Yes, sir.

Q Where? A At 276 Sixth Avenue, near 18th Street.

Q Do you know the name of the place? A Yes; Addicks'

Q Did you see Mr Perry on the stand? A Yes.

Q Did you see Mr Perry at that place on that day?

A Yes, sir.

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Q And you delivered him how much; what did you deliver to Mr Perry on that day? A Three boxes of eggs.

Q And where did you go from Perry&s, or from Addicks', place? A To Greenwich Street.

Q Back to Seliger's? A Back to Seliger's.

Q What time was it when you turned back to Seliger's? A About six o'clock, or a quarter after.

Q Why did you turn back to Seliger's? A On account that the horse was too tired, and I didn't want to drive him up.

Q And what time did you get back to Seliger's? A About seven o'clock.

Q Did you unload any goods from the wagon? A Yes, sir.

Q And where did you put the goods? A Down in the basement.

Q Now, I ask you this question: Did you see any card or any tag on those boxes of eggs with the name of Inedeker on them? A No, sir.

Q When you drove away from Seliger's place to go to 18th Street, and the two other places, was this man with you (indicating one of the defendants)? A No, sir.

Q When did you first speak to this man, or he to you? A When I came over to Seliger's place to unload the goods. So he asked me if I am going across town, and I said yes, and he said, "I am going to take a ride with you." So I said, "All right"; and he helped me to take off the goods.



Q When Seliger sent you uptown, after you left Addicks' place, where was you to go? A To 140 West 28th Street.

Q And after going to 28th Street, where were you to go?

A 666 Third Avenue.

Q And after going to Third Avenue, where were you to go?

A To 102nd Street.

Q What was the name of the Third Avenue place, do you know?

A No, sir, I don't recollect.

Q Do you know the name of the 102nd Street place?

A William H. Brown, I think.

Q Do you know the name of the 28th Street place? A No, sir.

Q Did you at any time on that day, or to your knowledge on any day preceding that, ever go into Mr Luedeke's place?

A Yes, sir, a couple of times.

Q In to Mr Luedeke's place? A Yes, sir.

Q Did you ever take any butter and eggs from his place?

A No.

Q But you had been in Seliger's place before that?

A Yes, sir.

Q A couple of times? A A couple of times.

Q How much did you get a week from Lichtenstein?

A \$10 a week.

Q Are you a married man? A Yes, sir.

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## CROSS EXAMINATION BY MR TOWNSEND:

Q Did you go under the name of Goodman, ever?

MR SACHS: Objected to.

THE COURT: Objection overruled.

A Yes, sir.

BY MR TOWNSEND:

Q Why?

MR SACHS: I object, if your Honor please.

THE COURT: Objection overruled.

A They gave me that name of Goodman.

BY MR TOWNSEND:

Q What? A They used to call me "Goodman".

Q Who did? A Fellows that I worked with.

Q Did you ever go under the name of Joseph Dobis? A It was a nickname they gave me.

Q Who? A Fellows I worked with.

Q What other nicknames did they give you? A That is all.

Q Joseph Dobis and Goodman? A Yes, sir.

Q Didn't you adopt and give that name yourself? A Yes, I gave that name.

Q Where did you give it?

Objected to. Objection overruled.

Q (Repeating) Where? A I was locked up, and the officer marked it "Goodman", because he heard it.

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Q Did you give the name Goodman? A No; I wanted to give my right name, "Harris", and he didn't want it.

Q Where was that? A In the Essex Market Court.

Q When?

Objected to. Objection overruled. Exception.

A A couple of months before.

THE COURT: When he was arrested?

MR SACHS: Yes.

THE COURT: Objection sustained.

MR TOWNSEND: I didn't ask that. I asked when he gave the name of Goodman and why he gave it, and he was telling.

THE COURT: All right.

BY MR TOWNSEND:

Q When did you give the name of Dobis? A I didn't give no name of Dobis.

Q Joe Dobis; did you ever go under that name? A No. It was a nickname they called me.

Q You never gave that name? A No, sir.

Q You have been convicted of a crime? A Convicted?

Q Yes. A Of cruelty to animals.

Q Poisoning a horse? A Yes.

Q How long a time did you do? A Done one year.

Q Your boss here testified that he did not know Seliger;

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did you hear him? A Yes.

Q Is that so, so far as you know? A Yes.

Q Then you never told him of your transactions with Seliger and the work that you did-- A He never asked me. I used to be in the care of that truck, and standing down in the market to catch work and he didn't ask me where; and I gave him the money.

