

START

984

CASE

10
COURT OF GENERAL SESSIONS OF THE PEACE

CITY AND COUNTY OF NEW YORK, PART V.

March Term Continued.

-----X
THE PEOPLE

vs.

JOHN W. WHITELEY.
-----X

Before:

HON. THOMAS C. O'SULLIVAN, J.

And a Jury.

New York, April 12, 1909.

Indicted for grand larceny in the second degree.

Indictment filed March 18, 1909.

A P P E A R A N C E S:

For the People, Assistant District Attorney Gauderman.

For the Defense, John B. Gray, Esq.

Jury was duly empanelled and sworn.

Peter F. McLaughlin

Official Stenographer

THE PEOPLE'S TESTIMONY

Mr. Gonterman opens the case to the Jury in behalf of the People.

WILLIAM J. FORD, called as a witness in behalf of the People, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. GONTERMAN:

Q Where do you live? A 2436 Valentin Avenue, Bronx.

Q What is your business? A I am a driver for the Adams Express Company.

Q And were you in the employ of the Adams Express Company on the 9th day of January, 1909? A Yes, sir.

Q And what office are you connected with? A Well, at present I am in the 124th Street and St. Nicholas Avenue, but at that time I was in 148th Street and Bergen Avenue.

Q And was the defendant also employed at that time in that office? A The defendant was money-clerk in the office I was working in.

Q The branch office at East 148th Street? A Yes, sir.

Q Now, were you working there on the 9th day of January? A Yes, sir.

Q Did you have any C.O.D. packages to deliver and collect?

A Yes sir; I had two.

Q And do you remember the amounts? A One was \$88.36 and the other was \$22.50 .

Q Where was the first one to be delivered? A Well, one of them was in the morning and the other one was in the

afternoon. One of them had to go to 1063 Union Avenue. It was delivered at 1099. They had moved.

Q And do you remember the name of the consignee? A It was a man. I had deliveries there quite often.

Q Well, did you get the money? A Yes sir; I got the money.

Q And what did you do? Was the other delivery in the morning or afternoon? A That was in the morning, the \$88.

Q Around what time? A Oh, I should judge around ten or eleven o'clock.

Q What did you do with the money? A On my return to the office I turned it in to Mr. Whitely who was money-clerk in the office.

Q How much money did you turn over to Mr. Whitely? A I turned over \$88.36 and 25 cents which the Company charges to return the money.

Q What did you do? Did you deliver that to the defendant? A That was at noontime.

Q At noontime? A We used to settle the money at noon and in the evening around six o'clock.

Q Now, did you make another delivery on the same day? A Yes, sir; in the afternoon.

Q Where was that? A 1226 Southern Boulevard.

Q And how much did you receive from the consignee on that shipment? A \$22.50 for the c.o.d. and also a quarter for

returning the money to Philadelphia, I think.

Q And you got that money in cash, I suppose? A The first delivery there was offered to those people and was refused on account of wanting to offer a check, and then it was offered for delivery the second time on the 9th, the afternoon that was the day that he had the cash. He gave me it in cash then, the 9th.

Q What did you do with that \$22.50? A I turned it in to Mr. Whitely.

Q In cash? A Yes, sir.

Q What time of the day did you do that? A About -- around six o'clock.

Q You keep a book of these transactions? A Yes, sir.

Q And have you one for this at that time? A This is the book; yes, sir.

Q Now, on these two shipments -- you turn over this --
A One was for \$88.36 and the other was \$22.50, also taking a quarter for returning the money.

Q Well, you put down the amount for the first shipment and the amount for the second shipment? A I didn't have them all added up that way.

Q Well, \$88.36 and \$22.50? A Yes, sir.

Q Now, have you got that book? A Yes, sir. (Witness produces book.)

Q You produce it? A Yes, sir.

Q I show you a certain memorandum book and ask you if that is yours? (Exhibiting book to witness) A Yes sir; that is my book.

Q Who makes those entries in there? A I make them in there myself.

Q Are these figured here in your own handwriting? A Yes sir; those are all my figures.

Q And were they made at the date set forth in the book? A Yes sir.

Q January the 9th? A January the 9th.

Q And does this contain an entry in reference to these packages that you referred to? A Yes sir; it contains both of them.

Q Will you look at it and specify the items? A C.O.D. \$22.50 and return charges 25 cents.

Q Now, there appears upon this a rubber stamp? A Yes sir.

Q Dated January 9th, 1909, Money Clerk, who put that stamp upon there? A That is Mr. Whitely's stamp.

Q And Whitely put it on there? A On January 9th.

Q At the time? A At the time I settled with the money.

Q It was put on there at the close of the day? A Well, at noontime and also at the close of the day.

Q Now, and did he sign anything there? A Yes sir; his name is on there.

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

Q And that was at the close of the day, after all of that money represented here had been delivered? A Yes sir; that one there on the lefthand side.

Q Do all of these entries represent c.o.d. packages?

A No sir; each of those figures, that represent a sheet and the register number, all the registered numbers is a c.o.d., and when you add them up you --

Q On the first page there appeared to be a grand total of \$27.30. Does that include the \$22.50? A Yes sir; that includes the c.o.d. and all.

Q Now, what is the total on the other page? A The total on the other page is \$91.88.

Q What does that include? A That includes three delivery sheets and c.o.d. for \$88.36 and also the return charges on returning the money.

Q And was this signature and stamp put on there after these totals were made up? A Yes, sir.

Q On the 9th day of January, 1909? A Yes, sir.

BY THE COURT:

Q And by whom? A (No answer.)

MR. GONTIERMAN: I offer that book in evidence.

MR. GRAY: No objection.

(Book received in evidence and marked Plaintiff's

Exhibit No.1 of this date.)

BY MR. GONTERMAN:

Q Did you have a conversation with the defendant at that time? A In reference to money?

Q Yes? A No, sir.

Q Did you ever after that time have any conversation with the defendant with reference to these moneys? A No, sir.

MR. GONTERMAN: That is all.

CROSS EXAMINATION BY MR. GRAY:

Q How long are you employed by the Adams Express Company?

A How long?

Q Yes? A About a year ago last September, I think.

Q You have been first employed? A Driver? I began at driver and ran an automobile for a year.

Q Always in that same position? A Always in that kind of work.

Q And you have a helper with you, have you not? A I have a helper; yes sir.

Q What was your helper's name at that time? A At that time his name was Frank Smith.

Q How long had he been with you at that time? A How often was he --

Q How long had he been with you at that time? About how long had he been your helper? A Oh, I could not tell you exactly that, about four or five months I guess.

Q You knew that he was previously employed by the Company as money-clerk? A Yes, sir.

Q The same position as Mr. Whitely held at that time?

A Yes, sir.

Q And you knew that he was taken from the money-clerk's department and put with you at that time? A No sir; he was not taken and put with me. He was taken to another job first. He came with me later on.

Q You knew that he had filled that position prior to the time that Whitely there, money-clerk, didn't you? A Yes sir.

Q Do you know a man named Wedges that was employed by that company? A Yes, sir.

Q Before Frank Smith? A No, after Frank Smith.

Q And then came Mr. Whitely? A Yes sir; then came Mr. Whitely.

Q Now, I notice in this book and direct your attention that after the sum on one page of \$3.22 was collected --

A Yes, sir; --

Q (Continuing) That there is no line or lines between that \$3.22 and these two other ? A Let me see please? (Counsel hands book to witness) What do you want me to do? Explain this total?

Q Explain why they were put on after this \$3.22? A After this \$3.22. Yes, that is for our charges delivered. We keep the c.o.d. separate, and, of course, I made a grand total, and also the return charges made a footing at the bottom of the page.

Q But it is quite possible -- from the appearance of this --
I don't say that it is, but it is quite possible that those
amounts could be added on after that stamp is put on there?

MR. GONTERMAN: I object to that.

THE COURT: Yes, sustained.

BY MR. GRAY:

Q Now, when did you turn in this \$88.00? What did you do?

A The \$88.00 I turned in about at noontime.

Q You say you received that \$88.00 about 10 o'clock?

A 10 or 11 o'clock, around there.

Q When did you receive this \$22.50? A In the afternoon.

Q About what time? A About 4 o'clock or five.

Q And you say you turned that in in the evening at about
six? A Yes, sir.

Q Was there anybody present when you turned it in? A
Well, the drivers that came in. That was supposed to be at
6 o'clock.

Q Did you notice Frank Smith? A Did I notice Frank
Smith?

Q Yes? A I could not say whether he was there or not.

Q Did you notice any little girl at the time that you
came in there? A No, sir.

Q Do you know Mr. Whitely's daughter? A No sir; I
do not.

Q Did you see that lady at the time you were there?

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A I don't recollect seeing the young girl there, Mr. Whitely's child, but that was --

Q Did you ever see that lady ? A No, sir.

Q You saw her down there? A No sir; I never saw her.

Q Now, isn't it a fact that -- you put that \$22. item down by itself -- isn't it a fact that on that night you came to Mr. Whitely and told him that you were short? A No sir; it is not a fact at all.

