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#318

COURT OF GENERAL SESSIONS.

PART III.

-----X
THE PEOPLE OF THE STATE OF NEW YORK: Before

-against-

HON. MARTIN T. McMAHON, J.,

MAANDIRAS KOSIAN.

and a Jury.

-----X

Indictment filed January 18th, 1905.

Indicted for Criminally Receiving Stolen Goods.

New York, March 14, 1905.

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

For the People, ASSISTANT DISTRICT ATTORNEY CHARLES C. MOTT.

For the Defendant, MR. MORRIS CUKOR.

Peter P. McLoughlin,
Official Stenographer.

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MR. NOTT: It is conceded, upon the record, that the Erie Railroad is a corporation, as charged in the indictment.

H U M B E R T T A L A M I N I , a witness for the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NOTT:

Q Now, Talamini, will you just speak up, so that the jury can all hear you? A Yes, sir.

Q What is your business? A Driver.

Q How old are you? A Twenty-six.

Q How long have you lived in this city? A Ten years.

Q Now, who were you working for, before your arrest, the 13th day of December, 1904? A With Edward Poppe & Co., wholesale grocery house.

Q Where is their place of business? A 72 Gansevoort Street.

Q How long had you been working for them? A I had been working for them, I think, about three or four months.

Q Who had you been working for before that? A I was working for Victor Gall.

Q When did you first become acquainted with this defendant at the bar? A I had been acquainted with him since that time I started with Edward Poppe & Co., to work for them,

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because he is one of their customers.

Q That is to say, you became acquainted with him three or four months before your arrest? A Yes, sir.

Q Where was his place of business? A 17th Street.

Q Between what avenues? A Tenth and Ninth Avenues.

Q In the City and County of New York? A Yes, sir.

Q In this County? A Yes, sir.

Q How did you become acquainted with him? A Well, I delivered goods to that man, and once he asked me --

Q Goods from Mr. Poppe? A Yes, sir.

Q You were then one of the truck drivers? A Yes, sir.

Q Did you or did you not ever have any conversation with him about delivering goods yourself? A Yes, sir.

Q Now, how long was that prior to your arrest? A Well, prior to my arrest, about three or four weeks.

Q Tell the jury what that conversation was, all of it that you can remember? A Well, the only thing I can say or I can remember is -- that is the truth -- that one day I went in and he asked me if I got something extra on my truck, he said, he will take it off me, and give me cash for it; so I told him I got nothing at the present time, but one second time he asked me, and I had a case of milk over.

Q Where did you get that milk? A That milk I had over, inside of my truck, that was one box.

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Q Where did you get it before you got it on your truck?

A From the store.

Q What store? A From Edward Poppe.

Q What kind of milk was it?

MR. GUKOR: Objected to as not being included in this indictment.

MR. NOTT: It was a transaction between the same parties; it shows guilty knowledge and intent.

Objection overruled. Exception.

A Magnolia milk, one case.

Q Well, how did you get it from the store? A I hadn't had it over --

MR. GUKOR: I object to that as incompetent, immaterial and irrelevant.

THE COURT: I will allow it.

MR. GUKOR: And as not included in the indictment.

Objection overruled. Exception.

Q Where did you get it, from the store? A Well, I was down, and I had that case over; I don't know what way I had it myself at that time; that was my first acquaintance with him, and afterwards --

Q You are not answering the question. How did you get that can of milk from the store that you had on your truck that day? A Through the porter, the helper.

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Q The helpers? A yes, sir.

Q Did he give it to you? A Yes, sir.

Q What were you to do with it when he gave it to you?

A I was to bring it inside to that man.

Q What was the name of the man that gave it to you?

A I could not remember his name any more; he is discharged from our firm.

Q Well, what did you do with this when you got it?

A I delivered it to that man.

Q What did he do?

MR. CUKOR: Objected to upon the same ground.

Objection overruled. Exception.

BY THE COURT:

Q You delivered it to this man? A yes, sir.

Q What did he do? A Well, he kept it and he told me if I could get something else he will certainly buy it from me.

BY MR. NOTT:

Q Did he pay you anything for it? A Yes, sir.

Q How much? A Two dollars.

Q Cash? A Yes, sir.

Q Then what did he tell you? A Then he told me if I got something extra sometime again, I should bring it.

Q Did you bring him anything else? A Yes, sir.

Q Well, before your arrest, how many times had you brought goods to him? A Two times.

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Q What is that? A Two times; the last was three.

Q Now, the second time you brought something to him, what did you bring to him? A I bring him a case of sauce.

Q Sauce? A Yes, sir.

Q Where did you get that? A At the same place.

Q In the store? A Yes, sir.

Q How did you get that from the store? A From the same party.

Q This party gave it to you, and you put it on your truck? A Yes, sir.

Q What did you do with that case of sauce? A I sold it to that man there, Kosian.

Q Did he give you anything for it? A yes, sir.

Q How much? A Two dollars.

Q On these two occasions, who took the cases, that case of milk and the case of sauce, off the truck? A I did.

Q What did you do with it? A I brought it inside his store.

Q Then what was done there? A He asked me how much I want for it; I says two dollars, and he gave me two dollars.

Q Did you leave it there? A Yes, sir.

Q Now, do you remember the day of your arrest, the 13th of December? A yes, sir.

Q Did you go to the defendant's store on that day?

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Q What is that? A Two times; the last was three.

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Q In the store? A Yes, sir.

Q How did you get that from the store? A From the same party.

Q This party gave it to you, and you put it on your truck? A Yes, sir.

Q What did you do with that case of sauce? A I sold it to that man there, Kosian.

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Q How much? A Two dollars.

Q On these two occasions, who took the cases, that case of milk and the case of sauce, off the truck? A I did.

Q What did you do with it? A I brought it inside his store.

Q Then what was done there? A He asked me how much I want for it; I says two dollars, and he gave me two dollars.

Q Did you leave it there? A Yes, sir.

Q Now, do you remember the day of your arrest, the 13th of December? A yes, sir.

Q Did you go to the defendant's store on that day?

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Q Yes, sir.

Q Where had you been before you went to his store?

A Before I went to the store I was down at the Erie Railroad for the milk; and the delivery clerk was not there; I got twenty cases, and I delivered it the same day.

Q You were at the Erie Railroad? A Yes, sir.

Q What pier is that? A Pier 21 North River.

Q North River in this County? A Yes, sir.

Q What did you go down to that pier for? A For the twenty cases of milk.

Q You got twenty cases there? A Yes, sir.

Q Why did you go down, what did you go down to get?
(No answer.)

Q Did you have orders to get anything? A Yes, sir.

Q What? A I had orders to get ten bags of white meal, and one barrel of white meal.

Q For Mr. Poppe? A Yes, sir.

Q Did you get those goods? A Yes, sir.

Q Now, did you get anything else besides those goods that you were ordered to get? A No, sir; I got the ten bags, and the barrel, and the 20 cases of milk.

Q Where did you get those 20 cases of milk? A At the same pier, Pier 21 North River.

Q Did you get them before you got the other goods, or after? A Well, after.

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Q Where was the milk, the cases of milk, standing when you got there? A In the middle of the dock.

Q Was anybody there? A No, sir.

Q Were you ordered to get that milk? A Yes, sir.

Q What is that? A Yes, sir; I had the order for it.

Q For the milk? A Yes, sir.

Q Who did you get the order for the milk from? A From Poppe.

Q Did you hand that order in? A I handed it to Poppe back.

Q What is that? A I gave the order ~~back~~ to Poppe back.

Q The order for the milk? A Yes, sir.

Q Did you get the milk? A Yes, sir.

Q What did you do with it? A I brought it to Kosian in 17th Street.

Q Did you go there before you went to Poppe & Co.?

A Before I went home.

Q What did you do with the milk when you got to Kosian's?

A I asked him if he wants to buy the milk; he says, "Where you got it from?" I says, "From the Erie Railroad." He says, "Well, I am afraid to take it"; I says, "That's all right, you take it", I said, "you took something before, you can take that to, it is all right"; he says, "All right, you can bring the milk in." He came out and his helper,

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and he helped me to bring the milk in.

Q How many cases did you take in? A Twenty cases.

Q Well, go on, what happened after you got the milk in there? A After I got the milk in, he asked me the price I wanted. I says, "\$40"; he says, "No"; he gave me \$11, and he says, "That will do", he says, "if you want more you can have the milk back"; so I says, "All right;" I kept the \$11, and I went away.

Q \$11 in cash? A Yes, sir; two fives and one single.

Q Then where did you go after you left Kosian's? A I went right straight home.

Q To Poppe's? A Yes, sir.

Q Did you deliver the other goods? A Yes, sir; I delivered it in the store.

Q How long was it after that that you were arrested?

A That is about three or four days after, I believe.

Q When you were arrested, did you see Mr. McKenna?

(No answer.)

Q Did you see that gentleman (Pointing to a gentleman in the courtroom)? A Yes, sir.

Q Did you go anywhere with him? A Yes, sir.

Q Was there anybody else along? A Yes, sir.

Q Who was it? A An officer.

Q Where did you and the officer and Mr. McKenna go?

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A. We went in Kosian's place.

Q The same place? A Yes, sir.

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

Q Was he there when you first came? A No, sir.

Q Where did you first see him? A I seen him in the barber shop in Tenth Avenue.

Q Who was with you when you saw in the barber shop?

A That young gentleman.

Q Mr. McKenna? A Yes, sir.

Q Now, tell what conversation you had in the barber shop? A Well, in the barber shop we had no conversation at all; he only asked me whether that was the right man, and I says, "Yes"; so afterwards we came out, and on the sidewalk I asked him if he wants to buy some more goods from me.

Q Who did you ask that of? A Kosian.

Q Was McKenna there then? A Yes, sir.

Q What did he say? A He said first "No", and afterwards I asked him, I said, "Yes, I have some stuff, if you want to buy it"; he says, "If it ain't too much, I will take it, but if it is too much I would not take it", he says, "I am afraid."

Q Did you introduce Mr. McKenna to him? A Yes, sir.

Q What did you say about McKenna? A I told him he

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Q A man from the Erie Railroad, and he will give me the goods when this man wants to buy them; so he says he would buy them if it ain't much.

Q State whether or not anything was said about the milk? A About the milk? Yes, sir; we asked him -- I said, "Well, did you see about the twenty cases of milk I sold you, they was all right"; so he gave me a sharp look, and afterwards we called an officer and we went inside this store to find the milk. At first he denied the milk, and afterwards the officer forced him to find the milk, and he pulled the milk out.

Q Where did he get it from? A From behind the vegetables, he had a stand; behind a barrel of wood.

Q What was the barrel of wood in front of? A He had some stuff piled up there, I don't know what it was, I can't remember any more.

him take the

Q You saw a barrel of wood and vegetables away?

A Yes, sir.

Q Then you saw the milk? A Yes, sir; the officer saw that, too.

Q Did you see the milk taken out? A Yes, sir.

Q The cases, rather? A Yes, sir.

Q Now, state to the jury whether the cases that you saw taken out were the same cases that you had left there?

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A Yes, sir; that is the same brand, the same cases, because the cases were all brand-new yet; I can remember it was the same cases of milk.

Q Did the defendant say anything then about the cases, how he came to buy them? A Yes, sir; he first said that it is milk, that he paid for it, and afterwards he said, in a statement, that I left the milk there.

Q That you left it there? A Yes, sir.

Q Now, at the time that you took this milk and gave it to the defendant, did you or did you not know it was not your milk? A yes, sir; I knew it.

Q It was not your milk? A I know it was my milk.

Q What is that? A I know it was my milk.

Q Had you bought it? A Sir?

THE COURT: He does not understand your question.

BY THE COURT:

Q Had you bought that milk? A No, sir.

Q It did not belong to you? A No, sir.

Q The milk did not belong to you? A No, sir.

BY MR. NOTT:

Q You knew it did not belong to you when you sold it to this defendant? A Yes, sir.

Q Have you ever been convicted of any crime before this?

A Yes, sir.

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Q What is that? A In 1895.

Q What were you convicted of then? A I don't remember any more; I think it was attempt at grand larceny, or something; I ain't sure.

Q What was done with you then? A I was sent away for two and a half years.

BY THE COURT:

Q Where to? A To Auburn.

BY MR. NOTT:

Q You say you never knew this defendant before the time when you first went there for Poppe? A No, sir; I never knew him before.

CROSS-EXAMINATION BY MR. CUKOR:

Q That is a State Prison you have been to for two and a half years, isn't it? A Yes, sir.

Q Where else were you before that, what other prison? A I was in no other prison except that.

Q Were you in prison in Italy? A No, sir.

Q At the time when you stole before, you didn't know this man, did you? A Sir? I never stole before; I was convicted because I was living with two crooks from my country; I only was a greenhorn when I got convicted.

Q You were convicted, weren't you? A Yes, sir.

Q You served your time? A Yes, sir.

Q Were you convicted for stealing? A Well, I do not know for what I was convicted.

Q You mean to tell these twelve gentlemen that you don't know what they charged you with at that time?

THE COURT: He says it was a charge of grand larceny.

MR. NOTT: Attempt at grand larceny.

BY MR. CUKOR:

Q At that time, when you were sent up to Auburn, you did not know this man, did you, the defendant? A No, sir.

Q You have a brother here in the city, haven't you?

A In Philadelphia, yes, sir.

Q Haven't you a brother on 22nd Street? A No, sir.

Q Is he in the grocery business on 22nd Street?

A No, sir.

Q Or a cousin, or some other relation? A No, sir.

Q Sure about that? A Yes, sir.

Q Did you ever tell this man that you had a brother on 22nd Street? A No, sir.

Q Now, how many weeks after you went to work for Peppe, was it that you sold him this first case of milk? A The first case of milk I sold him, that was about a month before I got arrested, about three weeks, three or four weeks.

Q Before you got arrested? A Yes, sir.

Q Who first suggested the idea that you should sell this man stolen goods? A Himself.

Q You never said a word about it? A No, sir.

