

START

628

CASE

CASE 628

I N D E X:

	Direct:	Cross:	Re-Dir:	Re-Gr.:
Theodore Lederer,	2	5	10	10
Floyd R. Houston,	11	13		
Peter Rienzie,	15	22		
Edward McDonald,	23			
Felix Rienzie,	25			
Michael Rienzie,	26	30		

CASE 77-628

I N D E X (2)

Direct: Cross:

Gerardo Seavone,	31
Rocco Mastrangelo,	31
Michael Gerardo,	32

CASE 67 628

915

Court of General Sessions of the Peace,
City and County of New York,

Part I.

THE PEOPLE OF THE STATE OF :
NEW YORK :

vs. :

PETER RIKNZIE and :
EDWARD McDONALD. :

Before
: Hon. Thomas C. T. Crain, J.

: and a Jury.

New York, February 15th, 1907, etc.

Indicted for Grand Larceny in the second degree, and
Receiving;

Indictment filed January 31st, 1907.

Appearances:

For the People: Assistant District Attorney
William S. McGuire;

For the Defence: Messrs. Townsend & Kiefer.

James E. Lynch,
Official Stenographer.

1530

CASE # 628

A jury was duly empaneled and sworn.

T H E O D O R E L E D E R E R, being called and duly sworn as a witness on behalf of the People, testified:

DIRECT EXAMINATION BY MR. McGUIRE:

Q What is your business? A Manufacturing cloaks and suits.

Q Where is your place of business? A 33 East Ninth Street.

Q And that is in the City and County of New York?

A Yes sir.

Q On the 27th day of January, 1907, when did you leave your store? A Saturday night.

Q About what time? A About seven o'clock.

Q You locked it up? A Yes.

Q I show you this piece of goods, People's Exhibit 1 for identification, and ask you if that piece of goods was in your store that night when you locked up?

A Yes.

Q Is there anything in that piece of goods that enables you to identify it? A Yes, there is a piece of tape on it,

Q Just find the piece of tape? A There it is (indicating).

Q What enables you to identify it by that piece of tape?

A Because I bought two pieces of goods from the American

CASE 628

Woolen Company.

Q This kind of goods? A Yes, and one piece of goods come back from the sponger and was unperfect, and one piece he passed, and whenever I receive a piece of goods from the sponger and it is unperfect, I always put a mark on like that.

Q And this is the one piece that was imperfect and that was returned? A Yes.

Q This being a piece of goods that you had purchased from the American Woolen Company? A Yes.

Q You yourself, I understand it, put this tag on there (indicating)? A Yes.

Q Are there any other familiar marks on that? A No.

THE COURT: Can we have that tag described in the record at all?

MR. MCGUIRE: We will describe it, Colonel, the identifying mark referred to by the witness, as a piece of tape about five inches long, sewed through four times, and tied at one end with a knot, on the edge, on the selvage of the piece of goods.

Q When did you next return to your store? A Sunday morning.

Q What condition did you find your store in on that occasion? A Closed up. The place has been closed, only

about eleven o'clock in the morning the "cop" came up with the detective, and he says "Lederer"----.

THE COURT: No; strike that out.

Q After the "cop" came up, as you say, with the detective, what did you do? A Nothing. I was sitting in the place, and he asked me whether I am missing any goods--.

THE COURT: Strike that out.

Q Do not say what he said to you. After the officer and the detective had come up, did you make any investigation of your store? A No sir.

Q At any time after that, did you go around your store? A No sir.

Q How do you know this piece of goods is not there now? A Because when I come in the place, I never count how many pieces of goods I got left, because I carry a stock--

Q How do you know that that piece of goods was in your store when you closed on Saturday night? A I know I left it there, because that was the only piece I had of sackings in the place.

Q And you saw it there on Saturday night? A Yes sir.

Q Was it there on Sunday morning? A No sir.

Q Well then, you did make an investigation of your store? A Afterwards, when the detective came up.

Q Was there anything else that was not there Sunday

CASE 628

morning that had been there on Saturday night? After I looked around, there was lots of goods missing.

Q Besides this roll that we now have here? A Yes.

Q When did you next see that roll (indicating)?

A When I come over to the station house.

Q That was on Sunday? A Yes.

Q And the officer here in court showed you this roll of cloth? A Yes.

MR. MCGUIRE: I offer it in evidence.

MR. TOWNSEND: Objected to.

MR. MCGUIRE: Well, I will wait for the officer's identification.

(Marked People's Exhibit 1 for identification.)

CROSS EXAMINATION BY MR. TOWNSEND:

Q How many rolls of goods did you miss from your store?

A About twelve pieces.