Q Just a moment. That is enough. Isn't it a fact that you asked him to help you *out*, and you would give him \$10. now, and \$12. next week when you got your pay? A No sir; that is a false statement.

Q And isn't it ^{also} a fact that you did not give him any part of that \$12. or \$22.50 until next week? A I never gave it to him because I never got anything.

Q Isn't it a fact that you never gave him any of that \$22.50 until about a week afterwards, and that you only gave him \$10.? A No sir; no such thing, I never gave him a part of that --

Q Never mind now. I am asking you if that isn't a fact? A I wouldn't keep any slips other than in those books there.

Q Describe those slips? A They are made out down at 148th Street for packages that have been offered for delivery once and refused, and come back for a second time. They keep a record of them, and then Mr. Whitely's book that I signed

when I received the package, and wrote this \$22.50 entry, contains my signature when I signed his book for the same.

Q Wait a moment please, don't you keep any other slips or receipts? A I don't. They keep them in the office.

Q They keep them in the office? A Yes, sir.

Q Do you remember turning in the delivery sheet there?

A Yes, sir.

Q Do you remember turning it in to Mr. Whitely? A Yes sir; to Mr. Whitely.

Q Did you ever have any other trouble of this nature with any other money-clerks since you have been there? A No, sir.

Q Not with Smith? A No, sir.

Q Did you ever while Mr. Whitely was money-clerk turn in any money to anybody else? A No, sir.

Q To Mr. Kent? A Well, I tell you --

THE COURT: Answer the question.

Q Did you ever turn in any money to anybody else while Mr. Whitely was money-clerk? A Yes, sir.

Q In his absence? A Well, he wasn't working.

Q When Mr. Whitely was out at lunch, for instance? A No sir.

Q Absent from the cage? A No, sir.

Q During the time of Mr. Whitely's incumbency in the office, when he was money-clerk in the office, did you ever at any time deliver any money to anybody else while Mr. Whitely was absent? A Yes, sir.

Q Did you notice how those receipts are stamped, with that stamp? A Yes sir; Mr. Kent when he would receipt for some, he would stamp it and sign his name under it.

Q Is there any record in this book of any moneys you have returned in to Mr. Kent? A Let me see. I will tell you.

Q Look it over? (Counsel hands Exhibit No. 1 to witness.)

A Yes sir; here is one (handing book to counsel).

Q What date is this? A I didn't notice. Let me see, I will tell you.

Q Well, there is no stamp here, however, such as Mr. Whitely uses? A No?

Q No stamp here either? A No stamp, just Kent's name.

Q Simply a signature here? A Yes sir; that is sufficient.

Q Did you see him sign it? A Yes, sir.

Q How do you account for this after addition here, that is not made by a carbon sheet, this "A 55 3-10"? A That was done with carbon sheets, in that book.

Q Well, this looks as though it was done with a pencil?

A That is pencil.

Q Who wrote this? A I made the whole thing.

Q Except Whitely's signature? A Yes, sir.

Q With a different pencil? A No sir; with the same pencil.

Q The same pencil as this(indicating)? A Yes, sir.

Q You are sure of that? A I am sure of that.

Q Now, up to the time that this money was received by Mr. Kent, you had not received any money from Mr. Whitely at all in this book, had you, or you hadn't delivered any money to Mr. Whitely until -- you see it is all Kent, right along?

(Counsel hands Exhibit No.1 to witness) A The first signature that I ever --

Q Now, I am asking you a question. I ask you if you did not notice that you haven't delivered any money to Mr. Whitely on that book up to the time you delivered to Scherer, that entry you made there? A No.

MR. GONTERMAN: Is that all?

MR. GRAY: That is all for the present. I will ask witness, however, to remain for a little while to have the privilege of recalling him.

RE-DIRECT EXAMINATION BY MR. GONTERMAN:

Q Did anybody use this stamp but Mr. Whitely or the money-clerk? A Mr. Whitely is the only one that used the stamp.

Q Now, you have referred to another book. Have you that book with you? A Yes, sir. (Witness produces a book)

Q What is this book that you now produce? A I said that that is a book which we enter reports in of all stuff sent down to our headquarters, and when you get orders disposed

itions, it goes in the case. It is kept there, and we keep a record in that book.

Q Does this contain a record of the \$22.50 item?
Yes, sir.

Q Does that show when that was first received for delivery?
A Yes, sir.

Q And does it show whether it was refused? A Well, it don't show that.

Q Well, when was it first received for delivery? A On January --well, I could not tell you when it first came up, I mean, this is the day it first came to the office on.

Q What day? A January the ninth.

Q Will you turn to the page? A (Witness examines book) Yes, here it is. (Witness hands book to Mr. Gonterman and indicates page.)

Q Where is this? A This is it right in here (Witness points to place on book).

Q Now, point out the entry? Does this book contain an entry of the \$22.50 item? A Yes, sir.

Q And do you remember the name of the consignee? A Well, Rabe, or Rabbe, I could not say which it is.

Q Well, will you look at that book and tell the name of the consignee and when it was delivered? (Hands book to witness)

MR. GRAY: I object to this. It is entirely immaterial and irrelevant when this package was delivered.

THE COURT: Anything in connection with this transaction is relevant and admissible evidence.

MR. GONTERMAN: Yes.

BY MR. GONTERMAN:

Q Now, state what it says there in reference to the delivery? A January 9th, 1908 (reading from book) five bundles of castings 260 -- that stands for 260 pounds, with a ring around it -- register sheet No. 193, going to P. Rabbe, 1226 Southern Boulevard.

Q And do you see any charges there? A Yes, sir, \$1.95.

Q Is that the c.o.d. package referred to? A That is the \$22.50.

Q Yes, and who signed the name that is signed there?

A That is my signature when I took it out of the office.

Q I see. That shows the date you took it out of the office? A It shows the date I took it out of the office for delivery.

Q That entry was made on that date? A On January 9th.

MR. GONTERMAN: Yes, I offer that in evidence.

BY MR. GRAY:

Q This is simply your own record? A Adams Express Company.

Q Your records? A No, it is Whitely's own book.

Q Now, who wrote all this stuff in this book? A The man in charge writes in the book.

Q Which man in charge? A The man who is money-keeper.

Q He writes in this book? A That book might be two or three years old.

Q Oh, it might be? A Yes, sir.

Q Is there any place in this book where Whitely wrote?

A Yes, sir.

Q I mean up to this time? A He wrote that in there-- well, let me see.

Q Have you got any record of this \$88.36 in that book?

A No, sir.

MR. GRAY: Now, I object and ask that all this testimony in regard to this book be stricken out.

BY MR. GONTERMAN:

Q I will ask you, did you make all of those entries yourself, in your own handwriting? A No, sir.

Q Who made these entries, if you know? A I can't tell if I could find them, if I can see them.

Q Whose entry is it in reference to the \$22.50? A Whitely's.

Q And then you signed your name to it? A When I would take the package.

Q Yes, it is his receipt at the time you got the package from Whitely? A Yes, sir.

Q Did he write all of that item? A He wrote it all but my signature.

Q And then afterwards you signed it? A Yes, sir.

Q In his presence? A Yes, sir.

BY MR. GRAY:

Q Just show us what he wrote? A This here (indicating).

Q And this is your signature? A Yes, sir.

Q What is this \$1.95? A That is express charges.

Q Oh, then there is nothing here to identify that \$22.50 item except your own statement that Whitely wrote it and put \$1.95 charges on it? A That is all.

Q By the way --

MR. GRAY: Then, if your Honor please, I will ask that it all be stricken out.

BY MR. GRAY:

Q you delivered other packages to Rabbe? A It happened to be five bundles of castings.

BY THE COURT:

Q Who made the entry January 9th, 1,085 etc.?

MR. GONTIERMAN: Who made that?

THE WITNESS: That is five bundles, that is Mr. Whitely's writing.

Q What is that? A Mr. Whitely's writing.

THE COURT: How is it connected with the transaction?

MR. GONTIERMAN: That is to show the defendant checked this out for delivery.

THE COURT: Do you object?

MR. GRAY: Yes, your Honor.

THE COURT: If this is in any way connected with the transaction charged in the indictment, and it shows a part of the transaction on a previous date, in the writing of the defendant, of course, it is admissible. It is for you to say whether or not it is in any way connected with that transaction. If it is not, it is not admissible. If it be, it is admissible. That is all.

BY MR. GRAY:

Q What is this transaction that you mentioned here, that you have referred to in this sheet? Is this the actual delivery of the money, or the , or relating to the delivery of the money? A This is where I signed out these five bundles of castings.

Q It has nothing to do with the receipt of the money, or any part of it? A Not with the receiving of the money.

Q By you from anybody? A No, no that is my signature I give Whitely when I took the package.

BY MR. GONTERMAN:

Q It shows, does it not, the date when you got that package for delivery? A Yes, sir.

THE COURT: And that package means what packages?