Q He told you to go and steal goods and sell them to him? A What is that? No, sir; he asked me if I got something extra on my truck, he said he will take it from me; so when I had a chance to have something extra on, I brought it to him.

Q Will you try and give us just the exact language that he used when he told you that, what did he say about that? A He told me, he says, "If you get something extra on, I will buy it from you."

Q You were in the hab it of collecting the bills of Poppe & Company from him? A Yes, sir.

Q In other words, the orders from Poppe & Co. were C.O.D. orders that you took to this man? A Yes, sir.

Q And the drivers made the collections as they delivered the goods? A Yes, sir.

Q When did you say it was that you delivered these twenty cases of milk to him? A On the same day, the 13th, I believe, the same day I took them from the Erie Railroad.

Q You say you believe; are you sure? A Yes, sir; the same day.

Q Are you sure it was the 13th? A Well, I ain't sure what day it was, but I think it was the 13th.

Q What day of the week was it? A Well, on Wednesday, I believe.

Q Wednesday? A Yes, sir; Wednesday or Thursday, I ain't sure.

Q Now, you said here, repeatedly, in answer to the District Attorney's question, that it was on the 13th you took these goods to Poppe's place. Do you want to change that? A The 13th?

Q Yes. A On the 13th the milk was taken from the Erie Railroad, I said.

Q Did you take it to this man on the same day? A Yes, sir.

Q Then it was on the 13th you gave him this milk?

A On the 13th? What milk?

Q The twenty cases of milk? A Yes, sir.

Q The 13th of December? A Yes, sir.

Q Sure about that? A Yes, sir.

Q That was on a Wednesday? A I believe it is.

Q Now, was it on a Wednesday? A yes, sir; I believe it was a Wednesday; I cannot make any statements about the date, but I am sure that the same date that I took the milk from the Erie Railroad I delivered it right away at his place.

Q You brought some goods to him the next day, didn't you, from Poppe & Co.? A The next day?

Q Yes? A I don't remember.

Q Well, you went to his place after you got these twenty cases of milk, and delivered a bill of goods to him?

A Afterwards? Yes, sir.

Q How many days afterwards? A I could not remember, because he ain't the only customer that I have went to; I have fifty or sixty customers to serve every day; I could not remember.

Q Did you do business like this with fifty or sixty customers? A No, sir.

Q Was he the only one? A Yes, sir; he is the only one that ever asked me, or make me attempt to do it.

Q What did you say then? A (Answer repeated.)

Q Well, can't you give us an idea how many days after you got the twenty cases of milk was it that you delivered a bill of goods to him from Poppe & Co.? A About two or three days afterwards I had another small order for him.

Q What do you call a small order, how much? A About ten or twelve dollars worth of goods.

Q About ten or twelve dollars? A Yes, sir.

Q He paid you ten or twelve dollars? A Yes, sir.

Q How many deliveries did you make to this man, the defendant, after you got the twenty cases, of goods of Poppe & Co.? A I only made about two deliveries.

Q Two? A Yes, sir.

Q How many days after you delivered these goods to him, the twenty cases, was it that you were arrested? A About three or four days.

Q In those three or four days, you made two deliveries to him, you say? A Yes, sir; I think it was three or four days, afterwards I delivered him the milk that I got arrested, but if I think right, that is only one delivery I made to him.

Q One delivery you made? A Yes, sir.

Q Between the time you took the twenty cases of goods, and the time of your arrest, you made one delivery to Kosian?

A Yes, sir.

Q That was a bill of goods of ten or twelve dollars?

A Yes, sir.

Q He paid you ten or twelve dollars? A Yes, sir.

Q Sure about that, are you? A Yes, sir.

Q It was about ten or twelve dollars? A Yes, sir; I can remember about the goods I brought him; I brought him a half a case of --

Q Answer my question. You are pretty sure it was ten or twelve dollars? A Yes, sir.

Q A small order? A Yes, sir.

Q Very small? A Yes, sir.

Q I want you to look at this paper I show you, and tell

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whether that is not your signature (indicating)? A Yes,

Q Is it? A Yes, sir; that is my signature.

Q I show you this one, and the writing across it, the signature; that is your name, isn't it (Showing witness another paper)? A Yes, sir.

MR. CUKOR: I offer these bills in evidence.

THE COURT: On what date is this delivery of milk charged?

MR. NOTT: The 13th.

MR. CUKOR: These two deliveries are on the 15th of December.

THE COURT: There is one here dated the 13th.

MR. CUKOR: It was paid on the next delivery, as your Honor will see by looking at the next sheet, it was added to it; the two deliveries were made together.

THE COURT: What is the purpose? To show it was not a small order?

MR. CUKOR: The purpose is to show that the man, to say the least, is mistaken, and to test his memory.

THE COURT: Excluded.

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MR. CUKOR: And that upon the question of his veracity.

THE COURT: It is excluded on that ground also. You cannot question a witness as to an irrelevant fact,

and then contradict him. You may question him as to an immaterial and irrelevant fact; if you do, you are bound by his answer, and you cannot offer evidence to contradict it.

MR. GUKOR: I take an exception. I offer these papers for identification.

THE COURT: They may be marked for identification, but I exclude them.

(The papers referred to were marked Defendant's Exhibits A and B for Identification.)

BY MR. GUKOR:

Q Let me ask you: Didn't you two days, one or two days after you made the delivery of these twenty cases of milk, make a delivery to this man from Poppe & Company, and collect \$57.87? A No, sir.

THE COURT: Is this objected to?

MR. NOTT: No, sir; I don't object.

Q You say that you had an order from the firm for those twenty cases of goods? A Yes, sir.

Q You went to this dock and got the twenty cases of goods for which you had the order? A Yes, sir; I had an order from Poppe, Edward Poppe & Company, for the goods.

Q Were those the only goods of that kind that were on the pier there? A What is that?

Q (Question repeated.) A No, sir; there are different kinds there.

Q I mean of this kind of milk, only twenty cases of it? A No, sir; it was more there; I could not tell you how many others.

Q More than twenty cases? A Yes, sir.

Q You took the twenty cases that your order called for? A Yes, sir.

Q And those that you took, those twenty cases, from the rest of them, were the same kind, they looked the same as these? A Yes; the same brand.

Q The same brand? A Yes, sir.

Q The same kind of boxes? A Yes, sir; the same milk.

Q They were all new boxes? A The same milk.

Q Were they all new boxes? A Yes, sir.

Q How far is this dock from Kosian's store? A Well, it is about a half a mile, about ten minutes walk.

Q Do you remember what kind of a day it was for driving, whether it was slushy or what? A A snowy day.

Q Pretty heavy driving, wasn't it? A Yes, sir.

Q About what time in the day was it that you got to Poppe's store with these goods? A Well, it was around three or four o'clock.

Q In the afternoon? A Yes, sir; in the afternoon.

Q Now, what did you do with them as soon as you got

them? A As soon as I got them, I unloaded my truck, and I went home.

Q What was it, a double truck that you had? A Yes, sir.

Q What else did you have on the truck besides the milk?

A Well, besides the milk I had some cases of catsup and some yellow milk and some thirty bags of beans.

Q What part of your truck was this milk on? A In the middle of the truck.

Q The middle of the truck? A Yes, sir.

Q Now, were there goods in front of it and behind it, other kinds of goods? A Yes, sir.

Q You did not leave anything else with Kosian except those twenty cases? A No, sir; I just left twenty cases of milk.

Q How long did it take you to unload those twenty cases of goods? A It only took us about five minutes.

Q What kind of a store has Kosian got there? A A grocery store.

Q As far as size is concerned? A Well, it is a large store.

Q How deep is it, would you say? A Well, I can say that in a minute.

Q How wide is it, do you know? A It is about fifteen

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feet wide.

Q Now, how deep is it? A I don't know.

Q You just told us how wide it is; why can't you tell us how deep it is? A Well, it can't be no more deep than thirteen feet.

Q About thirteen feet? A Yes, sir.

Q When you brought those goods in, those twenty cases, where did you pile them? A I piled them right inside the store there, in front of the vegetable stand.

Q In front of the vegetable stand? A Yes, sir.

Q What part of the store was this vegetable stand at? A Right alongside of the door, lengthwise, it runs from one end to the other.

Q That was a board, wasn't it, what you call the vegetable stand, that was a board? A Yes, sir.

Q How high above the floor was this board? A It was about three or four feet high.

Q Three or four feet? A Yes, sir.

Q You put some of these cases under the stand, didn't you? A Not me.

Q Did you see who did do it? A I don't know; they found the cases there.

Q Where did you put them, right in the middle of the store? A Yes, sir.

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Q You piled up twenty cases of milk in the middle of the store, and left them there? A Yes, sir.

Q And this store, you say, was 15 feet by about 13? A Yes, sir.

Q Did you see any customers there at the time when you piled up the twenty cases in the middle of the store?

A No, sir; there was nobody there except him and his helper.

Q His helper is here; is that the man (Pointing to a man standing in the courtroom)? A Yes, sir.

Q Now, did you know anything at all about the value of this milk, how much it was worth? A He?

Q Yes. A Yes, sir.

Q You knew it? A Yes, sir.

Q You say you asked \$40 for it? A Yes, sir.

Q And he gave you eleven? A Yes, sir.

Q Did you bargain about it at all, or did you take the eleven right off? A I took the eleven right off, because he told me to take the eleven or nothing.

Q What is that? A He told me to take the eleven or nothing.

Q Take the eleven, or take the goods? A Yes, sir.

THE COURT: "Or nothing."

Q What money did he give you? A He gave me two five-dollar bills and a single dollar.

Q Then you drove back to the store of Mr. Peppe & Co.?

A Yes, sir.

Q Did you say who helped you carry these goods into the store? A Kosian and his helper.

Q And his helper? A Yes, sir.

Q What did you do with that stuff that was on the wagon behind these cases, did you put that on the sidewalk?

A No, sir; I left that there; they carried the milk in, and I stood inside of the truck and hoisted it out.

Q This milk was in the middle of the truck, and there were goods behind it and in front of it? A Yes, sir.

Q Didn't you remove any goods at all, to get this milk off the wagon? A No, sir.

Q Where did he give you this \$11? A Inside the store.

Q Right in the store? A Yes, sir.

Q Was Paul there at that time? A Yes, sir.

Q Do you know whether Paul saw you get the \$11 from Kosian? A I do not know, if he saw it or not.

Q Where was he at the time when you got the money?

A Well, he was behind the counter.

Q What was he doing there, waiting on customers? A No, sir; he was working around there, doing something, I believe he was weighing up sugar, or something, if I am not mistaken.

Q On these other occasions that you say you got \$2 from him, twice, did you see him there? A Yes, sir.

Q Was Paul there at the time you got the \$2? A Yes, sir; I left the goods there; by the time I delivered the rest of the goods, I had an extra case there, and I pointed it to him, and says, "That's extra", and he says, "That's all right."

Q Was Paul there when you got the \$2? A Well, he was there, too, yes, sir; but he wouldn't know the difference, because he gave me the whole money at once, for my boss's goods and the extra goods.

Q But you said you pointed out to him these extra goods, didn't you? A Yes, sir.

Q You said to Korian, "This is extra"? A Yes, sir.

Q You said you wanted \$2 for that? A Yes, sir.

Q He gave you \$2? A Yes, sir.

Q He didn't bargain about that? A No, sir.

Q He gave you your price? A Yes, sir.

Q How high was this pile in the middle of the store after you finished putting twenty cases of goods in there?

A I didn't look, because I was too afraid to look; I took the money and I went right ahead about my business.

Q You got money ~~for~~ ^{the} ^{after} the goods ~~that~~ were put in there?

A Yes, sir.

Q Didn't you see the goods when you got your money?

A Yes, sir.

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Q Can't you tell us how high it was when you got your money? A Piled up about that high, in three or four boxes.

Q How high from where? A About that high (Illustrating).

Q About five feet, or four or five feet? A Yes, sir.

Q Four or five feet? A No, sir; about three feet.

Q Show it again? A (Witness does so.)

MR. CUKOR: How much would you say, gentlemen of the jury, that was?

THE COURT: No.

MR. CUKOR: I would like to have that measured, if your Honor please, the distance which he shows.

THE COURT: The jury see it.

MR. CUKOR: I would like to have it on the record, what he shows.

(Witness indicates.)

Q It was that high? A Yes, sir.

Q How long was the pile? A Well, that is the full length of two boxes, I should judge, about three and a half feet.

Q How many piles did you have of them? A Four.

Q Four piles? A Yes, sir.

Q Now, how long after you left those twenty cases was it that you went back to Kosian to deliver Poppe's order?

MR. NOTT: I object to that. He has asked him that time and time again.

THE COURT: Objection sustained.

Exception.

Q Can you tell us any more definitely than you have before stated, when it was you went back to Kosian after you delivered the twenty cases of goods? A Yes, sir; about two or three days after.

Q How many days before your arrest was it? A That is about five days, I think.

Q Five days before your arrest? A No, sir; it was, I think, the day after.

Q What do you mean, "it was the day after"? A I delivered this order on Saturday, and I got arrested on Monday morning.

Q When, then, did you go there with Mr. McKenna and the police officer to Kosian's place, what date was that?

A Well, they came and took me away from the store, and they asked me about the milk.

Q I didn't ask you that. When was it that you went there, what day was it that you went there with them? A I think Monday.

Q Monday? A Yes, sir.

Q What day of the month was it, do you know? A On

Q Well, I ain't sure.

Q What is that? A The 17th, I think.

Q The 17th? A Yes, sir; I ain't sure.

Q Well, I would like to get that. Was it the day you were arrested? A About the 17th.

BY THE COURT:

Q Was it the day you were arrested? A Yes, sir.

BY MR. CUKOR:

Q That was about the 17th? A Yes, sir.

Q On the very same day you went there with them?

A Yes, sir.

Q Did you know who this gentleman was, Mr. McKenna?

A No, sir.

Q Never knew him before? A No, sir.