Q Twelve pieces? A Yes.

Q Similar to that piece there? A All kinds of goods.

I have here one piece of goods that I bought for this spring, for samples; I cut out one sample out of it, for only one suit, I cut out of it, and when I received the order, I looked around for the piece of goods, and the piece of goods was gone, about sixty-four dollars, which

I bought from Fleitman & Company.

Q You have never seen those goods since? A No sir.

Q Well, have you seen any of the other goods that you missed? A No sir.

Q How were they marked? What marks did they bear?

A Like that (indicating); only single marks.

Q What are those? A These marks is from the sponger.

Q There are other people that mark goods in a similar way, aren't there? A I don't know.

Q You won't swear you are the only person who marks his goods in that way? A That piece of goods I marked, I know.

Q You won't swear you are the only tailor in that kind of goods who marks goods in that way? A No sir.

Q When did you mark these goods, as you say you did?

A When I received it from the sponger.

Q How long was that before this Sunday they were missed?

A I couldn't say exactly when.

Q You cannot tell? A No.

Q Was it a week before? A That will be about five or six weeks.

Q You put that tag on five or six weeks before?

A Yes.

Q Your store was filled with goods? A Yes sir.

CASE # 628

Q Now, were you the last person to leave the store on Saturday night? A I don't remember exactly whether I have been the last.

Q Well, you did not take any look around the store when you left, did you? A I did.

Q Will you swear that you saw that piece of goods in your store on Saturday night? A Yes sir.

Q Was your attention called to it particularly when you went away? A Yes sir, on every piece of goods.

Q Every piece? A Yes sir.

Q Well, it was not particularly called to this piece of goods? A Not particularly.

Q You looked around the store, and you saw that goods were there, generally speaking, isn't that it? A Yes.

Q But as for seeing this piece of goods particularly, you cannot swear to that? A No sir.

Q So that therefore you cannot swear to this jury that that piece of goods was in your store on Saturday night?

A No sir. I will swear that much, that this is my piece of goods.

Q What is that? A I will swear this is my piece of goods.

Q When can you swear that it was last in your store?

A That will be Thursday.

CASE 628

Q The Thursday before? A Yes sir.

Q In what way was your attention called to it at that time? A I just received an order, you see, from a party, and I looked around what goods I should cut, and I looked at this piece of goods. It wasn't good enough for this party to cut out of this cloth, so I told the cutter to take this piece of cloth and leave this out.

Q Now, between Thursday and the following Sunday, when you saw it at the station house, you had not seen the goods? A No sir.

Q Are there others who do business for you in that store?

A Sir?

Q Have you employes there? A Yes.

Q They have the right and the authority to sell goods?

A No sir.

Q Are you present at every sale of goods that is made?

A Yes sir.

Q Every sale? A Every sale of goods.

BY THE COURT:

Q Have they the right to send goods to the spongers without your authority or direction? A No sir, except the bookkeeper.

Q But the bookkeeper has? A Also not without me. She always asks me "Shall I give out this piece of cloth

CASE 628

"to the sponger?" When I say yes, she gives it out; when I say no, she don't give it out to the sponger.

BY MR. TOWNSEND:

Q You were not the last one to leave that night? A No.

Q You can't say then whether the doors were locked or not, of your own knowledge? A No sir.

Q Did you visit the store on Sunday, after you discovered these goods were out? A I didn't discover it in the morning.

Q Did you visit the store after the officer called your attention to these goods; did you visit your store?

A Yes sir.

Q How was the door when you went to your store? A When I went back from the station house?

Q Yes. A It was open, because I left some people in there.

Q What? A I left some people in there.

Q You had been to the store before that? A Yes sir.

Q Well, when you got to the store, the first time you saw the store on Monday, what was the condition of the door at that time? A It was closed.

Q It was closed? A Yes sir.

Q Was it locked? A Yes sir.

Q What time was that Sunday morning? A At eight

628
CASE

o'clock, in the morning.

Q Were there any windows or doors open in your store?

A No sir.

Q How many yards in that piece of goods? A I couldn't say exactly how many. About forty-two or forty-four yards.

RE-DIRECT EXAMINATION BY MR. MCGUIRE:

Q How long have you been in the business of buying and selling cloth of this nature? A Seven years.

Q You are familiar with the market value of this kind of stuff? A Yes sir.

Q On the day when these goods were missed from your store, what was the market value? A The market value, \$1.12 1/2.

Q For how much? A For a yard.

Q And there are at least forty-two yards in that roll?
A About forty-two. I don't remember exactly; forty-two or forty-six.

Q Are there forty yards in it? A It is more than that.