Q The package for which you collected \$22.50?

THE COURT: Give the answer Mr. Witness?

Q And that package was what? A Five bundles of cast-

ings.

Q For which you collected \$22.50? A For which I collected \$22.50, and also a quarter for returning the money.

THE COURT: That is admissable for that purpose.

BY MR. GRAY:

Q I want to ask you again, you testified that this entry here is in Mr. Whitely's handwriting? A Yes, sir.

Q You are sure about that, now? A No, I didn't say I seen him write, but I know his writing.

BY MR. GONTERMAN:

Q Was it written in your presence? A No sir, it was not.

Q You are only judging from -- A From my opinion of his handwriting.

Q Was he present when you signed it? A Yes, sir.

Q Did he hand the book to you? A He handed the book that was laying on the counter.

BY THE COURT:

Q Now, how frequently have you seen the defendant write? How often did you see him write? A Well, when I was working--

THE COURT: Well, try and answer the question.

BY MR. GONTERMAN:

Q How often have you seen him write? A Well, two or three times a day.

Q For how long prior to this day? A Oh, I guess it was-- well, it must have been about two months. About two months, I

could not say exactly.

BY THE COURT:

Q Two or three times a day you saw him write for how long a time? A About two months.

Q About two months, and you saw him actually writing?

A Yes, sir.

Q That number, and during that length of time? A Yes, sir.

Q You are familiar with his writing, are you? A Yes, sir.

THE COURT: That is all.

BY MR. GRAY:

Q Did you see him make any other entries in this book, besides this on this sheet, or this one here(indicating)?

THE COURT: He does not say that he saw him make that entry.

Q Now, in this book, point out one time there when you saw Whitely make an entry/in that book at any time? A Well, point out the -- no, I could not point out once that I seen him write, not that I remember him writing. You don't think I remember back about 150 pieces?

MR. GRAY: I think that is all.

RE -DIRECT EXAMINATION BY MR. GONTERMAN:

Q Now, this book --

THE COURT: It is admitted in evidence for that purpose.

(Book admitted in evidence and marked People's Exhibit
it No.2 of this date.)

Q Does this book contain all the entries in reference to
the packages which you received? A No, sir.

Q It only refers to what kind? A It only refers to
shipments that have been offered for delivery and have been
refused, sent downtown to headquarters and returned to the
office, came back the second time. It is put in this book

Q And therefore it does not contain any reference to the
other packages? A No sir; it does not.

Q And that is the reason? A Yes, sir.

RE-CROSS EXAMINATION BY MR. GRAY:

Q In whose custody has this book been prior to today?

A It has been in the 148th Street Office.

Q Who gave it to you to bring down? A Mr. Kent.

Q Did he give you the sheets in reference to this trans-
action? A Yes, sir.

Q Was it turned in to that office? A Yes sir; but
they are signed.

Q Have you got in your possession the sheets showing the
original amounts? A No sir.

Q you haven't got them, you say? A I turned the sheets
in.

Q You haven't got anything with you? A No, I haven't
got the delivery sheets.

Q Have you got any evidence here at all to show that you turned this money in to Whitely?

THE COURT: Objection sustained.

MR. GRAY: I will take an exception to that, if your Honor please.

RE-RE-CROSS EXAMINATION BY MR. GONTERMAN:

Q You have testified in reference to paying certain money to Mr. Kent? A Yes, sir.

Q Was this before January 9th, 1909 or subsequently?

A Yes sir; before January 9th, 1909.

Q What were the dates? A Let me see-- I think they are about the first two weeks in December, and Mr. Kent was acting money-clerk at the time, and that is the time I turned the money in to Mr. Kent.

Q That is the time you turned the money in to him?

A Yes, sir.

Q About what time was that? A About --from about the first of December up to about the 14th or so.

Q Mr. Whitely was not working there at the time? A No, sir.

Q And was that the only time that you remember while you were driver that you turned ^{any} money in to him? A No sir; every time they changed money-clerks, why, the agent had to be in charge of the money.

Q Well, how many times, roughly, do you remember turning

moneys in to Mr. Kent prior to January, 1909? A Prior to January the ninth?

Q Yes? A Well, the time that Frank Smith was checked out.

Q When was that, if you know? A I could not tell you, exactly.

Q And these occasions were when there was a change in the money-clerks, is that so? A Yes sir, and when this witness was checked out he was acting money-clerk.

Q you do not know the dates now? A I could not go back that far.

RE-RE-CROSS EXAMINATION BY MR. GRAY:

Q Did you turn in any moneys to Mr. Kent while Mr. Whiteley was money-clerk there? A No.

Q Do you remember my asking you that question twice before during your cross-examination and answering me that you did? A Well, I told you --

Q Now, I ask you if you remember my asking you that question twice before during your cross-examination and you answering me that you did. And you answered in the affirmative, saying that you did so, do you remember that? A Yes, sir.

Q Can you reconcile that statement with the one you now make? A Yes sir; can I explain that, do you mean?

Q Yes, sir. A You asked me if I could tell why I had said now that I had never turned in any moneys to Mr. Kent, when

I said before that I did remember it?

Q While Mr. Whitely was money-clerk? A That is while he was working there? That is while he was there? Now, if Whitely was off for a couple of days, sick, or anything, I would turn the money in to Mr. Kent.

Q Do you know of any time while Whitely was working there that he was absent from the office on account of sickness, or any other cause? He was only money-clerk there for about a month, December 12th to January 12th? A About a month?

Q Do you remember any time that he was absent during the time that he was money-clerk there? A No, not that I remember.

Q Now, I repeat the question, did you turn in any monies ~~book~~ to Mr. Kent while Mr. Whitely was money-clerk there?

A Yes, sir.

MR. GRAY: That is all.

RE-RE-RE-DIRECT EXAMINATION BY MR. GONTERMAN:

Q You did not see Mr. Whitely present at the time? A No sir.

Q You don't know whether he was sick or not? A No sir; I don't know whether he was sick or not.

Q Well now, can you specify the date? A No, but if you will let me see the book, I can trace it through.

Q What book? A

A The smaller book, I can check it back and see if I see any at all. (Counsel hands book to witness and witness examines book).

Q Well, perhaps you can look it over at lunchtime?

MR. GRAY: Let him look it over now, this is a sufficiently important matter.

THE COURT: Are you talking about other transactions than the transaction here at issue?

MR. GRAY: At any time during Mr. Whitely's incumbency in that office, did he turn in any moneys to Mr. Kent?

BY MR. GONTERMAN:

Q Wait a minute, what have you got? A January the 15th.

Q January 15th? A Yes, sir.

Q What did you do then? A I turned that money in to Mr. Kent.

Q And do you know whether Mr. Whitely was in then?

A Mr. Whitely was there in the morning, but at noon when it came time to settle up, he was gone.

THE COURT: We will not have any more on that point.

BY MR. GRAY:

Q Didn't you know, as a matter of fact, that Mr. Whitely had left the employ of the Company when this entry was made?

A No, sir.

Q You didn't know that? A No, sir.

Q That was January the 16th? A Yes, sir.

Q you didn't know that he had left at that time? A I didn't know he had left at that time.

BY MR. GONTERMAN:

Q Mr. Ford, these are the only books in reference to this transaction that you know anything about? A Yes sir; that is all I know anything about.

BY MR. GRAY:

Q Just a moment, did you see Mr. Kent this morning?

A Yes, sir.

Q Had a talk with him? A Yes, sir.

Q Was there anything said to you by Mr. Kent, or by any officer of the Adams Express Company, that if this defendant were not convicted, you would loose your job? A No, sir.

Q Sure of that? A Yes, sir.

Q Positive of that? A Yes, sir.

Q Positive? A Yes sir; positive.

J A M E S F O L E Y, called as a witness in behalf of the People and being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. GONTERMAN:

Q what is your business? A Money-clerk, money-messenger.

Q Are you in the employ of the Adams Express Company?

A Yes, sir.

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Q How long have you been in their employ? A Fifteen years.

Q And you were in their employ the 9th or the 11th of January, 1909? A Yes, sir.

Q And what are your duties? A To go around and collect the money for the Company.

Q Where do you go to? A All the offices in New York City.

Q And from whom do you collect the money in these various offices? A The cashiers.

Q And money-clerks? A Money-clerks, yes sir.

Q What are your duties with reference to the moneys received for c.o.d. packages? Do you collect that along with other moneys? A Everything is collected; yes, sir.

Q All the moneys that are received by the money clerks at these branch offices are turned over to you? A Yes, sir.

Q That is -- A All the money of the c.o.d.s and every settlement for the Company.

Q Well, are your duties confined to c.o.d. packages? A No, everything collected.

Q I see. Now, you know the defendant? A Yes, sir.

Q John W. Whitely? A Yes, sir.

Q You know that he was a money clerk up at -- one of the branches? A Yes, sir.

Q What street? A 148th Street and Bergen Avenue.

Q And you know how long he has been money clerk there?

A Well, he has been there a short while, probably a month and a half, something like that.