Q You never reported to him that you did trucking for Seliger? A He never asked me.

Q That was all on your own responsibility, was it?

MR SACHS: There is no proof of that, if your Honor please.

(No ruling.)

BY MR TOWNSEND:

Q (Continuing) Is that it? A (No answer.)

Q Where did you meet Seliger? A On the corner of Duane and Washington.

Q When? A On Monday.

Q Was that the first time you had ever seen him? A No, sir.

Q How many times did you cart stuff for him? A Four or five times.

Q Now, did you hear Officer Murphy testify that when you were arrested you said you had been to 102nd Street and First

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Avenue to a man named Goldberg? A I didn't say I was there.

Q (Continuing) And that you found the place closed.

Did you hear the officer testify to that? A He testified to it, but I didn't say that.

Q What did you say? A That I was supposed to go there, but that I came back because I didn't want to drive the horse up there; and he said where was I going to take the stuff, and I told him to 102nd Street, and different places.

Q Did you say to a man by the name of Goldberg? A I didn't say nothing of the kind.

Q Did you say also that you found the place closed?

A No, sir.

Q You did not tell the officer that? A No, sir.

Q How many tubs of butter did you have on that afternoon? A I didn't have no butter on; only eggs.

Q How long have you known Simon? A Who?

Q Simon? A Neyer knew him before.

Q What? A I didn't know him at all.

Q What are you; a Russian? A Sir.

Q Do you come from Russia? A Yes.

Q Do you know where he came from?

MR SACHS: I object, if your Honor please.

THE COURT: Objection sustained.



BY MR TOWNSEND:

Q You say you never knew him before?that day? A No,  
sir.

Q Are you sure about that? A Sure.

THE DEFENSE REST.

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## REBUTTAL TESTIMONY.

MICHAEL P. MURPHY, being recalled by the People, testified as follows:

DIRECT EXAMINATION BY MR. TOWNSEND:

Q You heard the two witnesses testify, Seliger and Harris that there were no tubs of butter on that wagon that afternoon? A No, sir, I didn't hear Harris testify.

Q You didn't hear that? A I didn't hear Harris testify.

Q Did you see any tubs of butter on that wagon when you first saw the wagon? A Yes, sir; I saw them take tubs of butter off the wagon.

Q How many tubs were on the wagon when you first saw it? A About 30 tubs of butter.

Q About 30 tubs of butter? A Yes, sir.

Q And how many tubs were found in there altogether? A 50.

Q And how many cases of eggs? A 26.

Q And how many cases of eggs were on the wagon when you first saw it? A I disremember now. About 16 I guess when I saw it first.

Q You had a talk with Harris when he was arrested? A Yes, sir.

Q What did he say to you?

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MR. SACHS: I object. That has been gone over before; he testified to that before.

THE COURT: I will allow it.

MR. TOWNSEND: I want it by way of contradiction.

Q What did Harris say to you when you arrested him?

A Harris told me that he had taken the stuff out of Seliger's cellar at 324 Greenwich Street, at 4:30 that afternoon; that he had taken it to 10 Second Street and First Avenue.

I asked him to whom he took it there, and he said to a man by the name of Goldberg.

I asked him what the number of Goldberg's concern was. He told me he didn't know.

I asked him if he had any receipts to show that he had taken that stuff there. He told me that he didn't know.

I asked him how he brought it back, why he did so. He said the place was closed and he brought the stuff right back again to Seliger's cellar.

Q Were you present when Mr. Luedeke saw the property in the cellar? A Yes, sir.

Q And did the tubs of butter bear the marks that that one bears at this present time (indicating)?

MR. SACKS: Objected to.

(No ruling)

A Yes, sir --

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THE COURT: One moment.

MR. SACHS: I object to any testimony being given with reference to anything that transpired not in the presence of the defendant, on the ground that the defendant had no control over any articles that might have been there and no right of interference with those articles. Your Honor will bear in mind that this was at 12 o'clock at night, five hours after the defendant was arrested, when Luedeke came down to that cellar.

MR. TOWNSEND: I will connect it more directly.

Q Can you say that the same goods that you saw being carried into Luedeke's cellar in the evening --

THE COURT: Not Luedeke's cellar.

THE WITNESS: Seliger's cellar.

BY MR. TOWNSEND:

Q -- Seliger's cellar -- are the same goods which Luedeke, at 12 o'clock that night, were shown to him, Luedeke, in the cellar? A They looked just the same.