Q Well then, forty? A Yes.

RE-CROSS EXAMINATION BY MR. TOWNSEND:

Q Did you put that tag on yourself? A Yes.

Q Do you tag all goods in your store? A Yes sir -- not all the goods, except a piece of sackings.

Q What? A What they call sackings.

CASE 628

FLOYD R. HOUSTON, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. McGUIRE:

Q Officer, you are attached to the Sixteenth Precinct of the Municipal Police Force of this City? A Yes.

Q And were you so attached on the 27th day of January of this year? A Yes.

Q On that day, did you see these two defendants, Peter Rienzie and Edward McDonald? A I did.

Q Where were they when you saw them? A At the northwest corner of Eighth Street and Broadway, at eleven o'clock, in the morning.

Q In this City and County? A Yes.

Q What attracted your attention to them? A The man McDonald had a large package on his shoulder. There had been several robberies lately throughout the precinct. I said "What have you in that package?" Rienzie said "It is wood".

Q Rienzie said it was wood? A Yes. I touched it, and I says, "We will look into it", and with that he started to run away.

Q Who did? A Rienzie. He left McDonald with the package on his shoulder. I told Rienzie to stop, and he ran about the length of this room, and he stopped, and I

CASE 628

went and got him and brought him back.

Q. Did you say anything to him besides "stop"? A. That I would shoot him if he didn't stop.

BY THE COURT:

Q. I did not hear whereabouts this was? A. Eighth Street and Broadway.

Q. At what hour? A. Eleven o'clock in the morning.

BY MR. MCGUIRE:

Q. This was Sunday morning? A. Yes; and he wanted me to stop at several bootblack stands and he would tell me all about the bundle. It seems he told me he had hired this man McDonald to carry the bundle because it was too heavy for him, and I says "Anything you got to tell me you tell the Sergeant at the desk, and if you are all right, you can go home, and if you are not all right, you can't go home". I took him to the station house, and we opened the bundle after we took the pedigrees, and it contained this roll of cloth. It was wrapped with a paper marked "M. Frachtenberg & Brother, 33 East 9th Street". I couldn't tell whether the goods came from there or not; we didn't know at the time, and the Sergeant says "You go up to that building, 33 East 9th Street, and see what you can do up there." I went up, and there were three business firms open that Sunday morning. I brought the three down and

CASE 628

two of them couldn't identify them, but the minute this man Lederer looked at them he says "It's my goods". The Sergeant says "Where are you in business?" and he says "33 East 9th Street".

MR. TOWNSEND: Objected to.

BY THE COURT:

Q Were the defendants there when he said that? A No, sir; they were below.

THE COURT: Then strike out that conversation.

BY MR. McGUIRE:

Q Did you have any other conversation with either Rienzie or McDonald, other than what you have said?

A No, only he wanted to explain to me all the way down to the station house.

Q Did they ever make an explanation to you about it?

A No.

Q Where was it you saw the complaining witness?

A In his place of business, 33 East Ninth Street.

Q That is in this City and County? A Yes.

CROSS EXAMINATION BY MR. TOWNSEND:

Q Officer, who was carrying the bundle when you first saw it? A McDonald.

Q How near was Rienzie to McDonald when you saw McDonald with this bundle? A They were walking together, about

six inches apart.

Q What did Rienzie say when you spoke? A He said there was wood in the bundle; a bundle of wood.

Q Didn't he say a bundle of dirty clothes; soiled clothes? A No sir.

Q Are you sure about that? A I am sure.

Q What did McDonald say? A He didn't say nothing.

Q Didn't Rienzie say he was going to take them to a certain place, or had been asked to carry them to a certain place, these soiled clothes? A No sir, not then.

Q Did not say anything of the kind? A No.

Q Well, didn't you say he wanted to tell you something and you would not pay any attention to him? A Afterward.

Q Now, when was that? A Going from that point to the station house.

Q What did he say then? A He wanted me to go in a bootblack stand, and he would tell me all about it.

Q Did he say anything about your-- about their being soiled clothes then? A No.

Q Why didn't you listen to him and get his story?

A Because I thought I had the man right, and he could tell the Sergeant what he had to tell.

MR. McGUIRE: The People Rest.

CASE 628

THE DEFENCE:

P E T E R R I E N Z I E, being called and duly sworn as a witness on behalf of the defence, testified as follows:

DIRECT EXAMINATION BY MR. TOWNSEND:

Q Where do you live? A 299 Mott Street.

Q What is your occupation? A Engineer.

Q Of what? A Of running a small plant, low-pressure boiler and an elevator.

Q At what place? A 33 East 9th Street.