Q Now, did you collect around there on January the 9th?

A Yes, sir.

Q What day was it, the day of the week? Do you remember?

A I don't know exactly the day, the day of the week, I think it was Saturday.

Q Well, and you collected around there in your regular course of business? A Yes, sir.

Q And what time of the day did you collect? A Well, I have got a regular time, about. Between two and two-thirty every day.

Q I see. At that time did he deliver to you the sum of \$88.36? A No, sir.

Q For a certain c.o.d. package? A No, sir.

Q Did he at any time at all? A No, sir.

Q Did he at any time deliver that sum to your c.o.d. package? A No, sir.

Q Did you collect again on the 11th? A Yes, sir.

Q And for the purpose of collecting any moneys that had been turned in to him, and did he turn over any-- A Yes, sir --

Q (Continuing) --moneys to you for a certain c.o.d. package of \$88.36, on the 11th? A No, sir.

Q Now, I call your attention to a certain c.o.d. package for \$22.50. Did the defendant at any time turn those moneys over to you? A No, sir.

Q Now, in regard to these c.o.d. settlements. They differ from ordinary settlements? A Yes, sir.

Q They are made up on separate sheets? A No, they were on the one sheet.

Q But it is a different sheet? A Different items.

Q Different items? A Yes, sir.

Q What is the arrangement in reference to these c.o.d. remittances to you? A Well, he had two sheets. He makes a carbon copy and an original and I take the carbon copy and I sign the original copy, and he keeps the copy.

Q And if any c.o.d. settlements had been made on the day prior to your -- on the same day prior to your calling, is he supposed to turn those over to you, A Well, if he can get them ready that morning. If he cannot, I am to get them the next day.

Q Yes, I see. And did you know that time that you called on the 9th, or on the 11th, whether or not any moneys had been paid in on two packages for \$88.36 and another one for \$22.50? A No, sir.

Q So you did not have any conversation with him in reference to these particular packages? A No, sir.

Q If it was turned in, it would have been his duty to

remit to you at that time? A Yes, sir.

Q Would they have been entered differently in the settlement? A A different entry on the sheets.

Q Upon the same sheets? A Yes, sir.

Q They were kept separate from the other moneys? A Yes, sir.

Q Then you are positive at no time, either on January the 9th, or the 11th, did the defendant turn over to you two certain sums, one for \$88.36 and the other for \$22.50? A Yes, sir.

Q The consignment to the Charlton Gas Company, 1063 Union Avenue, and another a consignment to a party by the name of Rabbe at 1226 Southern Boulevard? A Yes, sir.

Q You have examined your records very carefully thereto? A Yes, sir.

Q And know that the moneys received are not for the shipments, that the moneys were never turned over to you by Whitely at any time? A They do not appear upon any one of my records.

Q And he did not give you any slips showing the receipt of the moneys for the shipments? A No, sir.

Q Did you ever have any conversation with him, at any time, in reference to these two shipments? A No, sir.

MR. GONTERMAN: I think that is all.

CROSS-EXAMINATION BY MR. GRAY:

Q How were these deliveries made to you, Mr. Foley? You say that the money clerks at the various branches, gave you the

packages of money, and you gave them a specific receipt on a sheet for every package? A Yes, sir.

Q Now, have you got that sheet with you? A No, sir; I haven't got that sheet with me.

Q Why haven't you got that sheet that he gave you on the 9th day of January? That ought to show that you got that \$88.?

MR. GONTERMAN: You were not asked to produce that?

THE WITNESS: I wasn't asked to bring that.

BY MR. GRAY:

Q You were not told to produce that sheet? A I don't think he asked me to bring that sheet.

BY MR. GONTERMAN :

Q You were not told personally to bring that sheet?

A No, sir.

BY MR. GRAY:

Q And you checked up the items on that sheet before you left the money clerk's cage? A Yes, sir.

Q So that if that money, \$88., had appeared on that sheet, it would appear on the sheet as to the delivery to you? Suppose it appeared on that sheet, "Delivered one package, \$88., name or contents," you have to have that money before you leave that cage? A Yes, sir.

Q And you didn't bring that sheet down? A No, sir.

RE-DIRECT EXAMINATION BY MR. GONTERMAN:

Q When you got any money from Mr. Whitely, you signed a receipt for those packages? A No, sir.

Q You didn't sign any receipt for those packages when you got any money from Mr. Whitely? You didn't sign any sheet purporting to be a receipt for those packages? A No, sir.

Q Have you ever been asked to bring any money statement as to whether he ever paid you any money? A No, sir.

Q There wasn't then, on the sheet, any reference to these two items, \$88.36 and \$22.50, was there? A No, sir.

RE-CROSS-EXAMINATION BY MR. GRAY:

Q But you did get a delivery sheet on that day from Mr. Whitely, didn't you? A Yes, sir.

Q And that sheet is in court? A No, sir.

Q To your knowledge? A No, sir.

BY MR. GONTERMAN:

Q That sheet does not refer to these items at all? A No, sir.

Q If you had gotten any sheet for these two items, you would have had it here, I suppose? A Yes, sir.

Q You cannot produce anything you have not got? A No, sir.

BY JUROR NO.1:

Q The Express Company -- what I wanted to know is the Express Company in the collection of the express charges, is he the driver, of the c.o.d. packages he takes out, and he signs

for them? For instance, you are a driver and you take out packages of clothes, does he sign for them? A I don't understand your question.

Q Does the driver sign for packages he takes out to deliver, especially c.o.d.s?

BY THE COURT:

Q When the driver goes off with his cart containing packages -- wait a moment, when the driver goes off with his express wagon containing packages which he got at your express station, does he sign for the packages which he takes? A They have them on a sheet and they take a record of them before he goes out of the office.

Q Where is that record? A It is in the office of the Company now.

Q Well, is that book here? (No answer) .

BY MR. GONTERMAN:

Q This book refers to certain kinds of packages? Do you know anything about this? A That is not my line, I do not know anything about that.

Q Anything about that is not in your line? A Anything in the money line. I handle the money line and that kind of thing is not in my line and I cannot tell you anything about it.

G E O R G E K E N T, called as a witness in behalf of the People, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. GONTERMAN:

Q Are you in the employ of the Adams Express Company?

A Yes, sir.

Q And what branch are you connected with? A I am manager of a branch office at 148th Street and Bergen Avenue.

Q And how long have you been connected with that branch?

A In the Borough of the Bronx, do you mean?

Q Yes? A In the Borough of the Bronx, I have been nine years with the Company as agent.

Q Well, were you stationed all the time at this office, 148th Street? A Yes, sir.

Q And you are manager, you say, of that branch? A Yes, sir; manager of that branch.

Q And you are familiar, of course, with all the workings of the branch? A Yes, sir.

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

Q And what position did he occupy there? A He is money clerk.

Q Well now, will you explain briefly to the Jury the way that you direct the business there in reference to giving c.o.d. packages to drivers and what they are supposed to do with them, and who they are supposed to return them to, so that they will get an idea of the -- of what happens to a c.o.d. package? A It is customary for a driver to take and deliver it, and if it be a c.o.d., the driver takes it and delivers it, and collects the money for it, gets the money from the consignee

and he in turn brings it back to the office, the settlement of it also, and makes a statement in his c. o. d. book to the money clerk, and gets the consignee's signature, and he, the driver, in turn takes a signature from the money clerk --

THE COURT: Who in turn does that?

THE WITNESS: He, the driver, in turn takes a signature from the money clerk in the small signature book which is in evidence here.

BY MR. GONTERMAN:

Q This book, People's Exhibit No.1? A Yes, sir.

Q Now, where does the driver get the c.o.d. package from?

A Oh, that is handled the same as any ordinary package, brought from the office.

Q Well, does he get anything from the money clerk when he goes out on a c.o.d. delivery? A No, sir.

Q Does he sign anything to any person when he goes out on a c.o.d. delivery? A No sir; not from the money clerks; no, sir.

Q Well, he receipts for the package, does he not? A The driver?

Q Yes? A The driver receipts for the package on a carbon sheet.

Q The driver receipts for the package on a carbon sheet?

A The driver receipts for the package on a carbon sheet, but that is not given to the money clerk. That is simply an office

record.

Q Does the money clerk have a record of what c.o.d. packages are sent out each day? A He is furnished with a record from the main office, that is the main office on 124th Street.

Q And what is that record supposed to contain? A That is what we call a register.

Q Now, when a driver goes out on a c.o.d. delivery from your branch office, he gets the package from you or whom?

A The freight is brought into the office and assorted into what we call different routes.

Q Well, he starts out with the packages that have been sorted out for a certain route? A Yes, sir.

Q Now, he is supposed to report that delivery to whom? A To the money clerk, on his return.

Q And then take his receipt for the money at that time? A Yes sir; and the register sheet is noted on that book.

Q And the money clerk is supposed to have a stamp? A Is supposed to have a stamp, and the signature of the money clerk to the stamp which is in his possession also.