Q Now, you say you went there and told the defendant that Mr. McKenna "comes from the Erie Railroad"? A Yes, sir.

Q That he had some milk to sell, too? A Yes, sir.

Q That was not so, was it? A Yes, sir; that is so.

Q Did Mr. McKenna have to sell any milk to Kosian?

A No, sir; but they wanted to prove if it is true the way I said it, or not, and they caught him, and afterwards we asked him about the twenty cases of milk; afterwards the officer came there and he showed up his shield, he went inside the store and found the goods in there.

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MR. GUKOR: I move to strike out the latter part of the answer.

THE COURT: No. If you bring it out yourself, you cannot move to strike it out.

Q Will you answer my question again, please: Did you tell this man that McKenna wants to sell him some milk?

A Yes, sir.

Q Was that true? A Yes, sir.

Q It was true? A Yes, sir.

Q Was Mr. McKenna there to sell this man some milk?

A No, sir.

Q That is an answer. Now, one moment, please.

THE COURT: You can understand, just as well as I do, that he misunderstood your last question.

MR. GUKOR: Well, I am trying to straighten it out.

THE COURT: You asked him if he told Kosian that McKenna wants to sell milk to him; he said yes; you say, "Was it true?" and he said "Yes". His answer is perfectly proper, that is true that he told him he wants to sell him milk. You can ask him, if you wish, if it was true that McKenna wanted to sell Kosian milk.

MR. GUKOR: I will put it more plainly.

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Q Was it true he wanted to sell milk?

THE COURT: Ask him now, "Was it true that he wanted to sell milk?"

Q Was Mr. McKenna there to sell milk to this man?

A Well, he wasn't there for selling milk, but he was there to catch him right.

Q Was he there to sell milk, yes or no? A No, sir.

Q You knew that, didn't you? A Well, I knew him from being an officer.

Q What is that? A (Answer repeated).

Q Well, Mr. McKenna was not an officer, was he?

A Well, I didn't know, because the both of them was speaking to me, and one of them showed me his shield, and the other one, he had a shield too, and I thought they were both of them officers.

Q Didn't you know at that time that Mr. McKenna was from the Erie Railroad Company? A No, sir.

Q You did not? A No, sir.

Q Who told you to tell Kosian that he came from the Railroad Company? A Himself.

Q Who, Mr. McKenna? A Yes, sir.

Q Mr. McKenna told you to tell Kosian that he is from the Railroad Company? A Yes, sir.

Q He wanted to sell some milk to him? A Yes, sir.

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Q Now, what did Kosian say when you said that? A Well, he said he wouldn't buy any more milk for a little while now, because he has got too much of it, and he is afraid.

Q He said he was afraid? A Yes, sir.

Q Did he say he was afraid of what? A He was afraid to buy any more.

Q Why, did he say why? A He was afraid to get pinched.

Q Did you tell that to Mr. McKenna? A Yes, sir.

Q Wait a minute. You have answered. Did he tell McKenna that he was afraid to buy any more because he was afraid to get pinched? A He said it himself.

Q He told that to Mr. McKenna? A Yes, sir.

Q Do you know whether this man Kosian ever knew McKenna before that time or not? A No, sir.

Q Now, what happened then, after Kosian told McKenna that he would not buy any more milk because he was afraid to get pinched; what happened then? A Well, we called the officer there, and the officer wants to know what place is the milk, and Kosian denied it; he said he ain't got no milk, and he did not know a damned thing about the milk; so I says, "Yes, you got twenty cases of milk from me. I am arrested and they want to have their milk back, and they will let me go", afterwards he didn't deny it, while the officer showed his shield, he brought him inside the store and made him

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up the milk.

Q How many cases of milk did he find there? A Five cases, I believe.

Q Did they look for more? A Yes, sir.

Q Did they find any more? A No, sir.

RE-DIRECT EXAMINATION BY MR. NOTT:

Q Just one question. When you left goods at Kosian's from Mr. Poppe, when you left them there C.O.D. for your firm, did you always leave a bill? A Yes, sir.

Q When you got the money, you gave him the bill?
A Yes, sir; signed for it.

Q Receipted? A Yes, sir.

Q When you left this milk at this time, did you have any bill? A No, sir.

Q You didn't give him any bill? A No, sir.

Q Was anybody present on the railroad dock, that saw you get this milk, when you loaded it? A No, sir.

Q You were all alone? A No, sir.

Q I want to ask you another question. Look at this case here (Producing a case of condensed milk); can you tell the jury whether or not that is similar to the cases you left there at that time? A Yes, sir; that is a similar article.

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CROSS EXAMINATION BY MR. GUKOR:

Q You said that those five cases that were found in Kosian's place were five of those that you left there at his place? A Yes, sir.

Q You swear that they were the same? A Yes, sir.

Q Did you have any marks on them to show that they were the same? A Well, there is the marks right there.

Q What marks; show me? A The label there.

Q The label? A Yes, sir; "Eagle Brand".

Q But there were a whole lot of cases with the same brand on that you left there on the dock, weren't there?

A The same brand like that; yes, sir; that is the one kind.

Q You don't mean to tell us that you can say now that those five cases that were found in Kosian's place were exactly the five cases that you left there with him two or three days before that? A Yes.

Q The identical cases? A Yes, sir; the same cases.

Q You have no marks of your own on them? A No, sir; not in case that it would not be the same cases, he would not bunk them away that way.

Q Where did you find those five cases? A Behind the vegetable stand; the officer found them.

Q Wasn't it under this vegetable stand? A Yes, sir.

Q Under this stand? A Yes, sir.

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Q That is to say, there is a board there on which he keeps the vegetables? A Yes, sir.

Q And these goods were under that board? A Yes, sir; behind.

Q What do you mean "behind"? A Well, they were --

Q You said they were under it? A They were covered here with wood, so nobody could see them.

MR. GUROR: I move to strike out that.

THE COURT: I will not. You bring out certain facts and then you want to get rid of them.

Q Were they behind this board, or under the board?

A Under the board.

Q He always kept vegetables on that board, didn't he?

A Yes, sir.

Q Do you know what he kept under that board as a rule?

A Why, firewood.

Q Kindling wood? A Yes, sir.

Q You found kindling wood on that day, too, under that board, around the boxes, you say? A Yes, sir; the officer found it all right.

Q Where are you now -- are you in the Tomb now?

A Yes, sir.

Q Did you have any talk about this case with any members of the District Attorney's staff? A No, sir.

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Q Didn't say a word to them about it? A No, sir; only when I got arrested, for examination, that is all I know.

Q An examination, that was in the police court? A Yes, sir.

Q Well, since you were held, since you were sent downtown here, did you have any talk with any member of the District Attorney's staff, about this case? A Yes, sir; once.

Q What did you mean by saying, a few minutes ago, that you never had any talk?

THE COURT: You understand him perfectly. I am going to shut out that line of examination hereafter. He answered that he did not have any talk excepting when he was up for examination, or "during my examination". Then you switch him off onto the examination in the police court, and then you ask him, "Did you have anything to say to the District Attorney"; and he says "Yes." He said before that he had no talk with the District Attorney, but what he understood from your examination was a talk outside or elsewhere with the District Attorney.

MR. CUKOR: I will make that plain, if your Honor please.



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Q After you had this talk in the police court, did you have any talk at the Tomb with anybody connected with the District Attorney's office? A Yes, sir.

Q Or with the office of the District Attorney?

A In the office of the District Attorney, once.

JAMES G. MCKENNA, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NOTT:

Q Mr. McKenna, just raise your voice, will you, just so that the jury can hear you. What is your business?

A Police officer of the Erie Railroad.

Q Special officer? A Yes, sir.

Q How long have you been employed by the Erie Railroad? A About two years and a half.

Q Two years and a half? A Yes, sir.

Q Where were you employed before that? A Boston, Massachusetts.

Q In what line of business? A The same line of business for the New York, New Haven and Hartford Railroad.

Q Now, then, you were employed by the Erie Railroad from the 13th to the 17th of December, 1904? A Yes, sir.

Q Did you see this man Talamini during the month of December? A Yes, sir.

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Q Give the date, as near as you can, when you first saw him? A On the 14th, I believe it was,

Q Where did you see him that day? A Driving off our pier.

Q How did you come to notice him that day? A Well, it was the 15th I saw him driving off our pier.

Q How did you come to notice him that day? A Because we had received an anonymous letter stating that twenty cases of milk --

Q In consequence of a letter? A Yes, sir.

Q Did you watch him? A Yes, sir.

Q Where did he go? A He was driving a truck off the pier; he drove up West Street, he and another gentleman were on the truck.

Q Go on? A I didn't follow them; I stayed right at the pier; I stood there simply to get a spot on them.

Q When did you next see them? A The next time I saw him was the afternoon of the 15th.

Q Anything special at that time? A Yes, sir; we went to the Leonard Street station that afternoon and reported the loss of twenty cases of milk consigned to Borden & Company. Captain Sweeney detailed Officer Cronin on the case with me. We went to Gansevoort and Washington Streets, and saw Edward Poppe, wholesale grocer, and there we

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watched for Talamini.

Q Don't give the conversation. Now, what pier was it you saw him on? A Pier 21, North River.

Q Who occupies that pier? A The Erie Railroad.

Q Is the freight or the goods on that pier there in charge of the Erie Railroad Company until delivered?

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

THE COURT: I will allow it.

Exception.

A Yes, sir; in charge of the Erie Railroad.

BY THE COURT:

Q In the custody of the Erie Railroad?

A yes, sir; as common carriers.

BY MR. NOTT:

Q Now, did you have a talk with Mr. Poppe?

A yes, sir.

Q Well, after that talk, what did you do, don't state what was said? A Well, we went out, and saw the driver going away.

Q What driver? A Humbert Talamini.

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Q The last witness? A Yes, sir; and Officer Cronin called him off the truck and told him he wanted to talk to him for a few moments; he handed the lines to another fellow and said, "I will be back".

Q Is that the day of the arrest? A Yes, sir.

Q What was that date? A The 15th day of December.

Q What time? A About three or three-thirty.

Q Now, after he was arrested what was done? A Well, he informed us where he had--

Q You can't state what he said in the absence of this defendant, but simply that you had a conversation with him?

A Yes, sir; we had a conversation with Talamini.

Q In consequence of that conversation-- what time did you have that conversation? A When we got up as far as Washington and Gansvoort Streets-- or Gansvoort and the street where the elevated runs, I disremember the name of the street.

Q Then you had a conversation? A Yes, sir.

Q Now, after that conversation where did you go, if anywhere? A We went up to 456 West 17th Street.

Q In this county? A Yes, sir.

Q Whose store is that, if you know? A Mr Kosian's store.

Q This defendant? A Yes, sir.

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Q Who was with you? A Talamini and officer Cronin.

Q Now, did you find the defendant in his store?

A No, sir.

Q Where did you find him? A Why, Talamini and I entered the store, while Officer Kronan stood on the corner, and asked this other gentleman, who is in the audience back there, where Mr Kosian was; he said, "He is out getting shaved"; we asked him that barber shop and he said he did not know, some of the barber shops around the neighborhood. So he told the fellow there that he had some goods that he wanted to sell him. So we went out and we looked on Tenth Avenue between 16th and 17th Streets in a barber shop and found him getting shaved.

Q Now, state what took place after you located him in the barber shop? A Well, in the barber shop I told Talamini to introduce me to him as a friend of his, which he did.

Q Go ahead. A And tell him that I had some goods I wanted to sell him. So after he got shaved he walked out; we followed out after him; he introduced me as a friend of his and told him that I had some goods.

Q Told whom? A Told Kosian, that I had two barrels of sugar which I wished to dispose of to him at his own price.

Q Did he say where you were employed? A Yes, sir; he

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said I was employed on the docks; but first Kosian got afraid and would not do any business and Talamini said--

MR. CUKOR: I did not catch that.

(The answer is repeated.)

MR. CUKOR: I move to strike that out, if your Honor please.

BY THE COURT:

Q Did he say he was afraid? A No, sir.

Q Tell us what he said. Give the conversation? A He just said, "No"; he shook his head like that, he said no and shook his head.

BY MR. NOTT:

Q Go on. A So Talamini says, "He is all right, he is the fellow that sent me up with those twenty cases of milk I sold you, they were all right, weren't they?" Kosian said, "Yes, they were all right". "Well", I says, "as long as they are all right what are you afraid of?" I says, "Did you dispose of them, or did you sell them?" and he says, "No, some are sold and I have got around in the store yet"; so I says, "Do you want any stuff?" and he says, "I will buy stuff in small quantities of you, a case or two cases at a time". So with that I called the officer over, Officer Brennan, who stood on the corner. We told him we were officers and asked him to come around to the store and

give us the milk he had around there. At first he did not care to go and Officer Kronan had to speak kind of cross to him before he would move. When we got around there why he refused to search his store at first, and finally he did and we got these five cases from underneath this false counter.

Q Now, describe this false counter? A Well, this false counter was sort of, I should judge, they were window blinds on top of boxes underneath where the blinds are was covered with potatoes, cabbage, greens, cauliflower, and the likes of that; these five cases were underneath the counter.

Q Was there anything in front of them? A They were piled up at the end of the counter to prevent anybody from seeing underneath.

Q Did you see the cases taken out? A Yes, sir.

Q Now, look at this case on the table and state whether or not that is one of those cases? A Yes, sir; that is one of the cases.

Q What was done with the five cases that were taken out? A They were piled in the centre of the floor and taken to the Leonard Street police station.

Q And this was produced from there-- is this case produced from the Leonard Street police station? A Yes, sir.

Q Did you have any further conversation with the defendant? A No, sir.

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Q Did he make any statement after the five cases were found, as to how he came by them? A No, sir; not to my knowledge; I went out then to get a truck to take the stuff away.

Q And left him in charge of Officer Kronan? A Yes, sir.

CROSS EXAMINATION BY MR. GUKOR:

Q How long have you been an officer, Mr McKenna?

A How long have I been an officer? About five years.