Q How long have you been employed there? A Twenty-three months.

Q Married man? A No sir.

Q Single? A Single, yes sir.

Q Do you recollect Sunday, the 27th of January, the morning? A Yes sir.

Q What time did you go to this place of business?

A Seven o'clock.

Q What was the occasion of your going there that morning? A To carry my coals for the week, and I was cleaning my elevator machine.

Q Do you always go there Sundays? A Every Sunday in twenty-three months.

Q Did anybody go with you that morning? A My father

and my brother.

Q Were they working near where you were? A Sir?

Q How near to where you were at work were they? A MY father?

Q Yes. A They were in the same basement; they were carrying coals, and I was cleaning my machine.

Q In the same room? A It was in the same room.

Q What happened while you were there? A While I was there carrying my coals, and my father carrying coals and my brother also, and I was cleaning out my machine, in the meantime about eight o'clock, I felt kind of thirsty and I drops into a saloon at 52 East Ninth Street and I gets a glass of beer there, and I delayed myself fifteen minutes; when I went back, my father and brother went home, because they had to go to church, and who do I find out there but I find a young man.

Q By what name? A Joseph Moran.

Q Who was Joseph Moran? A Joseph Moran is the man that came over to me and brought a lot of dirty clothes.

Q When had you seen him before? I seen him about three or four times.

Q Where? A Around University Place.

Q You just knew him to speak to? A Well, we often met in the saloon also, and he tells me "Pete, will you

CASE 628

"do me a favor?" I says "What is it?" He says "I got some dirty cld hes; let me take them down in your basement and to-morrow morning I get them out".

Q When did he say that to you? A On Saturday night.

Q The Saturday night before? A Yes, the Saturday night before.

Q He said he had some soiled clothes, and where were they? A He had them in the express wagon.

Q And where was the express wagon? A Outside on the sidewalk; outside on the street, I mean.

Q What happened then, Sunday morning? You saw him again Sunday morning? A Yes, and he tells me "Go upstairs and get some wrapping paper", and I went upstairs to M. Frachtenberg's, and I got some wrapping paper and brought it downstairs in the elevator and gave it to him, but at the same time I didn't see this piece of goods over there. If I had seen them I would have notified the people in the building.

Q You got some wrapping paper; where did you get the wrapping paper? A M. Frachtenberg, on the fifth floor.

Q Do you identify this paper as the wrapping paper you got (indicating)? A That is it.

Q You got that wrapping paper from the fifth floor?
A From the fifth floor.

Q At that time, what did Moran have with him? A I seen a lot of clothes in the hallway there, but I didn't see this piece of goods. If I had seen this piece of goods I would have notified Mr. Lederer about it.

Q You did not see any goods? You saw soiled clothes?

A That is all.

Q Did he have any bag, or anything? A No bag or nothing at all.

Q What did you do with the wrapping paper? A He told me he wanted to wrap up his clothes, and he commenced to wrap up the bundle there, , and I was upstairs at the moment talking to my boss.

Q After giving him the wrapping paper, what did you do?

A After I gave him the wrapping paper, I went upstairs and seen my boss in the hallway.

Q What is the boss's name? A J. B. Pardessa.

Q Boss of what? A He is landlord of the building; my boss.

Q He was in the building at the time? A He was in the hallway looking for me. He wanted to know whether I was downstairs or not. I went upstairs, and he told me to chop some ice off the sidewalk.

Q You were speaking with him? A Yes.

Q How long were you with him? A I was with him at

879
CASE 77 628

least about half an hour or so.

Q Where did you leave Moran? A Moran was downstairs, and all of a sudden I seen him coming up with the elevator, and he tells me to hire a gentleman, to hire a man. I says "Why don't you carry the bundle?".

Q He came up with the elevator, and did he have anything with him then? A He didn't have nothing at all with him.

Q And he asked you if you would not hire a man to do what? A He tells me, "Pete, see if you can hire a man and let this bundle be carried as far as Eighth Street and Fourth Avenue".

Q "And let him carry this bundle"? A And I said to him, "Why don't you carry it; you ain't no better than anyone else?" and he says to me "Well, I got to meet someone presently because he owes me a little money and I got to get it off him before he leaves New York".

Q What happened then? A Then he says "Just as soon as he gets as far as Fourth Avenue and Eighth Street, why you carry it over." I says "Why, you are making a big mistake of yourself; I never carried a bundle in my life, and I never will." He says "Well, get another man over there and let him carry it as far as Mott Street, and I will pay him."

CASE 628

Q What did you do then? A I says--- we got as far as Eighth Street and Broadway, and the officer stopped us.