Q And when he returns this money to the money clerk, he gets the signature of the money clerk and the stamp? A Yes, sir.

Q And then does he sign anything for the money clerk? A Oh, no.

Q Now, in reference to packages which have once offered

for delivery, c.o.d. packages which have been once offered for delivery and refused. What happens to those packages?

A Why, they are sent from the main office, that is, 124th St., that is a depot, a main depot where the stuff is sent out to our office, that as we call it, that is the main office. It is sent over there and we make an entry of it in that book that you have there.

Q In this book, People's Exhibit No. 2? A Yes, sir.

Q And that does not contain packages except those that have been refused? A That is all.

Q Now, as to the duties of this defendant. He had authority to receive from the drivers, the moneys received by the drivers upon c.o.d. packages, deliveries, didn't he? A Yes, sir.

Q Now, what was his duty in reference to those moneys after he had received them? A He was in turn furnished with a c.o.d. report.

Q Yes? A This c.o.d. report was made out by him and it shows the person's name, and the date, and he was in turn supposed to put this money in the c.o.d. report, and put the money in an envelope and seal it and mark it on the outside as to what it contained and the following day turn it over to our money messenger, Foley.

Q The witness who was just on the stand? A The witness who was just on the stand, and he in turn was --

THE COURT: Is there any other way for returning

money for c.o.d. packages?

THE WITNESS: No sir; that is the only method that the Adams Express Company uses.

BY THE COURT:

Q And that money would be paid only to the individual mentioned for that purpose? A That is all.

Q No other person was authorized to receive as such? A Yes sir; there is no other individual.

Q This individual in this case was the witness Foley who was just on the stand? A The witness who was just on the stand.

Q What is his name? A James Foley.

BY MR. GONTERMNA:

Q And the money was to be put there by him in a separate envelope, is that right? A The money was to be put by him in a separate envelope, yes sir.

Q Containing the amount? A Yes, sir.

Q Now, the defendant, when did he come into your employ as money clerk? A Well, I could not exactly say as to the date, but I remember the date when he entered the employ of the Adams Express Company. He was employed in the Adams on December 1st.

Q When? A 1908.

Q About when did you say he was appointed money clerk in your office? A I am not quite positive, but I think it

was on December 14th or 15th.

Q I see, and the witness William J. Ford is one of your drivers? A Yes, sir.

Q Now, did you have any personal knowledge of whether or not on the 9th of January, any money was delivered to the defendant, and whether or not those packages were delivered to the driver? Does it come in the course of your duty? A Oh, no, that would not come in the course of my duty.

Q When did you first learn of those two transactions?

A On January the 16th, at 2 o'clock.

Q Yes? A I received what we call a tracer. A tracer is an inquiry from the shipper demanding his return, or looking for his returns, and I received that in the form of ordinary correspondence, that is, express bill from our man Foley. That was the witness on the stand before me.

Q Yes? A And he was present at the time that I questioned the defendant and asked him --

Q Well, wait a minute. You got certain information?

A Yes, sir.

Q And you started an investigation? A Yes, sir.

Q Now, what did you do after you started that investigation? Who did you see, who did you go to see, who did you inform first? A Why, I informed the money clerk first.

Q Who, Mr. Foley? A No sir; Mr. Whitely.

Q Oh, Mr. Whitely? A I then searched the records, both

he and I.

Q For what purpose? A For the purpose of finding whether or not there was any possible chance of returning the money on any other date outside of the supposed date. The supposed date was to be January the 11th.

Q you and the defendant searched his office records together? A We searched the defendant's office records together.

Q Did you find any record for the receipt of the money for those two items? A No sir; we did not.

Q \$88.36 and \$22.50? A No, sir.

Q And did you have a conversation with him in reference to those two items? A Yes sir; I did.

Q When? A After, when I could not find any record of either one of them.

Q What did you first say to him when you started to search his records? A I said, "Well, what do you know about this? What did you do with the money?"

Q What money did you refer to? A The \$88.36.

Q It was not anything in reference to any other item?
A No sir; because I did not know of that other item at that time.

Q Well, what did he say to you in reference to that?
A He says, "I don't know anything about it, I haven't had any such money," and when he saw the tracer, the paper in printed form he said, "I will look, and he and I looked, and he said,

"Well, I don't know what became of it." So then, I in turn questioned the driver and got his signature book.

Q Wait a minute, Did you question the driver in the defendant's presence? A yes, sir.

Q What did you say? A Then I asked the driver to produce his signature book.

Q What was the driver's name? A William Ford.

Q The man who was first on the stand? A Yes, sir; and then I asked him what he knew about it, and asked him to produce his signature book, and he produced that book.

Q He produced this book (Exhibiting People's Exhibit No. 1)? A yes sir; and I examined it.

Q People's Exhibit 1? A yes sir; I examined the book. we turned over to the entry in question which is here (indicating).

Q Which entry are you now referring to? A The \$88.36.

Q And did you show that to the defendant? A yes, sir.

Q What did he say? A He says, "that is my signature, but I must have got the money. I don't know what became of it."

Q Did he say anything further in reference to that?

A yes sir; he did.

Q What did he say? A And then, of course, when I discovered that he could not find a record of it, and at that time Mr. Poley the money messenger --

Q Was he there too? A He was there too; yes sir; he was

there and listened to the conversation.

Q Well now, state what conversation you had with this defendant, Whitely, or the other individual? A I only spoke about this item.

Q Did he say whether he had paid it over to Foley? A Oh no, he did not.

Q Did he ever make any claim that he had paid it to Foley? A No sir; he did not. He then asked -- of course, it was his duty for him to sign the money messenger out, and, of course, I took charge and signed him out, but he was still in the employ of the Company.

Q And you did afterwards sign for some money for that date in this book? A Oh, that was after he resigned.

Q Well, on that date did you let him sign for any more money? A No sir; not after I found the deficiency.

Q And did this driver turn in any more moneys to you that day? A Oh, late at night he did.

Q And the defendant was still in the employ of the Company at that time? He had not been discharged? A He had not been discharged.

Q you were simply acting there? A He told me, he says, "I am going and see my uncle. My ^{father-in-law} ~~uncle~~ always has \$100 or \$150. in his possession, and I will get the money from him, and put it in and then we will see if we can find it," and I wanted to

ring up the Superintendent, the man who is my superior, and he says, "Don't do it." Of course that was witnessed by Foley and the people in the office, but then I did ring up and when I did he left the office, and I forbade him to leave the office, but he was still in the employ of the company, and he came back in about three-quarters of an hour.

Q Where did he say he was going? A He said he was going to his father-in-law to get the money, he always had a \$100. or a \$150. in his possession.

Q He could not give you any account of the money? A No sir; not at all.

Q What time of the day did he come in later? A About three-quarters of an hour.

Q On January 16th? A Yes sir; I remember it was about that time.

Q What did he say when he came in later, the second time? A He was gone about three-quarters of an hour, and in the meantime, I knew there was other chances for him to be short, and, of course, I had to be there, and I was undertaking to check up the account, to look if there was any more short, and in order to do this, I took in one of the drivers as witnesses, that is, I called in one of the drivers as a witness, because I would not undertake to do it any other way, and I went into this cage, and checked up the books, and also inside of this

cage is a safe, and also this money drawer, but they all have combinations.

Q But you did check up the accounts? A Yes, sir.

Q You did not find any record of the c.o.d.? A No sir; but he found when he came in the office --

Q What did he do? A When he came in the office after this lapse of three-quarters of an hour he did find this driver and myself in the cage, and he took out a notebook and he put down my name and the driver's name, and of course, at that time he was in the employ of the Company. Then he said, " I wont stand this any longer; I resign right here and now."

Q Did he hand in his resignation? A He sent it down by a messenger boy about five o'clock that night.

Q He did not go himself? A No sir; he sent for him, but he would not go.

Q Now, after that time you have had other conversations with him, have you not? Did you ever have a conversation with him at your office? Did you ever have any other conversation with the defendant after the 16th in reference to this matter?

A Not in reference to this; no, sir.

Q Did you ever have any conversation with him in reference to the item of \$22.50.? A No sir; because I did not know of that for quite a while after.

Q Did he ever give you any explanation of the disappearance of these moneys? A No sir; when I met him we did not

Speak of that subject at all.

Q You have told all the conversations you have had with him?
A Yes sir; that is all, to the best of my knowledge.

Q Now, after you got that resignation, what happened? Was he discharged, or was it accepted? The resignation was accepted, I assume?
A Yes sir; of course, I referred it to the main office. I haven't got that here.

Q You have not?
A No, sir.

Q And after you got that he was not any longer in the employ of the Company?
A No sir; that all happened on the 16th of January.

MR. GONTERMAN: I see. I think that is all.

CROSS-EXAMINATION BY MR. GRAY:

Q You say that you are the manager of that branch office?

A Yes sir; I am.

Q How long have you been manager there?
A I have been in the Company about fifteen years.

Q I asked you how long you had been their manager there? You are talking a little too much?
A Nine years.