Q Now, you never saw this man, this defendant, prior to that occasion when you called there with the driver?

A Never before December 15th.

Q Will you just tell us all that was said between you and the driver and the defendant at the time when you called there, or when you met him in front of this barber shop?

A I have already explained that to you.

THE COURT: He wants it again.

THE WITNESS: All right, sir. In front of the barber shop Talamini introduced me to him as his friend, told him I had two barrels of sugar I wished to dispose of to him at his own price. At first Kesian would not do business.

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Q Please don't say that. What did he say? A He said, "no", he shook his head, "I am afraid".

Q What is that? A "No, I am afraid".

Q Did he say, "I am afraid"? A Yes, sir; he said, "I am afraid".

Q Didn't you say about a minute ago, or about three minutes ago on your direct examination that he did not say that at all, he didn't use the words but he shook his head?

A He said, "No, I am afraid".

Q Did he say, "I am afraid"? A Yes, sir; he said, "I am afraid".

Q Why didn't you say that on your direct examination?

THE COURT: Because you objected when he said he was afraid--

MR. CUKOR: I submit, if your Honor please, that he distinctly said that he did not say so.

THE COURT: He said "no" and he shook his head. Then you objected and the witness seemed to think that you were afraid of the word "afraid". He has a right to correct his testimony.

Q Now then he did say he was afraid? A Yes, sir; he did.

Q Did he say he was afraid of getting pinched? A Not to my knowledge; he said he was afraid.

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Q Did he say what he was afraid of? A No, sir; not to my knowledge.

Q What else was said? A Well, why, after a while Telamini told him I was all right, I was a friend of his; he says, "He is the fellow sent me up with those twenty cases of milk, they were all right, weren't they?" "Yes, they were all right"; then I says, "What are you afraid of if they were all right?" Then he agreed to buy some from me in small quantities at his own price.

Q What did he say? A He told me he would take one or two cases at a time.

Q Then what happened? A Why, I called Officer Kronan over, after he admitted that he had some of the goods still in the store, I called Officer Kronan over, I beckoned to him on the corner to come over; as soon as he did I told him, I says, "This is Mr Kosian who claims to have some of the stolen property in his store"; we then told him we were officers and asked him to come to the store; he at first refused.

Q What did he say? A He said nothing; he just simply stood there; he would not move and officer Kronan had to push him and kept pushing him to the store; as soon as he gave him a little push he started off. We went around to the store; when we got around there we asked him to show

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the goods that were there; we went to the shelf and saw some goods on the shelf and he says, "I buy some goods from Edward Poppe"; then we says, "Well those are not the goods I want, where is the other goods?" so he finally did go to work and get them from underneath this counter after Officer Kronan spoke pretty cross to him.

Q Well, where was it that you first commenced to ask this man Telamini about the goods, where was it you first commenced to talk to him? A On Gansvoert Street right opposite Mr Poppe's store.

Q He was on the truck at that time? A No, sir; he was on the ground at that time; he got off his truck and walked over and was underneath the shed on the sidewalk.

Q What day of the week was this that he was arrested? A I believe it was Thursday.

Q The 15th of December? A Yes, sir; the 15th of December, 1904.

Q Wasn't it on Monday that he was arrested? A No, sir; I believe it was on a Thursday.

MR. NOTT: Will I take up another witness now?

THE COURT: No. Gentlemen of the jury, at each adjournment I am required to give you the usual statutory caution not to converse with each other

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or any one else about the case and to come to no conclusion until it is finally submitted to you. You are excused until half past ten to-morrow morning.

(The Court then adjourned the further trial of the case until to-morrow, Wednesday morning, March 15th, 1905, at 10:30 o'clock.)

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New York, March 15, 1905.

TRIAL RESUMED.

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

DIRECT EXAMINATION BY MR. NOTT:

Q Are you a member of the municipal police force of this city? A Yes, sir.

Q What precinct were you attached to between the 13th and 30th days of December, 1904? A I was attached to the 8th precinct, County of New York.

Q Did you arrest this defendant? A Yes, sir.

Q In whose company were you when you made the arrest?
A In the company of Mr. McKenna from the Erie Railroad, and Humbert Talamini, who was also a prisoner.

Q Where were you when you made the arrest? A 456 West 17th Street.

Q Is that his store? A His grocery store.

Q Where was it you first saw him? A I saw him on the sidewalk, on Tenth Avenue, between 16th and 17th Street.

Q Who was with him when you first saw him? A Mr. McKenna and Talamini.

Q Did you go up to him there? A After a few minutes I went up to him.

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Q They had been talking to him in the meantime?
A Yes, sir.

Q Then you went over? A Yes, sir.

Q State what happened after you got there? A I asked McKenna if he had had any of the milk, and he says, "He has got some of it"; I said to the prisoner, "Come around and let us see it"; he says, "I haven't got any"; "Well", I says, "come around and we will see"; he stood, he wouldn't move; I pushed him around a little ways, and then he walked along. After we got to the store, he would not tell me then where it was, and so I told him if he wouldn't tell me where it was --

Q Where what was? A The condensed milk; "I would have to search for it and tear all his things around"; so he went over to a kind of a counter, like a fruit stand, with a lot of vegetables and some kindling wood around the sides, removed the kindling wood, went underneath the stand and brought five cases of condensed milk out.

Q What was done with the five cases? A We brought him down to the 11th Street station house.

Q Have you brought any of those cases down here?
A Yes, sir; this one.

Q This case which was produced yesterday? A Yes, sir.

MR. NOTT: I offer this case in evidence.

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(The case referred to was admitted in evidence and marked "People's Exhibit No. 1.")

Q Did you have any conversation with the defendant about this case, how he came by it? A Yes, sir; he said that Talamini left it there.

Q Left it there how? A He said he brought them up there some day, and left them there to be kept for him.

Q Just to be kept for him? A Yes, sir.

Q Is that the only explanation he made of their presence there? A That is the only explanation, sir.

CROSS-EXAMINATION BY MR. CUKOR:

Q What day was it that you arrested the defendant?

A The 20th of December.

Q The 20th of December? A Yes, sir.

Q What day of the week was that? A I am not quite sure as to the day of the week, I think it was Tuesday.

Q Tuesday? A Yes, sir.

Q Was that the day that you arrested the driver?

A Yes, sir.

Q You went with Mr. McKenna first to the driver's place? A Yes, sir.

Q You arrested the driver? A Yes, sir.

Q On the 20th of December? A Yes, sir.

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Q That was on a Tuesday? A I believe so; I am not quite sure.

Q Well, I have a calendar here which shows it was on a Tuesday. Then you went with him to this defendant's place? A With Mr. McKenna.

Q And the driver, is that right? A I went with them to his place, but I didn't go into his place.

Q Then you went around to this barber shop on Tenth Avenue? A No, sir; Mr. McKenna and Talamini went around there.

Q Where did you wait? A I waited on the corner.

Q Did you hear Mr. McKenna say yesterday that all this occurred on the 15th, on a Thursday? A I heard him say the 15th; I don't remember what day of the week he said.

Q It didn't happen on the 15th, did it? A No, sir; it was not the 15th.

MR. NOTT: I will concede it did not.

Q When was the defendant arraigned in the police court? A The following morning.

Q The 21st? A Yes, sir.

Q That was the time the driver was arraigned also? A Yes, sir.

Q Now, when was it that he told you, Officer, that this driver left the milk at his place? A He told me, when

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we went around to the store -- at first he told me he didn't have any milk at all, and afterwards he said Talamini left it there.

Q Now, you say that you asked him, while you were on the sidewalk, just as soon as they came out of the barber shop? A Not as soon as they came out, a few minutes after.

Q A few minutes after? A Yes, sir.

Q And he said he has some of the milk, he said that to McKenna, and then you went around to his place? A Well, a couple of minutes after we went around there.

Q It was while you were in the store that he made this explanation? A Yes, sir.

Q Please tell us again what he said? A He said Talamini left it there to be kept for him.

Q Did he say under what circumstances? A No, sir.

Q This stand that you are talking about, officer, where the vegetables were kept, is attached to the wall on one side of the store, isn't it? A It is near the wall, yes, sir.

Q How far from the wall does it extend, would you say? A I should say about five feet, four or five feet; I am not quite sure as to the distance.

Q How high from the floor of the store was this board or stand, as you call it? A The back may be three feet

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high, the back part and the front part about a foot and a half -- the back part about three feet high inclining a little.

Q Will you please tell us how this stand was, how far did it extend alongside of the wall? A I should say about six feet.

Q What is on the other side of the store, the counter?

A Yes, sir; the counter.

Q How far did the counter extend from the wall?

A Well, it is a regular grocery store counter, that is, the regulation counter, I am not quite sure how far --

Q How far from the wall was the outside of this counter? A It may be four feet.

Q From the wall? A Yes, sir.

Q There was shelving alongside the wall, wasn't there?

A The walking place is very narrow.

Q What was the space, the open space there, between the vegetable stand and the counter? A About five feet, I should say.

Q How deep was the store, if you can tell us? A It was about twelve or thirteen feet deep, I am not quite sure.

Q What was in the back of the store, did you notice?

A In the back?

Q Yes, the rear portion of the store? A Well,

had a lot of canned goods and things there.

Q Piled up on shelves? A Yes, sir; on shelves.

Q Well, you said that this open space there was very narrow, and you designated it as, I think you said four or five feet? A Five or six feet.

Q How deep was this empty space there? A Well, maybe nine or ten feet, I am not quite sure.

RE-DIRECT EXAMINATION BY MR. NOTT:

Q When you went into the store, you did not measure it? A No, sir.

Q You are just giving your recollection from having been in there a few minutes? A Yes, sir.

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

DIRECT EXAMINATION BY MR. NOTT:

Q Mr. Elsie, what is your business, please? A I am employed by the Borden Condensed Milk Company.

Q In what capacity? A In the traffic department.

Q What position in the traffic department? A The head of the traffic department.

Q How long have you been in that position? A About three years.

Q How long have you been with the Borden Company?

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A About thirty years.

Q Now, will you look at People's Exhibit 1 here, and state whether that is one of the cases of Borden's Condensed Milk? A It is, sir.

Q Now, will you further look at the case and see if it has what is known as batch number on it? A Yes, sir; it has.

Q What is that? A "A.A.E.A." (Indicating).

Q Will you state to the jury in the course of business, what those batch numbers are affixed to cases for? A To identify the cases, in case they are returned to us to ascertain the condition that they were in when they were sent out, and also the year and the month they were made.

Q Are any records kept showing the issuance of certain batches under these batch numbers? A Yes, sir.

Q When a batch number is used upon a batch of these cases, and the batch is shipped under that number, is that batch number used again? A No, sir; not for possibly a year; I think the numbers are changed each year.

Q So that, if a case of goods is shipped under a batch number in one year, that batch number would not be used again for a considerable length of time? A That is correct, sir.

Q What is the average number of cases that are shipped under a batch number? A They are shipped under the batch

number -- it depends upon the size of the order, that was received at the factory.

Q It would vary? A Yes, sir.

Q You say that this batch number on this case here is "A.A.E.A." A Yes, sir.

Q Can you state the number of cases of that batch number that were shipped to New York? A Yes, sir.

Q Kindly do so? A "A.A.E.A." -- there were 89 cases contained in that car shipped to New York.

Q When was that batch shipped to New York? A On the 8th day of December, 1904.

Q By what route? A By the New York, New Haven & Hartford, care of the Erie Railroad.

Q When was it received? A It was received according to our books --

MR. CUKOR: I object to that.

MR. NOTT: I will prove its receipt by the man on the dock, if you object.

BY THE COURT:

Q Can you tell to whom that case or batch of cases was consigned? A Well, no, we cannot, because we do not make deliveries according to these batch numbers; these batch numbers are merely for our own personal records.

BY MR. NOTT:

Q Can you tell from an examination of that case there to whom it was consigned? A Consigned to the Borden Condensed Milk Company.

Q Where from? A From the factory.

Q And according to your method, could that case have been sold at the factory to any other outside person? A Well, there are other cases of that same batch number that have been shipped to other points.

Q What I mean is, was there any sale from the factory direct to the purchaser? A No, sir.

Q Was there any other batch "A.A.E.A." shipped to New York except this batch of 89 cases on the 8th of December? A No, sir.

CROSS-EXAMINATION BY MR. CUKOR:

Q But you shipped some cases with the same batch number to other cities at the same time? A Yes, sir.

Q Around the 8th of December? A Yes, sir.

Q To New York, too? A When I say around the 8th of December, I have no record of that; the record of that is kept in the factory.

Q You are not employed at the factory? A No, sir.

Q You are at the New York end? A Yes, sir.

Q Of course, you don't know just what is shipped from the factory? A Excepting what would be shipped to New York.

BY MR. NOTT:

Q There were shipments made to other points -- do you mean other points in New York or outside? A Other points in New York City.

BY MR. GUKOR:

Q You said there were 89 cases of goods shipped from the factory to New York about the 8th of December? A There were 89 cases of that particular batch number in the car.

Q You don't know that of your own knowledge? A No, sir; excepting that we received from our factory that makes these shipments the invoice.

Q So when you said there were at least 89 cases shipped care of the Erie Railroad Company, you simply testified to that because you saw it on that invoice? A Yes, sir.

Q That invoice was not made by you? A No, sir.

Q It was made by the man at the other end? A Yes, sir.

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

DIRECT EXAMINATION BY MR. NOTT:

Q Now, what is your business, Mr. Reynolds? A Well, I am employed by the Borden Condensed Milk Company, keeping track of this stuff on the pier, keeping tally of it.

Q You are the tally man on the pier? A Yes, sir.

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Q What pier? A Pier 21 and Pier 20.

Q Whose pier is that? A The Erie Railroad.

Q North River or East River? A North River.

Q Were you employed by them between the 8th and 13th days of December, 1904? A Yes, sir.

Q Now, do you remember receiving a load of condensed milk on or about the 10th of December? A Yes, sir.