MR. SACHS: I call your honor's attention to the statement made by the officer, that the only case that he saw with Luedeke's name on it was one case of eggs, and that he saw no name on the wagon.

THE WITNESS: I said --

MR. SACHS: Just a minute.

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THE WITNESS: I said that that was at the time the stuff was taken in the cellar.

MR. SACHS: That's it.

BY THE COURT:

Q Did you see any others afterwards? A Yes, sir.  
After Luedeke came home I opened basement and saw Luedeke's name --

Q Did you have a key to the basement? A Yes, sir.  
I was still in charge of the stuff from 7 o'clock until 12.

Q You stood there from 7 o'clock till 12?  
A Yes, sir.

Q Remained in charge of the place? A Yes, sir.

Q Were any goods taken into the place from the time you remained in charge until Luedeke came? A No.

Q And were any of the goods removed during that time?  
A No, sir, not until Luedeke came.

THE COURT: objection overruled.

BY MR. SACHS:

Q Were any of Luedeke's goods on the wagon -- can you swear to that? -- and if not Luedeke's goods, how is the defendant bound by anything that was in the cellar?

MR. TOWNSEND: He testified that he saw them delivering the same goods.

THE COURT: I will allow the question.

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MR. SACHS: Exception.

BY MR. TOWNSEND:

Q You saw some goods being carried into the cellar?

A Yes, sir.

MR. SACHS: He said just now that they looked like them.

BY MR. TOWNSEND:

Q How big a place is this basement? A May be 20 or 25 feet by 12; that is, 20 or 25 feet long by 12 feet wide. Of course it may be a little longer; may be 25 feet or 30.

CROSS EXAMINATION BY MR. SACHS:

Q Officer, you testified before that the only package that was on that wagon on which you saw a tag or the name of Luedeke was one case of eggs. A I told you I had taken a tag from one case of eggs that was going into the cellar.

Q Did you see the name of Luedeke on any other package on the wagon? A After Mr. Luedeke came to me --

Q Never mind about after Mr. Luedeke came to you. When you saw the goods being unloaded from the wagon did you see the name of Luedeke on any other package? A Not until 12 o'clock midnight.

Q 12 o'clock midnight was the first time you saw the name of Luedeke on any package except this case of eggs?

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A On any package except the case of eggs.

Q Then you are not prepared to swear that any of the goods on the wagon belonged to Luedeke? A No.

RE-DIRECT EXAMINATION BY MR. TOWNSEND:

Q But you swear the goods were identified by Luedeke that you saw on the wagon? A I certainly would swear to that.

RE-CROSS EXAMINATION BY MR. SACHS:

Q You just said that the goods on the wagon looked like the goods that were identified by Mr. Luedeke. A I swear that Mr. Luedeke identified the goods on the wagon.

Q Do you mean to say that Luedeke identified the goods on the wagon?

MR. TOWNSEND: He said that.

THE COURT: No, he did not say that.

BY MR. SACHS:

Q Did you not say that the goods on the wagon looked like Mr. Luedeke's? A Yes.

MR. TOWNSEND: Now ask him if they were not the same goods that were identified by Luedeke.

BY MR. SACHS:

Q Do you mean to say that the goods taken from the wagon are the identical goods that were identified by Luedeke?

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A They could not have been anything else.

BY THE COURT:

Q Never mind. A The only stuff in the wagon was what entered there and were Mr. Luedeke's butter.

BY MR. SACHS:

Q And nothing else; no cases of eggs? A No butter but what was his.

Q Answer my question. A (No answer)

BY THE COURT:

Q Were there eggs? A Yes.

THE COURT: Then why do you not say so?

BY MR. SACHS:

Q And they did not belong to Luedeke, did they?

A Some of them did not; no, sir.

Q Are there any tubs of butter in that cellar?

A No, sir.

Q Yes or no? A Not that I know of.

Q When was the last time that you were there?

A yesterday morning.

Q Did you see any tubs of butter there then?

A I saw tubs; I can't say whether of butter or lard.

Q You saw tubs? A Yes, sir.

Q And how do you know that there were no tubs of butter in there but what belonged to Luedeke? A Because at that



time Mr. Luedeke claimed there was six tubs of lard in there-- only lard in the tubs.

Q Did you see any tubs there that did not belong to Luedeke? A I saw tubs there.

Q And do you know what was in the tubs? A No.

Q And do you know whether they were Luedeke's or not?