Q Two years?
A Nine years, I said.

Q Nine years?
A Yes, sir.

Q In charge of that branch at Begen Avenue?
A Yes, sir.

Q When did Mr. Whitely enter your employ?
A On December the first.

Q In what capacity?
A He was supposed to break in as a

money clerk.

Q What capacity did he enter your employ as? A He was to break in as a money clerk, that is the capacity he entered my employ in.

Q And was he acting as money clerk at any time between the 1st and 12th of December? A I could not say. I do not think he was acting as money clerk, you know, I think it was somewhere around the 14th. I could not be positive.

Q What was he doing between the 1st and 14th? A He was breaking into the business in general.

Q To your knowledge, he had not gone near the money cage, had he, to receive any moneys from anybody? A Yes, sir.

Q What did you mean then by saying that he was to break into the business as money clerk if he never went near the money cage from the 1st of December to the 14th?

MR. GONTERMNA: Explain what you did to break him in?

THE WITNESS: The man was a green man, and he had to be shown.

Q What do you mean by that, a green man to that business?

A Yes sir; of course, that is, understand, of course, he had to be shown the duties of the express business in general before he could become a money clerk, because he told me himself he says, "Now, I want to have as long a time as possible before I undertake this great responsibility," and I gave him all the

chance I could, and gradually I would go in and would show him how to make up statements. Now, what day that was I cannot tell myself, but I know it was before the twelfth, but it was not before the fifth.

Q What was the name of the money clerk in the office before he came there? A What is that?

Q What was the name of the money clerk before Mr. White-ly? A I am not quite positive. I think it was Frank Smith.

Q Don't you know, Mr. Kent, that it was Smith? A No sir I do not.

Q Do you not know that he was taken from the money clerks department and put as driver's helper?

MR. GONTERMAN: I object to that.

THE WITNESS: Yes, sir.

THE COURT: Objection sustained.

BY MR. GRAY:

Q He is still in the employ of the Company? A Yes, sir.

Q Is it usual for the Company to bond their money clerks? A Oh; yes, sir.

Q Was this man bonded?

MR. GONTERMAN: It is immaterial whether he was bonded or not.

THE COURT: Objection sustained.

MR. GRAY: I except to that.

BY THE COURT:

Q Is the man bonded? A Yes, sir.

THE COURT: Objection sustained.

MR. GRAY: If your Honor will allow me to explain my position. He said that this man entered the employ of the company as a money clerk. Now, I want to show that he did not go in as a money clerk. That it was their custom to bond their money clerks, and he was never bonded; that he was put right from a clerkship into that cage.

THE COURT: How is that material to this charge?

MR. GRAY: It is quite material, that the system was so loose that he might have --

THE COURT: Objection sustained as to the question of the bond.

MR. GRAY: Exception.

BY MR. GRAY:

Q Now, what time did you usually go to lunch, Mr. Kent?

A Well, that I could not say exactly.

Q Well, about what time, usually? A Well, if I remember rightly, I should judge about half past twelve or a quarter to one.

Q You remained away -- what was the lunch hour? A One hour.

Q Now, who was in charge of the money cage during that time? A Nobody, it was locked up.

Q Didn't you have a key to it? A I have got a key to it, but not the safe.

Q You did not know the combination of the safe? A No, sir.

Q Nor the combination of the money drawer? A No sir; I did not.

Q Did you ever, at any time during Mr. Whitely's time there as money clerk, enter that money cage? A Yes, sir.

Q On many occasions? A Well, at any time when there would be a definite occasion, one occasion in regard to a tracer.

Q Did you at any time when he was there? A Not to my knowledge. It would make no difference whether he was or not.

Q Were you there on the 16th when he returned from lunch, yourself and this man Smith? A Yes sir; I was.

Q Well now, at any time, did you ever notice the safe of the money cage open? A I do not thoroughly understand you.

Q I do not mean open, but I mean not under combination at the time, ajar? A No, sir.

Q Did you notice the door of it ajar? A No, sir.

Q Did you ever notice anybody else going into that money cage there during Mr. Whitely's absence? A No sir; I did not

Q What is this book, and what is its purpose, this book that is introduced in evidence, People's Exhibit No. 2?

A That is an office record.

Q Well, who keeps it, who has charge of it? A Well, of course, it is under my jurisdiction.

Q Isn't that book lying on the counter outside? A No sir; it is not.

Q It is not supposed to be under the money clerk's charge

A Yes sir; he keeps it. Can I explain that in detail?

Q Yes, go ahead? A The express messenger that comes from another office, takes what we call a sheet for shipment, that is, a refused shipment is sent out, and is brought back by the driver, and turned over to the money clerk, and the money clerk return gives his own signature to the driver, and he in turn to get his return signature, enters it in that book. So it is surely his property.

Q What would he enter in that book? Would he enter the amount to be collected, or simply the charges? A Well, it is simply for the register number, the sheet number.

Q I show you the item here which is marked June the 7th, can you show me a register number there? (Counsel hands book to witness) A Yes sir; 193.

Q This is simply used as what we call a waste book, not a commercial book? A No, sir; not exactly. It is a very valuable book, though.

Q Oh; of course, waste books are valuable. Are there any entries made from this book showing every detail -- in detail the nature of the transaction? A No, sir.

Q But it is a book in which one enters these c.o.d. packages, is it not? A Yes, sir.

Q And it is customary to enter in this book the amount to be collected, or simply the additional charges? A No sir; as I explained before, simply the sheet number.

Q And if you take, we'll say, the c.o.d. packages to P. Raabe, there is nothing outside of the fact that P. Raabe is the consignee in this case, there is nothing to show, that is, no reference to this \$22.50, that is missing? A That is not,

Q Is that all the reference there is? A The sheet number, yes sir; that is the only reference.

Q Now, that sheet number, that is the number of the sheet? A Yes, sir.

Q In whose custody is that sheet supposed to be? A Before it is signed, Mr. Counselor?

Q I mean the sheet, showing some authentic delivery of the money from the driver, or if it is otherwise, otherwise? Showing something in connection with the receipt of the money by anybody? A Yes sir; that is in the money clerk's possession.

Q The sheet of that day would be in the possession of the office today, would it not? A No, it would not. That was the 9th,

Q Have you got the register sheets of that day? Did you look them up? A Of the 9th?

Q Yes? A Yes sir; and Mr. Whitely also helped me to do it.

Q After the 16th, after this date? A It was not to be found, about that entry.

Q But those entries are in the possession of the Company now, aren't they? A I don't think so. I think there wasn't any settlement, but I would not say positively, but I think so.

Q Well then, what is the system to show whether he signed any money and turned it in? A This book.

Q That is the only authentic record you have got? A Yes, sir.

Q As to whether any money was received by Mr. Whitely or not, People's Exhibit No. 1? A Yes, sir. Of course, if

he would not settle that sheet, he would not have received the money and then they would send out a tracer.
 Q. Now, Mr. Foley, what would call him a money collector? A. Well, we call him a money messenger.

Q Now, when he comes to the money clerk's office, what is the procedure, what does he do? What does the money clerk sign, what is he supposed to sign? A The money clerk makes out an original and carbon sheet, and enters thereon all the money that he has got to forward that day.

Q Itemized? A Yes sir; and itemized, and Foley, the

money messenger, he signs the duplicate, that is, the carbon sheet, and gives that back to the money clerk, and the money clerk inturn files that away.

Q What is done with the original? A The original accompanies the envelope and the money to its destination.

Q So that if that \$88.36 occurred on that sheet of that date, it is presumed that Mr. Foley got that amount?

MR. GONTERMAN: I object to that.

THE COURT: Wait a moment.

BY THE COURT:

Q If the amount is shown on that sheet, for instance, that amount of \$88.36 was shown on that sheet to be returned to the money clerk, then the money messenger must have received that money?

MR. GONTERMAN: your Honor, there is no evidence of any sheet.

MR. GRAY: There was a sheet, and I want to find out what --

MR. GONTERMAN: It is for the Jury to draw inferences from the testimony.

THE COURT: Yes, objection sustained.

BY MR. GRAY:

Q You haven't got that original sheet of that date, or of any subsequent date in your possession here? A I told you, Counselor, I could not find it.

Q I asked you, have you got it? A That sheet of the 16th, or the 9th, rather?

Q No, the sheet on this day that the money was supposed to be turned in? A I haven't got it.

Q But it is in the possession of the Company? A It is in the possession of the Company.

Q But it is the custom to make a sheet on the date and itemize his money? A No, sir.

Q None of your sheets here in your possession? A No sir; there is not.

BY THE COURT:

Q Do you know whether or not there was a sheet of that character on that day by and between the money messenger and the defendant? A I know there was not any such sheet.

BY MR. GRAY:

Q There cannot be a sheet unless the defendant makes it out? A No sir; the defendant makes the sheet out, and I know there wasn't any sheet because him and I looked for it and could not find it.

Q The carbon sheet? A Yes, sir.