Q No; where was McDonald? A McDonald was outside, by the stable there, chopping a few pieces of wood there for his living.

Q Had you known McDonald before? A Never seen his face before in my life.

Q How near to the building was he chopping the wood?
A Just about three doors away from the corner.

Q And who had the bundle at that time, when you met McDonald? A Who had the bundle before that time?

Q Yes. A I gave it to him to carry.

Q You gave it to McDonald? A Yes sir, because he wanted to carry it as far as Eighth Street and Fourth Avenue.

Q Where was Moran then? A He "beat" it right away. If I knew it was a piece of goods in there, I would have notified the whole building, as well as I notified them when I found the whole building open.

Q Then you and McDonald started to go away? A To go to Eighth Street and Fourth Avenue. When we got as far as Eighth Street and Broadway, the Trust Bank there, an officer comes over and he says "What you got in there?" I told him nothing but dirty clothes, because I didn't know

CASE 628

what is in there; it was all wrapped up.

Q They were all wrapped up, so that all you could see was the paper? A That's all.

Q You did not see what was inside? A No.

Q And you said you had a bundle of dirty clothes. Did you say what you were going to do with it? A Just a bundle of dirty clothes, I stated.

Q Now, the officer said you ran away, or walked away fast? A I tell you the reason why I went a few steps back: I had never been here before in all my life, and never been arrested in my life; I never done no crime to be arrested.

Q Then you ran away, because you did not want to be in trouble; is that it? A Yes; exactly.

Q Did you tell the Sergeant how you came with the bundle? A Yes; the Sergeant asked me "What is in the bundle?" and I told him "Nothing but dirty clothes".

Q And you have been in charge of that building for twenty-three months? A Twenty-three months.

Q Do you get paid wages? A Well, I get about eight dollars a week. I couldn't look for a better job on account of my hand.

Q You live with your father? A Yes sir.

CROSS EXAMINATION BY MR. McGUIRE:

Q What is this fellow's name, Moran? A Joseph Moran.

Q Where did you meet him? A He came over-----.

Q Where did you first see him? A Thursday, the Thursday before.

Q The Thursday before this Sunday; that is the first you ever saw of him? A Yes.

Q Where has he gone to now? A That's something I don't know.

Q 33 East 9th Street; that is where Mr. Lederer has his store? A Yes, a loft.

Q Did you ever take any other pieces of goods from Mr. Lederer's store? A No sir; I can swear upon it.

Q Did you know that pieces of goods had been previously to this taken from Mr. Lederer's store? A No.

Q Now, when you say Joe Moran, whom you met on Thursday and who disappeared on Sunday, told you to get another man-----? A Told me to get another man-- that was on Sunday morning.

Q That is, McDonald here was to carry that roll over to Eighth Street and Fourth Avenue? A Yes.

Q And you were to there get another man to carry it where? A To Mott Street.

Q Why did you want another man? A Because I gave

CASE 628

him the understanding that I never carried a bundle, and never would carry a bundle.

Q Yes, but you were not going to carry it; you were turning it over to McDonald and this other fellow?

A This Joseph Moran told me to hire a man from Ninth Street as far as Eighth Street and Fourth Avenue, and I told Mr. McDonald there, and he says "Yes, I won't go no further because I am a stranger around here".

MR. McGUIRE: All right. That is all.

E D W A R D M c D O N A L D, being duly called and sworn as a witness on behalf of the defence, testified as follows

DIRECT EXAMINATION BY MR. TOWNSEND:

Q Where do you live? A National Hotel, 108 Bowery.

Q What do you do for a living? A I am a printer by trade; compositor.

Q Do you recollect this Sunday in question, the 27th of January? A Yes sir.

Q And do you recollect seeing this defendant here, Rienzie? A Yes sir.

Q And about what time was it that you saw him? A About noon.

Q What were you doing at the time you saw him? A I was breaking some wood.

Q Where? A In Ninth Street, near University Place,

a few doors down from University Place. I had promised to bring the wood to a lady living on the top floor of 348 18th Street.

Q And did this defendant say anything to you? A He came up to me and asked me if I wished to earn ten cents by taking a bundle over to Fourth Avenue. I replied that I did; and he gave me a bundle.

Q Did he say what was in the bundle? A To Fourth Avenue, was all he said.

Q Was anybody with him at that time? A No one with me, no.

Q And did he say whereabouts to Fourth Avenue? A To Eighth Street and Fourth Avenue; that was all I understood.

Q You had seen him before; you knew him? A No sir; I had never seen him before he came to me that time.

Q Well, you went with him, did you; you took the bundle? A Yes, I started along with him, with the bundle.