A There were only six in the basement after Mr. Luedeke took the stuff out of there.

Q Why can't you be honest, officer? A That is what I am trying to be.

Q Did you see tubs taken from the wagon? A Yes, sir.

Q Do you know whether those tubs contained butter or lard? A I don't know.

Q Then you don't know whether they were Luedeke's tubs that were taken from the wagon, do you? A No.

Q And are you prepared to swear that any of the property belonging to Mr. Luedeke was, even for a moment, in the possession of this defendant? A I saw them take stuff that he claimed to be his, into the basement.

Q No; you didn't see anything of the kind. You saw them take tubs? A I took the tag off one of them.

Q And the tubs looked like these (indicating)?

A yes, sir.

Q They had no mark? A No.

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Q They looked something like these? All tubs look something like them. You saw them take tubs off the wagon?

A Yes, sir.

Q But you don't know whether they contained butter or lard? A No.

Q And you saw them take cases off the wagon? A Yes, sir.

Q And you only can swear to one case having the name of Luedeke? A Yes.

Q Then you cannot swear that the other cases belonged to Luedeke? A No.

Q And you cannot swear that the defendant at the bar ever had in his possession any goods belonging to Luedeke that looked like them? A Yes, sir.

Q But you can't swear that they were Luedeke's?

THE COURT: That is sufficient. He has answered.

GEORGE W. OLDENSTADT, being recalled by the People, testified as follows:

DIRECT EXAMINATION BY MR. TOWNSEND:

Q What is your business, Mr. Oldenstadt? A Bookkeeper.

Q And you were with Mr. Luedeke that night when he saw these goods, were you? A Yes, sir; I went with him to identify them.

Q And you saw these goods in the store of Seliger?



A Yes, sir.

MR. SACHS: I object, if your Honor please, that the defendant at the bar is not in any manner responsible for any goods that may have been found in the possession or place of E. B. Seliger, on the ground that he, the defendant, had no control over that place, and had no right to determine what kind or character of goods should go into it.

THE COURT: Objection overruled.

MR. SACHS: We respectfully except.

BY MR. TOWNSEND:

Q And you are in the employ of Mr. Luedeke? A Yes, sir.

Q Look at that tub of butter there; do you see any marks by which you can identify that as being one of the goods in the grocery? A That Red Bird Creamy Brand, that is our stencil, and that name, "Schonemann," is the name of one of our customers.

Q Did you hear your brother-in-law testify this morning?

A Yes, sir.

Q That he put the name on the tub? A Yes, sir.

Q Did you see that tub in there? A Yes, sir.

Q Do you know whether any of the other tubs are marked in the same manner? A They were marked with different names.

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Q But they were marked across the heads of the tubs like that? A Well, wherever there is space.

Q And that was one of the means of identification, was it? A Yes. It had that brand on also.

BY THE COURT:

Q It had the brand on also, did it? A It had the brand on also, yes.

BY MR. TOWNSEND:

Q And were there any other means besides the brand?

A The brand and the name of Schonemann. Those are for orders to be delivered the next morning by our wagon.

Q Do you know how many were so marked to be delivered?

A I couldn't recollect now. There were about 16 or 18. I ain't sure about that.

Q And you saw them all in the store of Seliger that night? A Yes, sir.

CROSS EXAMINATION BY MR. SACHS:

Q What was the name of the man on the tag?

A Schonemann was on the tub and in the book.

Q And how many tubs did you sell to Mr. Schonemann?

A We have sold him more than this.

Q And how many tubs of butter left your place with the brand on? A Thousands.



Q Thousands of them? A I suppose so, in time.

Q Now when you left your place on Hudson Street on 4 o'clock in the afternoon of January 16th -- A 5 o'clock.

Q 5 o'clock -- when did you see Mr. Luedeke again?

A I believe it was 11 o'clock; something like that.

Q Didn't you testify that when you got to your store the next morning it was the first time you had heard of any alleged robbery; didn't you testify to that in your direct examination? A No, sir.

Q Do you mean to say that, when you were on the stand before, you did not testify that the first thing you heard of it was the next morning? A No; I went with the detective to Mr. Luedeke's house.

Q You did? A Yes, sir.

Q That afternoon? A That night at 11 o'clock.

Q And you testified to that before, you say?

A That was not asked of me.

F R A N K L U E D E K E, being recalled for the People,  
testified as follows:

DIRECT EXAMINATION BY MR. TOWNSEND:

Q You are recalled, Mr. Witness. Now can you say that that tub of butter (indicating) was in Mr. Seliger's store that night? A Yes, sir.