MR. GONTERMAN: Now, what sheet are you referring to, Counselor?

THE COURT: He is referring to a sheet that cannot be found, and there cannot be any sheet, and of course --

BY MR. GRAY:

Q Did you look for the original of the carbon sheet, of course, it was not in the possession of the money clerk? A Yes, sir.

Q Did you look for the original sheet in the possession of the money clerk? A No, sir.

BY MR. GONTERMAN:

Q He could not have it if it was not made out? A No, sir.

BY MR. GRAY:

Q How do you know it was not made out? A Because we could not find it.

Q And the items of those sheets were written down in an itemized statement? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. GONTERMAN:

Q If the defendant did not do that, make out a sheet showing these two items --

MR. GRAY: You haven't got any evidence of that.

THE COURT: That is all.

Q Now, when you instructed him into his duties as money clerk, what did you tell him his duties were? Explain what you told him in reference to these c.o.d. settlements, as you call them? A Why, I told him --

Q Did you tell him what he was supposed to do? A Oh, yes sir.

Q Now, what did you tell him he was supposed to do?

A I told him he was to give the driver a receipt for the money when he turned in a c.o.d. return, and he was to turn in this report.

Q You mean, to make this report out? A Yes sir; and in this report he was to include the rate and the return charges of returning the money to the shipper, and the amount collected, and he was to take the money and put it in an envelope and seal it up, and put this in a money package, and we sent this back to the shipper, and he in turn was to send this money ahead to the shipper, and itemize it down, and give it to the money messenger the following morning.

Q And he did follow that in detail? A Yes, sir.

Q And he appeared to understand what you told him?

A Oh, yes sir.

BY THE COURT:

Q On the 9th day of January, or on the 11th day of January, 1909, how long had the defendant been acting in the capacity of money clerk? A About one month.

BY MR. GONTERMAN:

Q And when you put him in full charge, you assumed that he knew what his duties were from the way he had handled himself, and the way he managed the business? A Yes sir; but in relation to that, there was also an assistant inspector of agencies who put him in charge, that is, his present position

of money clerk. I did not only take the responsibility of giving him that position, but there was also an assistant inspector of agencies who checked him into the office and enlightened him as to his duties.

MR. GONTERMAN: That is all.

RE-CROSS EXAMINATION BY MR. GRAY:

Q How many days did that inspector of agencies stay there to enlighten him as to his duties, and what instructions did he give him? A Why, he asked him whether--they always ask him --

Q What did he ask him, never mind what they always do?

A He asked him if he thoroughly understood his duties, and if he was satisfied with the checkup, and he showed him the combination of the safe, and the money drawer, and everything.

Q Was that the inspector of agencies who spent a whole hour in instructing this man in the duties of his office?

A Yes sir; you know that morning --

Q How long did you instruct him? A I could not say exactly how long. He took charge -- I took from the first of september until the day he took the money, or said he was satisfied to accept the responsibilities.

Q Did he ever do anything outside of taking the money from the drivers, any time? A Well, he was a clerk in general.

Q Did he ever leave the money cage during the time, for any other purpose? A Yes sir; to give receipts behind the

counter, not to leave the counter though.

MR. GRAY: That is all.

JUROR NO. 9: I would like to ask this witness a question.

THE COURT: Yes.

BY JUROR NO. 9:

Q now, in reference to the defendant here, when he turned over the money to the money messenger, as I understand, isn't the money messenger supposed to give him in return something similiar to Exhibit No. 1, with the signature of the driver, a receipt, something to show? A Yes, sir.

Q Was he supposed to give something to show for the money that he has received? A Yes, sir.

Q That he has turned over to the money messenger? A Yes, sir.

BY JUROR NO.1:

Q Was there any delivery of money made to the money messenger on the 11th, A Well, I was absent that day.

Q Was there any money turned over to him on that day? A There was, but I was absent on that day.

BY MR. GONTERMAN:

Q When a c.o.d. shipment is turned in to the money clerk, that is on a seperate sheet from the other, isn't it? A No, it all appears on the one sheet.

Q Does he make a seperate receipt for the c.o.d. money?

A The driver, do you mean?

Q No, the money clerk, does he make a separate receipt to the money messenger? A Oh, yes.

Q If he gets any c.o.d. moneys from the money clerk, he gives a separate receipt for them? A Will I explain in detail?

Q Yes? A The c.o.d. money is separate.

Q Yes? A We have what we call local, this is the local section. We have the divisions. We have local, east, south and west. East takes in the New England States and south, the States south of here, and the west division the Western States. Now, they are all supposed to be on separate sheets, that is, the money where it is to be returned to, that is, the shipper.

Q Yes? A And that is put down separately. Is that what you mean?

Q I mean any moneys which he received on c.o.d. packages, he gives a separate receipt for, does he not? A Yes sir; he does.

Q And if the money had been turned over by the defendant to the money messenger in this instance, the defendant would, in the ordinary course of business, have a receipt from the money messenger for that money? A Yes, sir.

Q Did you ever ask him if he had any such receipts?

A yes sir; I testified about that.

Q Did he ever say to you that he had any such receipts?

A No, sir.

Q Did he ever show you he had any such receipts?

A No sir; he did not.

THE COURT: I imagine what the exact situation which the Jury wishes to know is, if a c.o.d. payment is sent away, would it stand alone on a single sheet, or would it appear in items on another sheet?

THE WITNESS: No sir; it would appear on a single sheet.

BY THE COURT:

Q On a single sheet? A Yes, sir.

Q That single sheet being for the purpose of returning it to the shipper? A Do I understand, your Honor, only one entry?

Q Yes? A Oh, no, there are other entries of other shipments.

Q But with regard to c.o.d. payments to the money clerk?

A Yes, sir.

Q Now then, you are a collector? A Yes, sir.

Q And as he goes around, what does he give to show the receipt with regard to that one thing, and is the thing which he gives an item mixed up with others, or would it be a separate item, single, alone? A No sir; it would be mixed with other entries.

Q For that day? A Yes sir; but not mixed with other moneys.

Q We are talking about the entries now? A Yes, sir.

Q So that several c.o.d. receipts of the money messenger, on a certain day, would appear, as far as the reception of them is concerned, altogether on one sheet? A Yes, sir.

Q Now, what Mr. Gray is getting at is have you a sheet of that date?

MR. GRAY: Or any date subsequent, the 11th or 12th, from that date to this, we will say? And have you got it here?

A No, sir; I have not.

Q Now, another thing I want to ask. Suppose there was three c.o.d. packages, and three c.o.d. deliveries named, one for \$88., one for \$36., and one for \$22., delivered to the driver, now then, we will say the messenger comes around in a couple of hours, and they make the sheet -- the money clerk makes out a sheet, a carbon sheet and an original. Does that specify each of those items, \$88., \$36., and \$22., or a total of \$148.? A Oh no, he specifies each and every amount.

Q Each and every amount separate? A Yes, sir.

Q That is what I wanted to get at for a long time. Now, then the money messenger keeps the original, and he hands in the carbon sheet to the money clerk as his receipt? A Yes, sir.

(The Court then admonished the Jury in accordance
with Sec. 415 of the Code of Criminal Procedure and took
a recess until two o'clock, p.m.)

THE PEOPLE vs. JOHN WHITELY

New York, April 12th, 1909.

TRIAL CONTINUED

AFTER RECESS

GEORGE KENT, resumes the stand:

RE-CROSS EXAMINATION (CONTINUED) BY MR. GRAY:

Q Now, Mr. Kent, during the time that Mr. Whitely was money clerk there, we will say from December the 12th, as he stated to me, to January the 16th, when he resigned, did you in his absence at any time receive any money from this man Ford who testified here? A No sir; I did not.

Q You say that during the time that Mr. Whitely was money clerk, that you did not receive anything, at any time any money from this man Ford as a driver? A Before the 16th?

Q The man Ford, who was a witness here before you?

A Yes, sir.

Q You say that you did not receive any money from him at all during that time? A No, sir.

Q So that if Ford swears that he did give you some money during that time, he is mistaken, is he not? A I received money on the 16th.

Q But that was after Mr. Whitely had left the employ of the Adams Express Company? A He did not leave their employ until about five-thirty. He was not in the office at the time.

Q You say you did receive some money from him on the 16th?

A I did on the 16th; yes, sir.

Q January the 16th? We will say from December the 14th to January the 15th, did you receive any money from Ford? A No, sir; I did not.

Q So if he says so, he is mistaken? A Yes, sir.

Q Now, you say there is a money stamp. There is no name of any clerk on the stamp? It is simply a received and dated stamp? A Yes sir; there is no name of any clerk it is simply a received and dated stamp.

Q And the money clerk adds his name in pencil either above or below, or in that vicinity to show that he received the money and stamped that paid? A Yes, sir.

Q That is right? A Yes, sir.

Q Now, that particular stamp, you saw and used in the office, the cage? A Yes, sir.

Q It wasn't locked up in any drawer, was it? A No, sir.

Q It wasn't locked up in the safe, was it? A No, sir.