Q And how far had you proceeded when you were arrested? A At Eighth Street and Broadway, we were accosted by the officer.

Q How far was that from the point where you got hold of the bundle? A One block each way; one block from

CASE 628

Broadway, and one block down to Eighth Street.

Q And you told the officer how you came in possession of the bundle? A The officer asked me what the bundle contained. I told him I didn't know what was in it, that it belonged to that man and I was carrying it to Fourth Avenue for him.

Q Now, could you see what was in the bundle, as you casually looked at it? A I can see now what was in it.

Q I know, but could you at that time? A No sir; the bundle was wrapped up.

Q You could not tell whether it was soiled clothes, or that kind of goods there? A I hadn't the slightest idea.

NO CROSS EXAMINATION.

FELIX RIENZIE, being called and duly sworn as a witness on behalf of the defence, testified as follows through Official Interpreter Dollin:

DIRECT EXAMINATION BY MR. TOWNSEND:

Q Where do you live? A 299 Mott Street, New York City and County.

Q Is this your son (indicating the defendant Rienzie)?
A Yes.

Q Were you with him on the morning of the 27th of Jan-

uary? A Yes sir.

Q Where were you? A In the house where he works, in Ninth Street. I don't know exactly the number.

Q What were you doing there? A I was carrying coal for him into the place; for my son.

Q What time did you leave there? A At nine o'clock. I left the place at nine o'clock.

Q Was your little boy there with you at that time?
A Yes sir.

Q Does your son live with you? A Yes sir.

NO CROSS EXAMINATION.

M I C H A E L R I E N Z I E, being called and duly sworn as a witness on behalf of the defence, testified as follows:

DIRECT EXAMINATION BY MR. TOWNSEND:

Q Are you related to this defendant Rienzie? A My brother.

Q Do you recollect Sunday, the 27th of January; do you remember that morning? A I can't understand.

Q Do you recollect the morning you went with your brother? A I didn't go with him; only me and my father, we went to carry coal.

Q Where did you go with him? A Where did I go with my father?

Q Yes. A I went to carry coal.

Q What place? A 33 East Ninth Street.

Q Where this defendant works? A 33 East Ninth Street.

Q And did you see the defendant there; did you see your brother there? A Yes sir.

Q What was he doing there? A Cleaning the fire.

Q What did you do then? A I was carrying coals; I was helping my father carrying some coals too.

Q Now, while you were there, did you see any stranger-- what time did you leave? A I leave there about ten, or half-past ten.

Q Well, while you were there, did you talk with any stranger; was any man there? A Yes sir.

Q Who was it? A It was an Irishman there.

BY MR. MCGUIRE:

Q A what? A An Irishman.

BY MR. TOWNSEND:

Q What did he say? A He said "Can I have a bag?"

Q What is that? A "Can I have some rags? I want to fix up my bag."

Q He wanted to fix up a bag? A Yes.

Q Where was he? A He was upstairs, up in the hallway.

Q Of this building; of the building where your brother worked? A Where my brother works.

Q What did you do then, or what did he do then? A What

did he do then?

Q Yes; did you get him any paper? A No, I didn't get him no paper.

Q What did you do when he asked you for paper; did you say anything to your brother? A I didn't tell him anything.

Q Did you get the paper for him? A Yes.

Q Where did you get it? Who got the paper? A (No answer).

BY THE COURT:

Q Tell us all about what happened. Go on, and tell the story yourself? A Me and my father went and carried coals over at 33 East Ninth Street; we went over to give my brother a hand. While we were there, we seen him cleaning the fire out, and there was another "cop" with him too, down in the basement, the Sixteenth Precinct too. This Irishman comes down and says "Hey, Pete". Pete wasn't there, and he went over to 52 to get a drink.

BY MR. TOWNSEND:

Q That is, Pete, your brother? A That's my brother. While he went over there, and Pete wasn't over there, and Pete was over in 52 getting a drink, and I was watching the place, so this Irishman comes over and tells me "Can I have a rag to fix my bag up to put some wood in?" I said

"Sure, wait until Pete comes; he will give you all the rags you want", and Pete come and he says "Go in that room, there is all the rags you will find". So Pete lets him go in the room, and he finds a bundle and he puts it in the bag there. So he wouldn't let me put my hand by it, and he left me go, and I went away. That was about ten or half-past ten, when I went home.

Q Where did you leave this man? A Where did I leave my brother?

Q No, the other man? A What other man?

Q This man you were talking about that wanted the paper?

A I don't know.

Q Where was he when you last saw him? A I don't know; I never saw him. I seen him, but I don't know how his face looks.

Q Did you see him go out of the building? A Yes.