Q What was the date? A I received it on the 12th of December, Monday, I believe, Saturday was the 10th, and I have not seen that car because we were off early, Saturday; it came in probably late in the afternoon, but I received it Monday morning, the 12th.

Q Did you unload the car? A No, sir; the Erie Railroad does that work.

Q Did you see it unloaded? A Yes, sir.

Q Did you check it up? A Yes, sir; 500 cases.

Q Altogether? A Yes, sir.

Q Where were those cases placed? A Well, Pier 21, Booth 14.

Q You saw them placed there? A Yes, sir.

Q Did you miss any cases from there? A Yes, sir; I missed cases.

MR. CUKOR: I object to that, if your Honor please, as calling for a conclusion.

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THE COURT: I will allow it.

Exception.

Q Did you miss any cases? A Yes, sir.

Q How many? A Twenty.

Q Did you make any record of the batch numbers in of the cases? A Yes, sir.

Q In that load? A Yes, sir.

Q Were there any cases there having the batch number "A.A.E.A.", in that car? A Yes, sir.

Q How many? A There was 89.

Q They were among those that were placed on the dock? A Yes, sir.

Q Now, when cases are called for, do you take a record? A Yes, sir; I put down the batch numbers, but I can't say how many -- I take a record, put down the batch numbers on the receipts, but I can't tell how many of each batch I delivered.

Q You just put down the batch numbers and not the amount?

A No, sir; not the amount; I just put down the batch number.

CROSS-EXAMINATION BY MR. CUKOR:

Q Where is this pier, what street? A It is between Duane and Jay Street, Pier 21 North River.

Q How near 17th Street is that? A Well, that is

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... and a half, probably more.

Q Now, when these goods arrived you say you checked them off Sunday afternoon? A Monday morning.

Q When did you make deliveries out of that batch?
A On Monday.

Q At what time on Monday? A Well, I started probably at half-past eight or nine o'clock.

Q Is that an open pier? A No, sir.

Q All kinds of goods are piled up there? A Yes, sir; all kinds of goods.

Q Were you there all day? A Yes, sir.

Q On Monday? A Yes, sir.

Q On Tuesday also? A Yes, sir.

Q On Wednesday? A Yes, sir; the whole week, every day in the week.

Q What are your hours? A My hours is from probably, well, half-past seven or eight in the morning until six at night.

Q When was it that you first missed these twenty cases? A I missed them on the morning of the 14th.

Q What day was that? A That was Wednesday morning, I believe.

Q You say you don't keep a memorandum of the cases, of how many cases you delivered? A No, sir.

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Q But take the batch numbers? A No, sir; not the batch numbers, but the amount of cases, that is my business there, to deliver these goods.

Q You don't know how much of each batch? A No, sir.

Q When you make a delivery to a driver, you deliver them on a written order? A Yes, sir; from my place.

Q This driver, Poppe's driver, Talamini, do you know him? A Well, I seen him once or twice in my life; I seen him at our store once.

Q Do you remember whether he gave you any order Monday, Tuesday, or Wednesday, for any of this milk? A No, sir; he gave me no order.

Q Did you see him there on any of those three days, Monday, Tuesday or Wednesday? A No, sir; not to my knowledge; I seen him at the store once.

Q I mean on the pier? A No, sir.

Q You don't know whether you saw him or not? A No, sir; there are so many going in and coming out there the whole day, why, I don't know.

Q In other words, he might have been there and you not see him? A Yes, sir; he might have been there and I not see him.

Q Your business there is just to see to the Borden goods, deliver their goods? A Yes, sir.

Q Were all the cases piled up in one place? A Yes,

sir.

Q On the pier? A Yes, sir.

Q Would you stay around that pile of goods there all day? A No, sir; I got other piles, another pier to attend to.

Q You are employed by other people? A Yes, sir.

Q Now, when, for instance, you left the pier, when you left this Pier 21 to go to the other piers, is anybody left there to watch Borden's goods? A No, sir.

Q Nobody? A No, sir.

Q Do quite a number of truckmen come in there? A Yes, sir.

Q All day? A Yes, sir.

Q Carrying goods out? A Yes, sir.

Q When you left the pier, you left no watchman there?

A Well, the railroad people has a watchman.

Q You people haven't any? A No, sir.

BY THE COURT:

Q While you was absent, at any time, from that particular pile of goods, or any other pile, could a drayman come in there and load up without being interfered with by someone else, without authority? A Well, any man that has an order, I am supposed to see it and deliver the goods to

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Q Suppose you had gone to Pier 20, could any truckman come in Pier 21 and commence to load these goods on his truck without anybody asking him questions, or interfering with him, while you are away? A It seems that they did; our own trucks do that; they hunt me up, and I have got to look out for that.

Q Your own trucks? A Yes, sir.

BY MR. CUKOR:

Q Isn't it a fact that there are always quite a number of people on that pier? A Yes, sir.

Q All day? A Yes, sir; all day long.

Q A pretty busy place that, Pier 21, isn't it, all day? A Yes, sir; I guess all the piers are pretty busy along the river, and that pier is busy too.

MR. HOTT: The People rest.

MR. CUKOR: I move to strike out the testimony of the driver, Talamini, in reference to the alleged delivery by him and payment to him of some money for one case of milk ~~in~~ two or three weeks prior to the time mentioned in the indictment, and also one case of sauce two or three weeks prior to the indictment, as tending to prove an independent crime, as immaterial, incompetent and irrelevant.

THE COURT: Motion denied.

MR. CUKOR: I take an exception.

THE COURT: It is competent, both as to intent and otherwise.

MR. CUKOR: Now, I move your Honor that you advise the jury to acquit the defendant, upon the ground that the People have failed to show facts sufficient to constitute a crime, and have failed to substantiate the allegations of the indictment.

THE COURT: It is for the jury to determine upon that. Motion denied.

Exception.

MR. CUKOR: Will your Honor permit me to put the grounds of my motion on the record?

THE COURT: Certainly.

MR. CUKOR: There is no proof here of the facts alleged in the indictment.

Motion denied. Exception.

MR. NOTT: I ask leave to prove one fact, and that is the value of these goods.

THE COURT: It is not important in the charge of receiving.

MR. NOTT: It may be important upon the question of guilty knowledge, if the defendant gave \$11 for property

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that was worth over one hundred.

JAMES J. ELBIE, a witness for the People,
recalled.

BY MR. HOTT:

Q Mr. Elsie, what brand of condensed milk is this,
People's Exhibit 1? A Eagle Brand, sir.

Q In your thirty years experience in the business, can
you tell the jury the market price per case of this size?

A \$6.25.

Q A case? A yes, sir.

Q So that twenty cases would be worth twenty times that?

A Yes, sir.

BY MR. GUKOR:

Q How many bottles are there in them? A Forty-eight
cans, not bottles.

MR. GUKOR: I renew my motion.

THE COURT: Motion denied.

Exception.

Mr. Gukor opened the case on behalf of the defendant.

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DEFENCE.

MARDIRAS KOSIAN, the defendant, being duly sworn on his own behalf, testified as follows:

DIRECT EXAMINATION BY MR. GUKOR:

Q What countryman are you? A I am an Armenian.

Q How long have you been in this country? A Eleven years.

Q Are you in business now? A Yes, sir.

Q Where is your place of business? A 456 West 17th Street.

Q Is it a grocery business? A Yes, sir; the grocery business.

Q How long have you been at that place in the grocery business? A Five years.

Q What is it, a retail store? A Yes, sir; a retail store.

Q Where do you live? A 456 West 17th Street.

Q In the same place? A Yes, sir; in the same place.

Q Behind the store, or alongside of the store?

A Alongside of the store.

Q Now, before you went into this business, five years ago, what did you do for a living? A I was working in a machine shop.

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Q Where? A Garvin Machine Company.

Q How long had you been working for the Machine Company?

A Five years or six years.

Q Now, you know the firm of Poppe & Company, do you?

A Yes, sir.

Q They are in the wholesale grocery business, are they not? (No answer.)

Q Are they in the grocery business? A Two or three years.

Q Speak up louder. Are they in the grocery business? A Two or three years.

Q Are Poppe & Company in the grocery business, I am asking you, do they do grocery business, that company?

A Yes, sir.

Q What is their business? A Grocery business.

Q How long have you been dealing with them? A Two or three years.

Q How do you deal with them during those two or three years? A C.O.D.

Q Who gave the orders to them? A I gave the orders.

Q They sent the goods on a truck? A Yes, sir.

Q To whom did you pay for the goods? A The driver.

Q Who else do you deal with? A Messrs. Bailey & Hamilton.

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Q What business are they in? A They are in the grocery business, too.

Q How long have you been dealing with them? A Five years.

Q C.O.D. business? A Yes, sir; sometimes C.O.D. and sometimes credit.

Q Who else did you deal with?

MR. NOTT: Have we got to get the name of everybody he deals with? I do not believe it is material.

MR. GUKOR: Except to show the general character of the man.

THE COURT: He cannot prove his own character.

MR. NOTT: Every grocer in town has to deal with somebody.

BY MR. GUKOR:

Q Do you know this Talamini, the driver that was on the stand yesterday? A Yes, sir.

Q How long have you known him? A About three or four months.

Q Was he a driver for Peppe & Company? A Yes, sir.

Q Was he the only driver that brought goods from you
Peppe? (No answer.)

Q Do you understand the question? A I do not understand that.

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Q Was he the only driver from Poppe's? A No, sir.

Q Now, two or three weeks before you were arrested, did you, at any time, tell this man Talamini if he had anything extra you would pay him in cash for it? A No, sir.

Q Did he, two or three weeks before this trouble, deliver to you one case of milk for two dollars, for which you paid him two dollars? A No, sir.

Q Did he about that time, or at any time, deliver to you one case of sauce or one can of sauce for two dollars, and did you pay him for it? A No, sir.

Q Did you ever have any such talk with him, that you would, if he brought any goods for you extra -- you would pay him for them? A No, sir; I never did like that.

Q What dealings did you have with him, what business did you have with him? A Only when I ordered my goods, I paid for my goods, he delivered them.

Q Now, do you remember the time that he got there with some of those cases of milk, condensed milk? (No answer.)

Q You remember that day when he came there with the condensed milk? A Yes, sir.

Q What day of the week was that? A It was Wednesday.

Q What is that? A Wednesday.

Q About what time of the day was it? A About two o'clock in the afternoon.

Q Now, before that Wednesday, when was the last time that

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you ordered goods from Poppe. Do you understand? A Tuesday.

Q The Tuesday before that Wednesday? A Yes, sir.

Q At that time, where did you buy your condensed milk from? A Mr. Poppe.

Q How much condensed milk did you use in your store? A I used about two dozen in three or four weeks.

Q Two dozen in three or four weeks? A Yes, sir.

Q What do you mean by two dozen, two dozen what? A About twenty-four cans.

Q What is that? A Twenty-four cans, -- twenty-four cans of milk.

Q Now, just tell us all that happened at that time on that Wednesday about two o'clock, when this man Talamini came there with this load of goods. Tell these gentlemen. A We was eating inside.

Q Who? A I and Paul, about Wednesday afternoon; we was eating inside, I and Paul, and he told me the order is coming, and I says, "Well, let it come." He was eating inside of the store; then he says the order is coming, and I says, "Let him come in, bring it in." It took about five or six minutes; he says, "He brings in all boxes; did you order those boxes?" I says, "No, I didn't order boxes." When he told me that, I jumped up and I says, "What is that boxes?"

Q To whom did you say that? A I told the driver.

Q Talamini, this driver that was on the stand yesterday, the same man that was on the stand yesterday? A I do not understand that.

Q Was it Talamini? A No, sir.

Q Was it the driver who was on the stand yesterday, that brought in the cases? A Yes, sir.

Q Go ahead; what did he say when you said that?

A He says, "Please leave it here, because this is the nearest place, I leave it here, leave it here until I deliver these goods, big load of truck, big load of goods on the truck", and there was plenty of snow under, "Then I will come back for it." I says, "I have no room, I couldn't keep them goods; there is no room in the store, I couldn't keep it here." He says, "Please leave it here." I says, "I don't want it, carry it out"; he started to carry out some part of it, and he left them five cases, and he put them under the board.

Q Under what? A Under the stand there.

Q The board? A yes, sir; he put them under there, and he says, "As soon as I come, I will take them back;," he says, "Now, it is all right, because it is out of the way".

Q He says, "It is out of the way?" A Yes, sir; then he is going away.

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Q Now, did you and Paul -- by the way, who is this Paul, your clerk? A Yes, sir; my clerk, helper.

Q Did you and Paul help this man carry these boxes from the truck into the store? A No, sir; he carried in himself.

Q Did you and Paul pile up these twenty cases in the middle of the store? A No, sir; he did not bring twenty cases.

Q He put those five cases under this vegetable board? A He put those cases in.

Q Did you at that time, or at any time, pay him eleven dollars for those cases? A No, sir; I did not pay him anything.

Q Did you pay him anything for them? A No, sir.

Q At any time? A No, sir.

Q Did he ask you for forty dollars first, and then you offer him eleven dollars and give him eleven dollars? A No, sir; he did not ask me any money at all.

Q Now, when next did you see this driver? A The next Tuesday, the next day.

Q What day was that? A It was Thursday.

Q What did he do in your store then? A He bring my order.

Q The order from whom? A From Poppe, I ordered.

Q When did you make that order? A Tuesday and Wednesday.

Q Did you speak to him then? A Yes, sir; I told him, "When you going to take these things away; they are in my way, the wood is coming"; I was expecting the wood coming, and he says, "As soon as I deliver this order, I will come back and take them."

Q At that time did you pay him any money, on that Thursday? A Yes, sir.

Q For what was that? A I paid for my order about \$57, or something like that.

Q On that occasion, did he give you a receipt for the money? A Yes, sir.

Q I show you these papers; tell me whether that is the receipt?

MR. NOTT: I don't know that they are material. I have no special objection to them. It is another transaction.

Q Is that the receipt you got? A Yes, sir.

MR. CUKOR: I offer it in evidence.