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MR. SACHS: I object.

(No ruling)

A (Continuing) Because on that afternoon I picked out -- that tub of butter was one of 16 to go out of the place the next morning, order.

Q What did you do with it when you picked it up?

A I picked it out and left the butter man to write it up.

Q You saw him put the name on? A Write out different names, yes; 19 different customers.

Q And you saw them all in there that night, in Seliger's store? A Yes.

BY THE COURT:

Q That was on the night of the same day on which you had picked out the goods? A Yes, sir; and those 26 cases of eggs were taken up that day. We candled the eggs a day ahead.

BY MR. TOWNSEND:

Q Now look at that book (indicating) and tell us what there is about that that affords you means of identification?

A On the left is our name, and on the top is the candler's name, and the date is below that and it is marked when they were candled out.

Q And when were they candled? A The same date, the 16th.

Q That shows all on there? A Yes, sir.

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Q That they were candled in your store that day?

A Yes, sir; and there is a man outside to prove it; he can prove that none of the goods left that place that day.

Q And how many of the goods were found in the store?

A 26 cases.

BY THE COURT:

Q 26 cases of eggs? A Yes, sir, all marked the 16th. Some of the tickets are gone.

Q But every one of the tickets was on the 16th at the time you found them? A Yes, sir.

CROSS EXAMINATION BY MR. SACHS:

Q You say they were all candled on the 16th? A Yes.

Q And that was the date of the tickets? A Yes.

Q And is that just as true as everything else you have stated? A Yes, sir.

Q Now tell me if this (indicating) is not dated the 14th? A Well --

Q Now I ask you if that is dated the 14th?

MR. TOWNSEND: Let him look at it.

A (After examining) Yes, sir, the 14th. That was candled the previous Saturday.

BY THE COURT:

Q The 14th was on Saturday? A Yes, sir.

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Q And the 16th was on Monday? A Yes, sir.

BY MR. SACHS:

Q But you said before that they were all candled on the 16th. A I didn't examine that case. The police officer picked out that case.

Q Did you hear officer Murphy testify this morning that he couldn't swear that any of these cases or tubs of butter were ever in the possession of the defendant? A Did I hear him --

THE COURT: He was outside.

MR. SACHS: Not this morning.

Q Did you hear him swear that he couldn't state that any of these cases of eggs or any of the tubs of butter were ever in the possession of the defendants? A No, I did not.

Q Can you swear that any of your cases of eggs or any of your tubs of butter were ever in the possession of the defendants? A How could I?

MR. SACHS: No. That is all.

THE COURT: I understand that the witness states that the shipping clerk is outside.

J O H N C. H A L E, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TOWNSEND:

Q Your name is what? A Hale.

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Q And you live where? A 31 Charles Street.

Q And your occupation is what? A Shipping clerk and receiving clerk at 650 Hudson Street, in Mr. Luedeke's employment.

Q And you have been for some time? A A year and a half.

Q Were you so employed on the 16th of January? A Yes, sir.

Q Will you look at people's Exhibits here, Nos. A and B, and state whetheryou have seen them before? A Yes, sir, I have.

Q Where was it that you saw them other than here?  
A on the afternoon of January 16th, Monday.

Q Where were they? A In Mr. Luedeke's place.

Q His place of business? A Yes, sir.

Q About what time? A Well, those eggs were candled in the afternoon, or forenoon, and I saw them in the afternoon.

Q And you saw them when the place was closed? A Yes, sir; I saw them when the place was closed.

Q Does that (indicating) bear any marks that identifies it to you? A Yes. One of the customer's names is Schone-mann.

Q And do you know who put that on? A Yes, sir; the man that marks the butter.

Q And do you know that others were also marked on that

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day? A Yes, sir.

Q How many? A 16 tubs.

Q All marked with the names of the parties who purchased them? A They were to be delivered the following morning by the drivers and they were wired and made ready for delivery.

Q What about these eggs; look at the tag taken from a box?

MR. SACHS: I object; he has no right to refresh the witness's recollection until his memory has been exhausted.

(No ruling)

BY MR. TOWNSEND:

Q You know what that is?

THE COURT: yes, I will allow that.

A Yes, sir.

BY MR. TOWNSEND:

Q What is that? A Candler's name and the date the eggs were candled and the mark of the eggs.

Q That shows that they were candled when? A These eggs were candled on Saturday, on the 14th.