Q Did you see him talk to Pete? A No, I didn't see him go down to talk to Pete.

Q How big was the bundle he had? A Well, it was about---

Q Did you see that bundle there (indicating)? A That ain't the one; I don't think that's the one.

Q Well, what was the cover around it? A It was covered around with rag.

870
CASE 628

Q Like a bag? A Like a bag; something like it; I don't know how it was. The man put it in a bag, but I don't know how it was; see, I don't know how it was.

Q Did you see what he brought in when he came in first? Did you see what he had with him? A No, I didn't see what he had in it.

Q Did you try to see; did you look? A Yes sir.

Q And what did he do? A He went right out of the door.

Q And he would not let you look at it? A He wouldn't let me look at it.

CROSS EXAMINATION BY MR. McGUIRE:

Q Did he take the bag right out with him? A Who?

Q This Irishman? A No. He took the bag right out with him, yes.

The Court admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until Monday, February 18th, 1907, at ten-thirty o'clock A. M.

New York, February 18th, 1907.

TRIAL RESUMED.

J O H N G U I D E T T I was duly sworn as interpreter.
G E R A R D O S C A V O N E, being called and duly sworn
as a witness on behalf of the defence, testified through
Interpreter John Guidetti as follows:

DIRECT EXAMINATION BY MR. TOWNSEND:

Q Where do you live? A 282 Mott Street.

Q What is your business? A Laborer.

Q Do you know Rienzie, the defendant? A Yes.

Q How long have you known him? A Twenty years.

Q Do you know other people who know him? A The whole
yard where I live knows him.

Q And do you know his reputation for honesty among
the community? A Yes sir.

Q What is it, good or bad? A Up to now he has been
good.

NO CROSS EXAMINATION.

R O C C O M A S T R A N G E L O, being called and duly
sworn as a witness on behalf of the defence, testified
through Interpreter John Guidetti as follows:

DIRECT EXAMINATION AS FOLLOWS:

Q Where do you live? A 297 Mott Street.

CASE 628

Q What is your business? A Laborer.

Q Do you know the defendant Rienzie? A Yes sir.

Q Do you know others who know him in the vicinity in which he lives? A Yes sir.

Q Do you know his reputation for honesty in that community? A Yes sir.

Q Is it good or bad? A Good.

NO CROSS EXAMINATION.

M I C H A E L G E R R A R D O, being called and duly sworn as a witness on behalf of the defence, testified through Interpreter John Guidetti as follows:

DIRECT EXAMINATION BY MR. TOWNSEND:

Q Where do you live? A 297 Mott Street.

Q What is your occupation; what is your business?

A Shoemaker.

Q Do you know the defendant Rienzie? A Yes sir.

Q Do you know others who know him where he lives?

A Yes sir.

Q Do you know what his reputation is there for honesty?

A I know him to be a good boy.

Q What do other people say of him? A They all say he is a good boy.

NO CROSS EXAMINATION.

MR. TOWNSEND: The defence rests.

CASE 27628

MR. MCGUIRE: I will not question the boy any further. I understand there is some question about that roll of cloth. It is marked in evidence as People's Exhibit 1?

MR. TOWNSEND: Yes.

(Marked in evidence as People's Exhibit 1.)

MR. TOWNSEND: Now, I ask your Honor to direct a verdict of acquittal in the case of these two people, on the ground that the People have failed to make out legally a case against the two defendants. If I may call your Honor's attention to the fact, we make the point that there is no evidence that the property was the stolen property in question. The proof here is, the testimony is, as I recollect it, that it was on Thursday night when the man left the store, the complainant, and that was the last time he saw the property in his store.

MR. MCGUIRE: The last time he examined it.

MR. TOWNSEND: Examined it, and he testified that it was there then, and we find upon the testimony that it was afterwards found in the possession of McDonald, who was walking with Rienzie, the co-defendant, and that was on Sunday.

THE COURT: I will allow the case to go to the

jury.

MR. TOWNSEND: Exception. I will ask your Honor if you will take the count of Grand Larceny in the second degree, and submit it upon the count of attempted grand larceny in the second degree?

THE COURT: I think I will let it go to the jury on the counts as they are now in the indictment.

MR. TOWNSEND: Exception. With reference to the defendant McDonald, the testimony there is that he was carrying the bundle, and that he was employed by this other defendant, and apparently from the testimony so far, it is that he was innocent of any criminal knowledge.

THE COURT: Counsel, this is peculiarly a case that ought to go to a jury. I have considered the evidence very carefully, and it is a case that ought to be passed upon by a jury. It is a question of fact.

MR. TOWNSEND: Yes sir.