THE COURT: For what purpose?

MR. CUKOR: As part of the res gestae, if your Honor please, also upon the question of the guilty knowledge of this man.

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THE COURT: I do not see how that affects it.

MR. HOTT: I don't dispute that he left some goods there, and that this defendant paid the bill, but that hasn't anything to do with this milk transaction.

THE COURT: I do not see that it has, either, but I will let it go in now. It concerns another transaction with another party altogether.

(The bills referred to were admitted in evidence and marked Defendant's Exhibits A and B.)

Q Now, when next did you hear about this business?

A The next Tuesday.

Q Just tell us what happened the next Tuesday? A The next Tuesday I was in the barber shop, and as soon as I was through my shave, I seen that driver and another man, I don't know who he was --

Q Who was the other man, did you see him here? A I seen him; he was here.

Q Is that Mr. McKenna? A Yes, sir; he was there, and as soon as I got through with my shave, I walked out, I says, "Hello", to the driver; I says, "Hello, why don't you come and take that milk out?" He says, "That is all right; I came for that"; and then we walked out. As soon as we walked out, I seen another man, two or three standing at the store, and the man held my arm like that (illustrating).

Q Was that Mr. Cronin? A Yes, sir.

Q The police officer on the stand this morning? A Yes; he held my hand; he says, "Come on, get us the milk"; I says, "The milk is in the store, why you hold my arm for, the milk is in the store, go on and take it." I was waiting for him to come back, but he didn't come." We walked in the store. Then as soon as I walked in the store, I called that Paul, and I says, "Paul, come on and take out that milk." They took that away, then they ordered a wagon or an express, I don't know, a truck, and they threw the milk on the wagon and took that away, five cases.

Q At that time, on that Tuesday afternoon, did this driver introduce you to Mr. McKenna, and say, "This is a man that has some milk to sell you?" A No, sir; he did not tell me like that.

Q Did he say that, "Here is a man that has sugar, two barrels of sugar to sell to you?" A No, sir; he did not tell me such a thing at all; he just walked out, and then when we walked out, that man held my arm, and says, "Come on, give me the milk." I says, "You don't want to hold my arm, the milk is in the store, come on and take it. I waited for him to come and take the milk, I have nothing to do with the milk.

Q At the time when this man Talamini, the driver, was in your store on Wednesday, when he left the twenty cases

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or milk, or when he left the milk there, when he was unloading it, was there anybody in your store except Paul and you? A Yes, sir.

Q Who was it? A Mrs. Smith.

Q Is that the lady (Pointing to a lady in the courtroom)? A Yes, sir.

Q Was there anything said between you and the lady at the time when the driver was carrying the goods out of your place? A Yes, sir; she came down; she laughed, and she says, "Mike, why sending back your order for"; I says, "That ain't my order, that is the wrong order." She says, "You have no money, that is why you send that back."

CROSS-EXAMINATION BY MR. NOTT :

Q How long have you been in the grocery business? A Five years.

Q Always at the same place? A Yes, sir.

Q Have you always been in that business for five years? A Yes, sir.

Q Did you ever leave the business? A That I don't understand. Excuse me, I don't know what you mean.

Q I mean just what I say, did you ever leave your business and go away during that five years? A About two months, something like that.

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Q What is that? A About two or three months.

Q Weren't you away for about a year? A No, sir.

Q How long were you away at that time? A No, sir; I didn't was away a year.

Q How long were you away? A About three or four months.

Q When was that? A I don't remember when it was.

Q Do you mean to tell the jury you were away for three or four months, and you cannot tell when? A I cannot tell when.

Q You cannot? A No, sir.

Q Was it last year? A No, sir.

Q The year before? A Yes, sir.

Q You cannot tell the month, can you -- what month was it when you left? A I don't remember what month it was.

Q Was it in the winter, summer, spring or autumn?

A It was winter time, I think.

Q That is a pretty busy season with you, isn't it, winter is a pretty busy time with you, isn't it? A Well, I have no --

Q What is that; speak up. Winter is a busy time with you in your business? A Well, not busy all the time, I do something.

Q Who did you leave your business to when you left for

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three or four months? A I sold it before.

Q What is that? A I sold it to a man.

Q What is that? (No answer.)

Q Who did you leave it to when you left, what is the name? A Gillalian.

Q Was that this same store? A Yes, sir.

Q When you came back, after three or four months, you bought it back? A Yes, sir.

Q Didn't you just leave him in charge while you were away? A Well, they couldn't run the business, and then I came back and took it back.

Q Where did you go when you went away? A I was in what you call that -- Connecticut.

Q You left the State of New York? A Yes, sir.

Q Where did you go in Connecticut? A I go there to a friend of mine.

Q Where? A Well, I don't know the city now.

Q Isn't it a fact that you left because two Central Office men were looking for stolen goods in your store, just before you left? A No, sir; I don't know about that.

Q Why did you leave your business? A Because I gave it to him, I sold it to him.

Q You sold it to him? A Yes, sir.

Q You gave him a bill of sale? A I have a bill of

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Q You have? A Yes, sir.

Q What did he pay you for it? A Well, about a thousand dollars.

Q Don't you know what he paid you for your own business?
A A thousand dollars.

Q Is it a thousand dollars, or about a thousand dollars?
A About a thousand dollars.

Q About a thousand? A Yes, sir.

Q What is the exact amount, don't you know? A Well, I don't remember that.

Q What did you pay him for it when you came back? A The same thing.

Q The same thing? A Yes, sir.

Q Did any money pass at all on either sale? A What?

Q Did he pay you in cash? A No, sir; he was owing money.

Q Now, tell us where you went when you left the State?
A I don't remember the city.

Q You don't, you were three or four months there and you don't remember the city, is that right -- were you in one place all the time? A Yes, sir.

Q You don't know its name? A Well --

Q Are you a married man? A No, sir.

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Q What is that? A No, sir.

Q Now, when you came back, you went on with that business again, is that right? A Yes, sir.

Q You were dealing with Poppe on a C.O.D. basis?
A Yes, sir.

Q Whenever he sent goods there, you paid for them on the spot, is that right? (No answer.)

Q When he sent goods up, you paid for them? A Yes, sir; I paid for them.

Q On delivery? A Yes, sir.

Q You sell condensed milk in your business, don't you?
A Yes, sir.

Q And you know the value of a case of condensed milk?
A Well, I don't know very much about that.

Q What is that? A I don't know very much about that, about six dollars, or something like that.

Q You know mighty well that if you could pick up twenty cases for eleven dollars, you would make a good deal of money on it, wouldn't you? (No answer.)

Q If you could pick up twenty cases of condensed milk for eleven dollars, you could sell it for a good profit?

A I can't sell that -- how could I sell twenty cases?

Q You just told the jury you were selling it in your business -- you sold condensed milk? A yes, sir; I sold it, only about in a month only two dozen, three or four weeks.

Q You don't know anybody else you could sell a case to?
A No, sir.

Q Now, do you tell this jury that Talamini did not ask you to buy some of this stuff?
A What is that? I do not understand again.

Q Did he ask you to buy any of this condensed milk?
A No, sir.

Q What is that?
A No, sir.

Q He did not ask you to buy it at all? (No answer.)

Q He did not ask you to buy any of it?
A No, sir.

Q Didn't say a word to you about buying it?
A No, sir.

Q Didn't say he wanted to sell it?
A No, sir.

Q You know now that he had stolen it, don't you?
A No, sir; I don't know.

Q You know it now?
A Yes, sir.

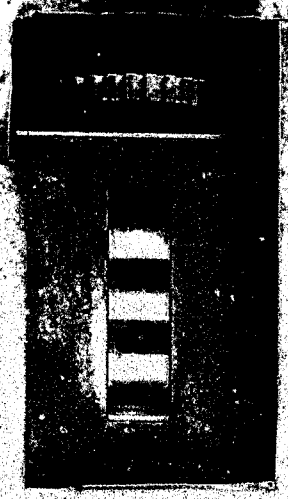
Q Now, do you still tell the jury that when he came there with that stolen property on his truck, he was not trying to sell it to you at all?
A No, sir.

Q What was he trying to do with it?
A He wanted to leave it there.

Q He wanted to leave it?
A Yes, sir.

Q He didn't say a word about getting any money for it?
A No, sir.

Q He did not want any money for it, did he?
A He



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to leave it here until "I come back for it"; I says,
"I don't want it at all, because I have got no more room."

Q He didn't want any money for it at all? A No, sir.

Q You know that the goods were stolen? A I didn't
know the goods were stolen.

Q You know it now? A I know it now.

Q You heard him say so? A Yes, sir.

Q Now, where is your place? A 456 West 17th Street.

Q 456 West 17th Street? A Yes, sir.

Q That is between what avenues? A Near Tenth Avenue.

Q Near Tenth Avenue? A Yes, sir.

Q Where is Poppe's place? A Greenwich Avenue and
Washington Street.

Q Washington Street and Greenwich Street -- they run
parallel? A Yes, sir; that corner.

Q Where is Poppe's place? A I don't know the number.

Q Washington and Gansevoort Streets? A Yes, sir;
Washington and Gansevoort Street.

Q Washington and Gansevoort Street? A yes, sir.

Q That is downtown from you, isn't it? A yes, sir.

Q Downtown? A Yes, sir.

Q Do you know where the Erie pier is? A No, sir.

Q What is that? A No, sir.

Q I thought you did not, when you gave your testimony,
or you would not have given it. Don't you know that when

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Q. After leaving the Erie pier, he would have to go to Peppe's place before he got to your place, don't you know that?

A. I don't know.

Q. What? A. He said, "This is the nearest place", he said.

Q. Just answer my question, do you know or don't you know, if you don't, say so. Do you know that after Talamini left the pier, the Erie pier, he would have to go to Peppe's place before he got to your place with that load?

A. I don't know about that.

Q. You don't know? A. No, sir.

Q. Now, you say he drove up on this afternoon with a truckload of goods, is that so? A. Yes, sir.

Q. And he told you that he wanted to leave them, or a part of them, there? A. Yes, sir.

Q. Did he say why he wanted to leave them there? A. He says because they would not fall, the horses would not fall.

Q. He had gone out of his way to go to your place? (No answer.)

Q. He had not any order for you on the truck, had he? A. No, sir.

Q. The rest that he had on the truck was for Peppe, wasn't it? A. I don't know who it was for; it was a loaded truck.

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Q He was Poppe's driver, wasn't he? A Well, I don't

know.

Q Did he tell you he came from the pier? A He told me
he came from there.

Q From the pier? A Yes, sir.

Q He was Poppe's driver, getting Poppe's goods at the
pier, wasn't he? (No answer.)

Q Do you understand? (No answer.)

Q Did you understand that question? A Yes, sir; I
understand it.

Q Well, then, please answer it? A He was Poppe's
driver.

Q Driving Poppe's truck from the pier? A Yes, sir.

Q You tell this jury that he came to your place before
he went to Poppe's, is that right, and said that he had to
leave all these cases with you because the load was heavy,
is that right? A Yes, sir.

Q How many of these cases did he take off the truck?

A About a few, because I didn't count how many.

Q How many, as near as you can put it? A Well, three
or four cases.

Q Three or four? A Yes, sir.

Q Is that all he took off? A Yes, sir; he took off
five cases and left them.

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Q How many did he take off altogether, that is what I want to know? A Three or four cases he took off.

Q He took off five cases that he left with you? A Five cases he left there.

Q And then three or four more? A But he took them out; he did not leave all the cases in.

Q How many did he bring in? A About eight cases, eight or nine cases.

Q Eight or nine cases? A Yes, sir.

Q You saw him bringing them in? A Yes, sir -- well, I didn't see him.

Q What is that? A I saw afterwards, when I walked out.

Q Did you see him bringing the cases into your store? A Well, Paul told me he brings the cases in.

Q Did you see it; can't you answer that? A Yes, sir; I saw it.

Q Why did you tell him to take some out and leave others in there? A Well, I told him to take them out.

Q Why did you tell him to take some out and leave others there?

MR. CUKOR: I object to that, because it assumes a state of facts not in evidence.

Q Did you tell him to take all? A I told him to

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take them all, but he begged me to leave those five cases there.

Q Why did he want to leave those five so bad? A He says, "I come back, and I will take them."

Q Why did he want to leave five with you? A Because he says the load is heavy, and he says, "I will leave it here."

Q Did you see what was on the load? A Well, bags and boxes, and like that.

Q Did you see what was on the load? A No, sir; I did not get a look at it.

Q If you didn't see, don't say what was on it; who took all these cases out? A Himself.

Q And Talamini? A Yes, sir.

Q Did you put the others in under the counter? A No, sir; he put them in himself.

Q He put them in there? A The driver himself.

Q Now, that was on Wednesday, you say? A That was Wednesday, yes, sir.

Q You don't know what became of these other goods at all? A What cases is that? I don't know.

Q The cases that were not brought in. Do you know what became of the other cases besides the five cases? A No, sir; I don't know nothing.

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Q Then they disappeared off the face of the earth; you don't know where they are? A No, sir; I don't know where they are.

Q Now, what day were you arrested? A Tuesday.

Q So that these cases stayed in your place Wednesday, Thursday, Friday, Saturday and Sunday and Monday and Tuesday, is that right? A Yes, sir.

Q And you never sent word to Poppe that they were there? A Because I was expecting --

Q Did you ever send word to Poppe that they were there? A Because I was expecting him to come back.

Q Did you? A No, sir.

Q You let them stay all these days under that counter? A Yes, sir.

Q You didn't think it was queer that Poppe's driver should leave these cases there? A Yes, sir.

Q Did you think it was a funny thing to do? A Well, because he told me --

Q Did you think it was a funny thing to do, or didn't you think so? A I thought it was funny --

Q But you never told Poppe about it? A I didn't go to Poppe.

Q You never sent word to him? A No, sir.

Q How far is his place from yours, how many blocks?

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Q Ever or not, isn't it? A Eight blocks.

Q You never sent word to him at all? A No, sir.