Q That is, to examine whether they are fresh or not?

A Yes, sir.

Q And then the tag is put upon the box? A Yes, sir.

Q Is there any other mark there? A The stencil on the

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side, the firm's name on the side, Luedeke & Son, 650 Hudson Street, Fresh Eggs.

CROSS EXAMINATION BY MR. SACHS:

Q How many cases were stenciled on Saturday, January 14th? A I couldn't exactly say.

Q How many cases were stenciled on Friday, January 13th? A That I couldn't say positively.

Q How many were stenciled on Monday, the 16th?  
A 60 cases in all I believe, and 23 were taken out --

Q 60 cases were stenciled on Monday? A Yes, sir; not all.

Q In other words, there were 60 cases <sup>of</sup> stenciled eggs in Luedeke's premises on the 16th of January? A About that; I couldn't say positively.

Q Did you ever, while in Luedeke's place, know of a tag being put on two days before delivery was made? A Yes, sir.

Q Three days before delivery was made? A No, not three days. Probably two days.

Q Did you ever tag any goods to be delivered?  
A Yes, sir.

Q Oh, you have tagged some two days before delivery was made? A That (indicating) is our tag, showing the day they are tagged and candled.



Q I am talking about goods to be shipped out; have they been tagged to your knowledge two days before they were to be delivered? A Not butter, no.

Q What has been tagged two days before delivery was to be made? A Do you mean --

Q To ship out to customers? A No; they have been tagged the same day they were to be delivered.

Q The same day what? A The same day they were to be delivered.

Q These goods were tagged on the same day --

A There is no tag in that; only the writing.

Q only what? A The writing, the name.

Q The name from whom it comes and the date, January --

A Oh, that is the police tag. We don't put that tag on.

Q You did not put that tag on? A No.

MR. TOWNSEND: That is a police tag.

MR. SACHS: That is what I want to know.

Q Now the name that is put on butter tubs to be delivered to customers, when are they put on? A That was put on in the afternoon.

Q That was the day before then it was to be delivered?

A Yes, but that (indicating) is not a tag.

Q No, the name? A Yes, sir, but you are talking about tags.



Q I am talking about the names of the customers to whom the goods are to go. A Yes; the tub of butter was wired and the name was marked on that date.

Q And it was to go out the next day? A It was to go out the next day, the following morning, yes.

Q And you say these eggs were candled on the 14th?  
A Yes, sir.

Q Do you know how many were candled on that day, the 14th? A I haven't the least idea.

Q And on Monday you say there were about 60 cases?  
A Yes, sir.

Q And when was the earliest time that any of those 60 cases of eggs had been candled; how long before the 16th of January, do you know? A The 14th -- some of them were candled on the 14th.

Q Do you think any were candled on the 13th? A No.

Q The earliest eggs candled were on the 14th?  
A Yes, sir.

BY THE COURT:

Q How many days before you deliver eggs do you candle them? A That depends upon the amount of business.

Q After you candle them do you keep them longer than two or three days? A No, sir; not over a day and a half or two days at the most.

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BY MR. SACHS:

Q You never saw the defendant in Luedeke's place, either Harris or Simon? A No.

Q And you don't know whether they ever had any goods in their possession belonging to Luedeke?

THE COURT: Oh, well, there is no such contention.

MR. TOWNSEND: I offer the boxes in evidence and with that we rest our case.

Said two boxes are marked respectively People's Exhibits Nos. 1 and 2.

TESTIMONY CLOSED.

MR. SACHS: Before I make my motion to dismiss I desire to call your Honor's attention to the statement of the officer that he could not swear that any of Luedeke's goods were ever in the possession of Simon or Harris. I call your Honor's attention to the statement of Luedeke that he could not testify to that. I also call your Honor's attention to the fact that Seliger testified that he had the goods in his place before he ever sent for Harris or Simon. Upon that testimony I respectfully move this Court to take from the consideration of the jury the count charging the defendants with burglary, the count charging the defendants with grand larceny and the count charging the defendants with re-

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ceiving stolen property; and I ask your Honor to instruct the jury to acquit on the ground that the People have not made out a case.

THE COURT: Motion denied.

MR. SACHS: We respectfully except.

The Court admonished the jury in accordance with Section 415 of the Code of Criminal procedure.

Adjourned to Wednesday, February 8th, 1905, at 10:30 A. M.

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Wednesday, February 8, 1905.

The jury found the defendant guilty as charged in the indictment.

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