CASE 628

THE COURT'S CHARGE:

HON. THOMAS C. T. CRAIN:

THE COURT: Gentlemen of the Jury, the defendants Peter Rienzie and Edward McDonald are on trial charged with the crime of Grand Larceny in the second degree and also with the crime of Criminally Receiving Stolen Property.

Although they are being tried together, when you come to deliberate upon the evidence in the case, it will be your right, if you conclude that the evidence so warrants it, to find a verdict of acquittal respecting one of the defendants and a verdict of conviction respecting the other. In other words, the circumstance that both these defendants are tried at the same time and that they both appear by the same Counsel, does not require that your verdict respecting one of them shall be the same as the verdict respecting the other.

Theodore Lederer, a manufacturer of cloaks and suits, having a place of business at 33 East 9th Street, charges that a piece of cloth which has been received in evidence as an exhibit was stolen from his place of business on the 27th of January, 1907.

CASE 628

The first question for you to determine is, was there a theft by someone at some time of that piece of cloth, because, if there was no theft of that piece of cloth by anyone at any time, then it necessarily follows that neither of these defendants can be convicted, but that both of them must be acquitted.

If upon the testimony in the case as you recall it you have a reasonable doubt as to whether or not there was a theft of that cloth, these defendants and each of them is to be given the benefit of that doubt, and in that event, neither could be convicted. In other words, the first substantial fact to be established to your satisfaction by the prosecution in order to warrant a conviction must be the fact, if it be one, of the theft of the piece of cloth offered and received in evidence as an exhibit. If you shall find from the evidence beyond a reasonable doubt that that cloth was stolen, that the evidence warrants the conclusion that that cloth was stolen, then the question will be, does the evidence establish beyond a reasonable doubt the theft of that piece of cloth by either the defendant Rienzie or the defendant McDonald?

CASE 44-628

A person who, with the intent to deprive the true owner of his property, takes from the possession of the true owner personal property, steals such property and is guilty of larceny. Where the value of the property taken under such circumstances is more than \$25. and less than \$500., the crime is Grand Larceny in the second degree.

If this property was stolen, and you are satisfied of that fact from the testimony beyond a reasonable doubt, but are in doubt from the testimony as to whether either the defendant Rienzie or the defendant McDonald stole it, you will come to the consideration of the second count in the indictment, namely, that which accuses them of the crime of Criminally Receiving Stolen Property.

The law says respecting the crime of Criminally Receiving Stolen Property, that a person who receives any stolen property knowing the same to have been stolen, is guilty of Criminally Receiving such property. In other words, if you are satisfied from the evidence that this property was stolen, in point of fact, and then are satisfied beyond a reasonable doubt from the evidence that it was received by the defendant Rienzie or the defendant McDonald under

CASE 628

circumstances which show to your satisfaction beyond a reasonable doubt that they knew that it was stolen, in that event the proof would warrant a conviction of the crime of Criminally Receiving Stolen Property.

The defendants come to the bar with the presumption of innocence. Both of these men are presumed to be innocent. The burden of proof is upon the prosecution, and that burden does not change at any stage of the case. The prosecution must establish to your satisfaction beyond a reasonable doubt the guilt of these defendants.

As I said before, at the opening of the charge, although both these men are tried together, if in your judgment the evidence has a different bearing in its relation to one of them than in its relation to the other, you will consider the case of each of these men as an independent and separate case.

Some testimony has been introduced here in behalf of the defendant Rienzle to establish his previous good character; his good reputation; and the Court of Appeals have held that in certain cases evidence of good character may create in the minds of a jury a reasonable doubt as to the guilt of the

870
CASE 628

defendant where but for the introduction of such evidence a jury would have no doubt of the defendant's guilt.

Are there any requests to charge?

MR TOWNSEND: Except that I ask the Court to charge that either one of the defendants can be convicted and the other acquitted, or both can be acquitted or both convicted.

THE COURT: Gentlemen, the statement of Counsel is entirely correct. You can and you **must** find regarding each man according to the evidence. One man may be acquitted if the evidence in your judgment so warrants, and the other may be convicted if in your judgment the evidence so warrants. Both may be acquitted if the evidence in your judgment warrants an acquittal, or both may be convicted. Although tried together, they are separate individuals, and their cases must be looked at from that standpoint.

You may retire, Gentlemen.

The Jury returned the following verdict:

We find the defendant Peter Rienzie guilty of

CASE 628

Grand Larceny in the second degree, and we find the
defendant Edward McDonald not guilty.

The defendant Peter Rienzie was remanded
until Wednesday, February 20th, 1907.

CASE 77 628