Q Now, had you ever seen McKenna before you saw him by the barber shop? A Yes, sir; I seen him in the barber shop.

Q Did you ever see him before that? A No, sir.

Q You never had any trouble with him before that?

A No, sir.

Q You never did anything to him, or he never did anything to you before that? A No, sir.

Q Did you ever see Gronin before that day? A No, sir.

Q He never did anything to you, nor you to him?

A No, sir.

Q Now, do you tell this jury that Mr. McKenna has testified falsely?

MR. GUKOR: I object to that, if your Honor please, as characterizing the testimony of the witness; that is for the jury to say.

THE COURT: Objection overruled.

Exception.

Q Do you say that Mr. McKenna testified falsely when he testified to this jury that he told you that Talamini introduced him; did he introduce him to you as his friend? A No, sir; he did not introduce him.

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Q He did not introduce him at all; A No, sir;
that is when I --

Q Did McKenna say that he had two barrels of sugar
which he wished to sell to you at your own price? A No, sir.

Q So, if he so testified, that is false, that is not
true, is it? A No, sir.

Q Did he tell you that he was employed on the docks?
A No, sir.

Q Did he say anything about the docks? A No, sir;
he did not tell me anything about them.

Q So if he said that, that is not true? A He don't
tell me anything about that.

Q Did Talamini tell you that McKenna was all right?
A No, sir; he did not tell me that.

Q Did he tell you that he was the fellow who sent up
those twenty cases of milk? A No, sir.

Q Did McKenna ask you, or say to you, "Well, they were
all right, weren't they?" And did you say, "Yes, they were
all right." A What all right? I don't know what you
mean.

Q The milk. Did he say -- did Talamini say, "He is
all right, he is the fellow that sent me up with those twenty
cases of milk I sold you, and they were all right, weren't
they?" And did you say, "Yes, they were all right?"

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A No, sir; I did not.

Q Did he ask you whether you had sold them all? A No, sir; he did not ask me that.

Q Did you say that some were sold and some you got around in the store yet? A No, sir.

Q This whole conversation that he has told this jury is false, is that right? (No answer.)

Q This whole talk that he has told is untrue, is that right? A Yes, sir.

Q Now, do you remember that Officer Cronin came over and took hold of you? A Yes, sir.

Q Did you tell him you didn't have any milk there at all? A No, sir; he asked me, and I says, "The milk is in the store".

Q So, when he testified, a little while ago, that you denied having any milk, he has testified to what is false, too, is that right?

Objected to. Objection overruled. Exception.

Q When Officer Cronin swore here that you said that you didn't have any milk there at all, was that true, or was it false? A No, sir; that ain't right; that ain't true.

Q Now, when you got around to the store there, did you say you wouldn't tell him where the milk was? A Yes, sir; I told him.

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Q Did you say you would not tell him? A I told him the milk is just right here.

Q You showed him that right away? A Yes, sir.

Q How much wood was there over that milk? A Wood? About a hundred bundles or something like that.

Q A hundred bundles? A Yes, sir.

Q When did that wood come in? A Just the same day.

Q The same day you were arrested? A Yes, sir.

Q How long had you been out of wood? A I had a little there yet.

Q So you were not out of wood at all? A No, sir.

Q You had not run short of wood? A No, sir.

Q Why did you get those 100 bundles in? A Because I ran short, just only at that time, it was Friday coming.

Q Was it inconvenient for you to have those five cases under the counter? A I don't know what "inconvenient" is; I don't understand.

Q Were they in your way; did you want the room for something else? A Yes, sir; that is the place for my wood.

Q What do you usually keep in there? A Wood.

Q What is that? A Wood.

Q Full of wood? A Yes, sir.

Q In spite of the fact that it was in your way, you never sent word to Peppe to come and get it? A I was expect-

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ing he would come.

Q Did you send word? A No, sir; I did not send him word.

Q Now, I ask you again, do you tell this jury that Talamini did not ask you to give him some money for that property? A No, sir; I did not give him money.

Q What is that? A I did not give him money.

Q Did he ask you for any money for it? A No, sir.

Q He didn't want any money for it at all? A No, sir; he did not ask me for money, for it.

RE-DIRECT EXAMINATION BY MR. GUKOR:

Q Have you ever been arrested in your life? A No, sir.

Q Never been convicted in your life? A I don't know what that means.

Q Never been in trouble before in your life? A No, sir.

BY THE COURT:

Q Ever been sent to prison, that is what "convicted" means? A No, sir.

Q Do you keep books in your business? A Yes, sir.

Q Do you keep books of sales? A Of sales, no, sir.

Q Do you keep an account of what you sell in any book?

A Yes, sir.

Q Always? A Yes, sir.

Q Put down everything you sell? A yes, sir -- well,

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only when I give trust I put it down.

Q When you give credit? A Yes, sir.

Q But where you are paid in cash, you don't put it down in any book? A No, sir.

Q You rely entirely on your memory to know what business you do? A Well, I don't put it down when we get cash -- we don't put it down at all.

Q You only put it down when somebody pays you money? A Yes, sir.

Q Then you don't know how much you sell on a particular day, or in any particular week? A No, sir; I got a register there.

Q What is that? A I have a register there.

Q A register for what? A Well, what I get in, how much money I get in and how much money I give out.

Q Do you know what kind of goods you sell on any day of the week? A No, sir; I cannot tell.

Q Why don't you keep books which would show whether you sold any milk about that time or not? A Because I got all kinds of stock.

THE COURT: That is another reason for keeping it, it seems to me.

BY MR. CUKOR:

Q How many people have you got in your place, one clerk

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Q Yes? A No and another helper, Paul and me.

Q You call yourself a clerk too? A No, sir.

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

BY MR. GUKOR:

Q Mr. Poppe, you are a member of the firm of Poppe & Company down there on Washington Street? A Yes, sir.

Q Do you know this defendant? A Yes, sir.

Q How long have you known him? A I should judge about between two and three years.

Q Been dealing with him during that time? A Yes, sir.

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

Q Do you know his reputation for honesty; is he an honest man?

THE COURT: He cannot answer that.

Q Do you know his reputation among those who know him?
A No, sir; I don't, only in a business relationship.

Q What is it in a business relationship?

THE COURT: That will not do. The witness says he does not know his reputation, and, therefore, you cannot prove reputation by a man who does not know it.

Q Do you know his reputation in a business way? A Yes, sir.

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the business world? A Yes, sir.

Q What is it?

THE COURT: Mr. Peppe, it is not what you know of him, in your own way. Do you know what his reputation is among the persons who deal with him?

THE WITNESS: No, sir; I do not.

BY MR. CUKOR:

Q Are you still dealing with him? A Yes, sir.

CROSS-EXAMINATION BY MR. HOTT:

Q You deal with him on a C.O.D. basis? A Yes, sir.

Q You would deal with anybody on a C.O.D. basis that paid you for your goods? A Yes, sir.

Q You were the employer of this Talamini? A Yes, sir.

Q Did you miss any other property, any property from your store? A Yes, sir; I have.

Q What is that? A I have.

Q Did you discharge any of your employees for that?

A I did.

MR. CUKOR: I object to that as immaterial, irrelevant and incompetent.

THE COURT: I sustain the objection.

Q Do you know where the Erie pier is? A Yes, sir.

Q Between what streets is that? A Well, I should judge in the neighborhood of Laight Street, or Franklin

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...down in that section.

Q. It is near Duane Street? A Yes, sir.

Q. It is considerably downtown from your place of business? A Yes, sir.

Q. So that if a person was driving from the Erie pier, one of your drivers, they would come to your place of business before they would get up to 17th Street, to this defendant's place? A Yes, sir.

GUSTAVE A. PERKY, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CUKOR:

Q. What firm are you connected with? A With McDermott, & Binger Dairy Company.

Q. Selling what kind of goods? A We sell milk.

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

Q. How long have you known him? A I know him for about the last four years, going on five.

Q. During that time did your firm deal with him? A Yes, sir.

Q. Still dealing with him? A Yes, sir.

Q. Now, do you know other people that know him and deal with him? A I have seen several salesmen, but I never had any conversation with them in regard on business.

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Q Well, do you know his reputation?

THE COURT: You must lay your foundation. You will have to prove what his reputation is among men that know him. This witness says he does not know anybody that knows the defendant particularly, but he has seen salesmen but has not had any conversation with them. You are only allowed to prove general reputation, and you can only prove it by persons who have had occasion to know it. He says he does not know it.

ROBERT A. BAILEY, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CUKOR:

Q You are a member of the firm of Bailey, Hamilton & Company? A Yes, sir.

Q Where is your place of business? A 413 East 14th Street.

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

Q How long have you known him? A About five years.

Q Have you been dealing with him during the five years? A Yes, sir.

Q Are you still dealing with him? A Yes, sir.

Q Dealing with him on credit and for cash? A Yes, sir.

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Q Do you know other people that know him, Mr. Bailey?

A Yes, sir.

Q Do you know his reputation for honesty among those people that know him? A Yes, sir; some of them.

Q What is it? A I personally sell him my goods, and I made inquiries as we usually do before we give credit, we find out about a man's standing, and so far as my knowing and what these people have said, it was very good.

CROSS-EXAMINATION BY MR. HOTT:

Q What kind of goods do you sell him? A Teas, coffees, canned goods and so forth.

Q How much credit did he have with you? A Probably as high as seventy-five to one hundred dollars.

Q If by any chance he was getting condensed milk at eleven dollars for a hundred and fifteen or a hundred and twenty dollars worth, why, his credit ought to be pretty good as to solvency? A I hardly understand that question.

Q I say, if he was picking up condensed milk which is worth \$115, paying \$11 for it, he ought to be solvent, oughtn't he, and good for \$75 credit? A Yes, sir; anybody could be solvent in a case like that.

A L I C E S M I T H , a witness called on behalf of the defendant, being duly sworn, testified as follows:

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EXHIBIT EXAMINATION BY MR. GUKOR:

Q Where do you live? A 457 17th Street.

Q Where is that with reference to the defendant's store?

A That is right across the way, across the street from me.

Q Do you remember a day last December, about two or three o'clock in the afternoon, seeing this driver that was on the stand yesterday in his place? A Yes, sir.

Q Did you at that time have any talk with the defendant, in the presence of this driver? A No, sir; it was the driver was carrying out some boxes as I was going into the store, and I said to him, calling him by name, "Mike", I says, "why don't you pay for your groceries, and not be sending them back"; "Well", he says, "that is not my order", he says, "I do pay for my groceries; it isn't my order"; I says, "That ain't so, you would not be sending them back if you were paying for them"; with that the man kept on carrying out some boxes or groceries, I don't know which, like groceries.

Q Who was it that carried them out? A This man I seen here on the stand yesterday.

Q The driver? A Yes, sir.

Q That is all you know about it? A Yes, sir; that is all I know about it.

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CROSS-EXAMINATION BY MR. NOTT:

Q Did you ever see that driver before that day? A No, sir.

Q Ever seen him since? A No, sir; only in court yesterday.

Q What day was it you saw him? A Well, I don't know the day of the month.

Q Do you know what month it was? A Well, it was before Christmas.

Q Well, there are eleven months before Christmas in the year? A It was a couple of weeks before Christmas.

Q You tell the jury that you recognize that driver? A Yes, sir; I recognize him.

Q Never seen him before or since? A No, sir.

Q How many seconds did you see him at that time? A I seen him coming on with a box of groceries.

Q How many seconds did that last? A I don't know; I could not say.

Q Did you look at his face specially? A Well, I had moved out of the way to let him carry out the boxes.

Q Did you look at his face specially? A The same as I look at any of these gentlemen here.

Q Do you think you would recognize any of these gentlemen if you saw them two months from now? A Well, I think

I would.

Q You have a good memory for faces? A Pretty good.

Q Did you go into the store? A I went in to get some groceries.

Q Were there any men in there when you went in? A No, sir; there were Mike and the man, and this man carrying out those boxes of groceries.

Q Are there steps into the store, do you go up steps? A No, sir; right flat in; I had to stand one side to let him come out with the box before I went into the store.

Q Well, there is a store window there? A Yes, sir.

Q So that they could see you coming in? A Yes, sir.

Q Well, after you left there, where did you go? A I went over to home; that day I was going to --

Q Did you notice the truck any more? A No, sir.

Q You don't know whether he carried it all back in again or not? A No, sir; I could not say.

BY THE COURT:

Q Do you know what were in the boxes he carried out, or what kind of boxes they were? A They looked like these regular grocery boxes, either tomato boxes or milk boxes.

Q Or any kind of things? A Well, they were boxes.

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

BY MR. GURON:

Q Will you look at the box right in front of you there.

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Is that the same kind of boxes that you saw? A I could not tell the box.

Q Was it the same kind? A It was a box something like this; I could not say that that was the box.

Q Did you see any boxes inside the store? A Yes, sir; there were some lying on the floor, right in front.

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

DIRECT EXAMINATION BY MR. CUKOR:

Q Are you working for the defendant, this man here?
A Yes, sir.

Q What place? A 456 West 17th Street.

Q How long have you been working in that store? A One year.

Q Do you know this driver, Telamini that was in the chair yesterday? A Yes, sir.

Q Did you see him in this store? A The driver?

Q yes. A Yes, sir.

Q How many months or weeks before the defendant was arrested did you see him? A I can't understand.

Q For how many months did you see the driver? A I can't tell you; I seen him three or two months.

Q Three or four months? A Three or two.

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Q Now, did you, two or three weeks before this man was arrested, -- did you hear him say to the driver that if he has anything extra he could bring it to him and he would pay him for it; did you hear that? A I cannot understand.

MR. CUKOR: I have an interpreter here, and there is an official interpreter down in the Special Sessions.

THE COURT: I will not wait for him. You can have him here by two o'clock. If the official interpreter is not available, then you can have your man here and have him sworn as an interpreter. You are excused, gentlemen, until two o'clock. Meanwhile bear in mind the usual statutory caution which I have given you, not to converse with each other or anyone else about the case, and to come to no conclusion until it is finally submitted to you.

(The Court then took a recess until 2 o'clock.)

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AFTER RECESS.

PAUL TECHITAN resumes the stand.

(Garabed Burnjik was sworn as an interpreter.)

BY MR. GUKOR:

Q Do you remember the day when this driver that you saw on the stand yesterday, the driver, brought some milk into the store, some cases of condensed milk? A yes, sir; I remember.

Q What day of the week was that? A Wednesday.

Q Now, where were you at the time when he brought in the milk? A I was in the store.

Q Now, just tell us all that happened at that time?

A We were eating dinner at that time, and I was sitting near the door to watch the store; just after, while we were eating, Poppe's driver walked in, and I told the boss that the driver had come; the boss told me to let the driver take the goods in, "You keep on eating;" I told him that all the goods they were bringing in were boxes, I asked him if he had ordered so many boxes; then he got up himself and started to speak to the driver.

Q What did you say to the driver, and what did the driver say to you? A Well, as far as I could understand, he was talking to the driver to take these goods away, because he

Q Now, the driver these were not his order, and that the driver told him he might leave them there for awhile, and might call for them again.

Q Well, what happened then? A He took some of the boxes away, and he left five there, and desired the boss to give him the permission of leaving them there, he might call for them again because it was a snowy day.

Q While this driver was taking some of these boxes back to the wagon, who was in the store? A Mrs. Smith.

Q The lady that was on the stand this morning? A Yes, sir.

Q Did you hear what she said to the boss? A The boss told him -- the woman told him that why he was sending these goods back was he didn't pay for them; that is what I heard from the boss so.

BY THE COURT:

Q Now, I want to know whether he heard this, or did the boss tell him to say it. Did he hear it?

THE INTERPRETER: Yes, your Honor.

BY THE COURT:

Q Why did he say he understood that he said it?

A The boss explained more to me after.

BY MR. CUMOR:

Q Now, how many cases were left in the store after the driver had left? A Well, he said five boxes were left,--

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He doesn't know how many.

Q Who said so? A He said.

Q Did you help this driver to carry the cases from the truck into the store? A No, sir.

Q Did the boss help him do it? A No, sir.

Q Now, where were those five -- A We were busy eating at that time.

Q Where were those five boxes put, what part of the store? A They were put under the vegetable stand there.

Q Who put them there? A He put them there; we told him that there was no space.

BY THE COURT:

Q Who put them there? A This driver; we told him there was no space, but the driver pushed them under the stand.

BY MR. CUKOR:

Q Were you in the store all the time while this driver was carrying the boxes in and out? A Yes, sir.

Q Did this defendant pay to the driver any money at that time? A No, sir; I did not see any.

Q When next did you see this driver after that Wednesday? A Thursday he brought an order.

Q When next after that Thursday did you see the driver?

A I did not see him after Thursday, the day that Mike was

arrested.

Q Now, do you know what day that was? A I don't remember.

Q Who did the driver come with at that time? A Two men.

Q Were those the two officers that you saw on the stand, one yesterday and one to-day? A Yes, sir; they were the men.

Q Where were you at the time that they got to the store? A I was in the store when the driver came and asked for the boss; I told him that the boss had gone to get shaved.

Q What was the next thing that you knew about it? A I showed them the barber shop where he was getting shaved; they went there, and then they returned back to the store together.

Q Well, what happened when they got back to the store?

A When the boss came into the store, he told me to take these boxes away, so that they take them, they carry them out.

Q Did you, two or three weeks before this time, before this arrest, did you hear the driver say at any time to your boss, or did you hear your boss, two or three weeks before this arrest, say to the driver that if he had anything extra he would buy it for cash from him?

Objected to. Objection sustained. Exception.

CROSS-EXAMINATION BY MR. NOTT:

Q Do you still work for the defendant? A Yes, sir.

Q What does he pay you? A Six dollars.

Q Six dollars a week? A Yes, sir.

Q Is that all? A Yes, sir; because I am green in this country.

Q How long have you been in this country? A Two years.

Q Do you board and lodge with him? A Yes, sir.

Q Anything extra, does he pay you any extras?

A No, sir.

BY THE COURT:

Q When you heard the boss talking with the driver, in what language did he talk? A In English.

Q How do you know what he said? A I understand partly, and the boss explained to me what it was all about.

Q When did the boss explain to you? A When they were discussing about leaving the cases, and then I asked him what it was about, and he told me what it was.

Q What day? A Wednesday.

Q Did he speak to you about it afterwards? A Yes, sir.

Q When? A I cannot remember, exactly.

Q When was this Tuesday, when was it? A Wednesday.

Q While the cases were being brought in? A Yes, sir.

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

DIRECT EXAMINATION BY MR. CUKOR:

Q What business are you in? A Butter, eggs and cheese.

Q Where is your place of business? A 874 Washington Street.

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

Q How long have you known him, Mr. Cohen? A I know him about five years.

Q During the five years have you been dealing with him?
A Yes, sir.

Q Do you know other people that know him? A Oh, several.

Q Do you know the defendant's reputation for honesty?
A I know him to be always honest.

THE COURT: It is not what you know. Do you know his reputation?

THE WITNESS: Yes, sir.
BY THE COURT:

Q Among those who know him? A Well, they all speak well of him; I never knew anything wrong.

BY MR. CUKOR:

Q You know his reputation among those who know him?

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A Yes, sir.

Q What is that reputation? A It is pretty good; I never heard anything wrong about him.

Q What did you hear about him? A I heard nothing wrong about him.

Q What did you hear? A Everything good, as I know of.

CROSS-EXAMINATION BY MR. NOTT:

Q There are several people that know him, how many do you know? A Several dealers that deal with him that I have asked in reference to him when I started dealing with him.

Q About four or five? A Yes, sir.

Q You know four or five people that know him, and that is your idea of his reputation being good in the community, it is based on what four or five people tell you, is that right? A Yes, sir; and generally his references.

BY THE COURT:

Q You deal with him on credit or C.O.D.? A Yes, sir.

Q How much credit do you give him? A About \$100 a week.

BY MR. CUKOR:

Q He never asked you for any more credit, did he? A No, sir; he has not.

MR. CUKOR: The defence rests.

TESTIMONY CLOSED.

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MR. GUKOR: I renew my motion that your Honor direct this jury to acquit upon all the grounds mentioned in the motion heretofore made.

THE COURT: Motion denied.

Exception.

MR. GUKOR closes the case on behalf of the defendant.

MR. HOTT closes the case on behalf of the People.

THE COURT: I don't suppose, gentlemen, that you care to take this case this afternoon. In that event I will let it go over until to-morrow morning, or charge you now, just as you like.

THE FOREMAN: To-morrow morning, your Honor.

THE COURT: Remember, gentlemen, the caution I am obliged to give you at each adjournment, not to converse with each other or anyone else about the case, and to form no express no opinion upon it until it is finally submitted to you.

(The Court then adjourned the further trial of the case until to-morrow, Thursday morning, March 16, 1905, at 10:30 o'clock.)

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New York, March 16, 1905.

TRIAL RESUMED.

The Court's Charge, McMahon, J.

Gentlemen of the jury: The defendant is indicted for criminally receiving stolen goods knowing the same to have been stolen.

The law upon that subject which it is necessary I should call your attention to reads as follows: "A person who buys or receives any stolen property, or any property which has been wrongfully appropriated in such a manner as to constitute larceny, according to this chapter, knowing the same to have been stolen, or so dealt with, or who corruptly for any money, property, reward or promise or agreement for the same, conceals, with-holds or aids in concealing or with-holding any property knowing the same to have been stolen, or appropriated wrongfully in such a manner as to constitute

larceny under the provisions of this chapter, is guilty of the crime of receiving stolen goods."

Now, gentlemen, you have heard the testimony in this case and the one particular fact for you to deter-

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mine is: Were these goods when delivered in the premises of the defendant-- which is conceded-- did he know they were stolen; or when he retained them there for a certain period, according to the testimony offered by the people, concealed from view under this counter, did he know then they were stolen goods?

Now, you have got to determine the question of guilty knowledge from the testimony offered by the people and by the defence. You will consider it carefully and weigh each circumstance according to its worth. It is contended by the people that this defendant bought more than one hundred dollars' worth of property for eleven dollars. That is a circumstance to be considered as to whether that was not a sufficient reason for putting him on his guard as to the right of the person disposing of the property to dispose of it.

Secondly, you have the testimony of the people that he denied the possession of this property; so, too, you have the denial of the defendant and his associate and clerk that he had nothing to do with the receiving of the property and that he claimed at any time to be the owner thereof, or that he attempted to steal it, or that he denied that he had some portion of it on his premises.

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Of course, there is a direct conflict of evidence, and it is for you, gentlemen of the jury, to determine which of the witnesses tells the truth. To do that you have to consider fairly and justly all the circumstances which the testimony develops. You have the right to consider the interest which the witnesses may have in the case. Of course, it goes without saying that the defendant always has a very great interest in the deliberations of a jury before whom he is on trial. You have a right to ask yourselves what motive could the officer have, or both officers, in charging this defendant with this offense, unless they had reason to believe him guilty. If you find that there was some motive behind it which might influence their testimony, give it such weight as in your opinion it deserves.

Now, you have the admission of the thief who stole these goods that they were stolen; there is no doubt about that; you have the testimony as to the number of cases delivered; you have also the testimony for the defense, not only of the defendant himself but the testimony of the only other party, disconnected entirely with the case, however, that is Mrs. Smith; but inasmuch as she fixes it as before Christmas you have got to take

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that into consideration, whether it was this case, or whether it was this day and this man that she describes.

It does not appear that Mrs. Smith speaks Armenian, and it does not appear that the defendant's employe speaks English. Nevertheless, she claims that she carried on quite a hamorous conversation with him. Weigh all these circumstances, as I say, gentlemen, and give them such consideration as they deserve and come to a just conclusion.

If you have good reason to believe that this defendant received these goods in his premises, or that during the time that he kept them there, at anytime during the week, he knew they were stolen, then that would bring him within the definition of the Statute, and your verdict should be guilty of criminally receiving stolen goods knowing the same to have been stolen.

The people are obliged to make out their case beyond a reasonable doubt; that means precisely what the words imply: a doubt based upon good and sufficient reasons, not a mere surmise or theory or suggestion made by counsel, or otherwise arising, but it must be a fair and reasonable doubt such as would influence you gentlemen in the important affairs of your daily lives and control your action.

Unless such a doubt

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exists in your minds after carefully considering the case then the people will be justified in claiming a conviction. If any such doubt exists the defendant is entitled to the benefit of such doubt and to an acquittal.

MR. CUKOR: I except to that part of your Honor's charge wherein your Honor was commenting on the testimony of Mrs. Smith.

THE COURT: I meant to refer to the employe of the defendant who testified to a conversation and afterwards said that he didn't understand it, but learned it afterwards from the defendant. That is the point that I wanted to make. I remember now that the defendant himself speaks English, but I intended to refer to the witness Paul.

MR. CUKOR: I ask your Honor to charge that the defendant is not bound to prove his innocence.

THE COURT: That goes without saying.

MR. CUKOR: The burden of satisfying the jury of the defendant's guilt beyond a reasonable doubt rests upon the prosecution throughout the whole case.

THE COURT: I will charge that. The law presumes the defendant to be innocent and that presumption remains with him until it is removed by your verdict.

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MR. CUKOR: I ask you Honor to charge that if the jury have a reasonable doubt as to the defense interposed herein the defendant is entitled to an acquittal.

THE COURT: A reasonable doubt as to what?

MR. CUKOR: As to the defense.

MR. NOTT: If they have any reasonable doubt as to the people's case--

THE COURT: Do you expect them to reasonably doubt your defense? I decline to charge that. I do say to the jury that if a reasonable doubt exists as to the guilt of the defendant he is entitled to the benefit of that doubt and to an acquittal.

MR. CUKOR: I respectfully except to your Honor's refusal to charge as requested and also to the modification.

THE COURT: In the first place, I don't understand the request.

MR. CUKOR: I will put it over again. If the jury have a reasonable doubt as to the defense interposed--

THE COURT: A reasonable doubt as to whether the defense is exact or otherwise?

MR. CUKOR: As to the truthfulness of the defense and the truthfulness of the story.

THE COURT: If they have a reasonable doubt as to the truthfulness of the defendant he is entitled to the benefit of that reasonable doubt and not to be believed?

MR. CUKOR: I take an exception to that.

THE COURT: Of course, if they doubt his word they won't believe him.

MR. CUKOR: If the evidence is evenly balanced in the minds of the jury the defendant is entitled to an acquittal.

THE COURT: I have charged already that the people are obliged to prove their case beyond a reasonable doubt.

MR. CUKOR: I take an exception to your Honor's refusal to charge.

I ask your Honor to charge that if the jury believe that any witness in this case knowingly testified falsely as to any material fact in the case they must disregard that part of the testimony, and they may disregard his entire testimony.

THE COURT: I will charge that if the jury have

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any reason to believe that any of the witnesses has wilfully and deliberately sworn falsely they are at liberty to throw out his entire testimony.

MR. GUROR: I ask your Honor to charge that there were finding of this property, even if the jury believe that it was stolen property, in the possession of the defendant is not sufficient in itself to warrant a conviction.

THE COURT: I charge that it is entirely a question for the jury to determine.

MR. GUROR: I take an exception to that refusal to charge.

THE COURT: I am not going to charge on the facts of the case so you might just as well abandon any further requests on that score; the jury are the supreme judges of the facts.

The jury retired and returned a verdict of guilty as charged in the indictment of criminally receiving stolen property knowing the same to have been stolen.

MR. GUROR: I ask that the defendant be remand-

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ed until a week from to-morrow. He is alone in this city and wants to regulate his business affairs. On Monday I have to go into the trial of a homicide case before Mr. Justice Fitzgerald.

THE COURT: We do not like to keep prisoners so long awaiting sentence after conviction.

Defendant remanded.

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