Q So that you had access to that stamp? A Yes, sir.

MR. GONTERMAN: Is that all?

MR. GRAY: That is all.

RE-RE-DIRECT EXAMINATION BY MR. GONTERMAN:

Q Now, there has been some question, when a driver takes out a package for delivery, he gets a sheet which goes --

which he takes with him on the wagon, does he not? A Yes, sir.

Q And do you know whether that is the sheet that was taken out on that day (Hands sheet to witness), the ninth, I mean? A Yes sir; that is the sheet.

Q That is the sheet paged in the morning? A It was the sheet paged about two o'clock in the afternoon of the 9th.

Q Well, it is supposed -- and he is supposed to make the deliveries and get the signatures of the parties and return that sheet? A Yes, sir.

MR. GRAY: I object to that, what the driver is supposed to do.

THE COURT: I will sustain the objection. You may strike out the question and answer.

BY MR. GONTERMAN:

Q After he gets -- makes his delivery, and if that delivery is a c.o.d. delivery, what does he do with that sheet which he takes with him?

MR. GRAY: I object to that on the ground that the driver is here to testify as to his own duties on each and every occasion.

MR. GONTERMAN: All right, I will put him on .

MR. GRAY: He does not --

BY MR. GONTERMAN:

Q Now, you have testified in regard to the duties of the money clerk when the money messenger goes around, and I

want to get this clearly before the Jury. There is a difference made between moneys which are received for charges and moneys which are received for c.o.d. settlements, is there not? A No, there is settlements and c.o.d. settlements.

Q I see. Now, when the money -- when the money messenger comes around, and if there are charges in addition to c.o.d. settlements, are there -- how are those to be made out, on separate sheets or on the same sheet?

MR. GRAY: Now, I object to that. The money messenger is in court and he can testify as to that. It is not the best evidence.

THE COURT: No, I will allow the question. Proceed.
BY MR. GONTERMAN:

Q I want you to explain that to the Jury so that they will understand that? That is all? A These charges you speak of are entered as settlements. They are put on separate sheets, apart from the c. o. d. packages.

Q So that if on any one occasion, if there were moneys which were turned over for ordinary express charges and if on the same days, there were moneys for c. o. d. settlements, there would be at least two sheets, would there not? A Yes, sir.

Q And then those -- those two sheets are both delivered to the money messenger are they, when he takes the money?

A Yes, sir.

Q And then upon any given occasion when money is turned over to the messenger, if it were money received for packages, there would be given a sheet containing that entry for that payment, and if on the same occasion there were also moneys turned over for c.o.d. settlements, there would be a addition or sheet? A Yes, sir.

Q And then in addition to that there would be the regular envelope containing the c.o.d. moneys themselves? A Yes, sir.

Q And would those all be turned over at the same time to the messenger? A All turned over to the messenger at the same time, yes sir.

Q Yes, and then the money messenger is supposed to give his receipt to the money clerk for the moneys? A Yes, sir.

BY MR. GRAY:

Q What would there be to show on either of those sheets whether they were c.o.d. settlements, or money charges? A It would be specified thereon the sheet.

Q But all the c.o.d. charges for that day would be down on one sheet, would they not? A Well, as I explained before,-

Q Never mind, as you said before. Let me make clear to you what I want to find out. Suppose there were three c.o.d. deliveries on that day, \$88, \$36, and \$24; they would all appear individually on one sheet, and that would show on the sheet

would it not? A Yes, sir.

BY MR. GONTERMAN:

Q But at the same time, there is a differentiation made as to whether it is outside of the city? A Yes, sir.

Q And if one c.o.d. package were out of town, that would be on a separate sheet by itself? A There are three divisions.

Q What are they? A The three divisions are the Eastern and Northern states, for one, and the Southern states for another, and the Western states for another, and there is another sheet known as the local, that is, the city.

BY MR. GRAY:

Q The local? A Yes, sir.

BY MR. GONTERMAN:

Q Then, if on one occasion there were three deliveries of c.o.d. packages to different parties, they would all be on one sheet? A Yes, sir.

Q That is, if they were all in the same territory? A Yes sir.

Q And the others would be on separate sheets? A Yes, sir.

Q And the money charges would be on a separate sheet? A Yes, sir.

BY MR. GRAY:

Q If there were one item of \$88 there overlooked or put on the wrong sheet, it would be a mistake of his, would it not? He is liable to mistakes? A Oh, we are all liable to make mistakes.

BY MR. GONTERMAN:

Q If he made a mistake, it would be his mistake? A Yes sir; it would be his mistake.

MR. GONTERMAN: Now, I would like to recall Mr. Foley.

J A M E S F O L E Y, recalled:

DIRECT EXAMINATION BY MR. GONTERMAN (Continued)

Q Now, Mr. Foley, on the 9th, when you called at the office and saw this defendant, you received certain sheets in reference to moneys, did you not? A Yes, sir.

Q I show you one dated January 9th, 1909, and ask you if that is one of the sheets? A Yes, sir.

Q And the name of the defendant is on it? A Yes, sir.

Q Is that his signature? A Yes, sir.

Q Was that put on in your presence? A Yes, sir; this is the name here.

Q I see. How much does that -- what does that represent?

MR. GRAY: The sheet speaks for itself.

THE WITNESS: \$149.50.

MR. GONTERMAN: All right, I offer that in evidence.

THE COURT: Are the items there at all?

THE WITNESS: One item.

MR. GRAY: Just let me see it, please.

BY MR. GRAY:

Q What does that mean here (indicating), where from?

A That is the shipper, that is where it is from.

Q It is not the man that was here on the stand? A Yes sir; that is the man. That is put on all the sheets.

Q This is Whitely's name, you say here (indicating)?

A That is Whitely's name there; yes sir.

Q Did you see Mr. Whitely write that name there? A No, I never saw Mr. Whitely write anything.

Q You did not have this one herein court this morning?

A No, sir.

Q Is that the sheet you procured during recess? A Yes, sir.

Q Is that the original sheet you procured recess in the Adams Express Company's office? A Yes, sir.

Q And this is \$149.70, does that include more than one c.o.d.? A That is the balance.

Q It is not itemized at all? A There is no c.o.d.'s put on that sheet.

Q Who wrote this? A I do not know whether it was

Whitely. It looks like his writing.

Q It has not been written today, has it? A No sir; indeed, it has not.

Q You did not see it written today between one and two o'clock? A No, sir.

BY MR. GONTERMAN:

Q It was handed to you by Mr. Whitely? A Yes, sir.

Q Is that your name there (indicating)? A No, that is our cashier, downtown.

Q And what does that read? That makes \$149.50 for express charges on that day? A Yes, sir.

CROSS EXAMINATION BY MR. GRAY:

Q If I remember correctly, Mr. Foley, when I was examining you, you testified that in each -- that your statement that you received from the money clerk at each branch office was itemized? A That is as I remember it.

Q And in regard to c.o.d.'s if I remember correctly, you testified that each and every item was itemized?

MR. GONTERMAN: Well, he said he did not.

Q I thought I understood you to say that each and every package delivered to you was itemized on the sheet and a package corresponding to that entry was handed to you? So that, suppose that there was seven, or eight or nine packages, each and every one of them was put up and delivered to you as money,

and the sheet was delivered to you relating to the amount on each and every package? A Yes, there is a package delivered to me, but it is sealed.

Q Don't you check the amounts you received from the money clerks? A Oh, it is checked by the money clerks. That is not c.o.d's that you are talking about. It is express charges. It has got nothing to do with c.o.d's.

Q In this sheet here (indicating) represents the moneys delivered to you for one day? A Yes, sir.

Q For one branch office? A Yes, sir.

Q How much does that amount to for one day? A Oh, on any one day, \$20, \$40 and different amounts.

RE-DIRECT EXAMINATION BY MR. GONTERMAN:

Q Now, at the same time, did you receive this paper, January 9th (indicating)? A Yes, sir.

Q From the defendant, Mr. Whitely? A Yes, sir.

Q And that was in reference to the transactions that were had with him that day? A Yes, sir.

Q That was a c.o.d. package was it not? A That was a c.o.d. package,

MR. GONTERMAN: I offer that in evidence.

(Paper received in evidence and marked "Peoples"

Exhibit no. 4 of this date.)

RE-CROSS EXAMINATION BY MR. GRAY:

Q How much is that there on that sheet? How much did you receive there from that c.o.d. package, is it about five cents? A I received \$4.75 total.

Q For the whole day? A I think it is only -- not for the whole day.

Q Yes, but that was all you received on January 9th?

A Well, I received --

Q Yes, but I mean c.o.d. packages, that was the only c.o.d. package for which you received money on that day?

A That one day; yes sir.

Q When did you get up there on this day? Were you there previously? A That day?

Q What time? A About a quarter past two, half past two.

Q What time did you pay a visit on this day? A About the same time.

Q When did you pay a visit to that office previously? A About the same time.

Q And only forty-five cents was turned in from that branch? A Yes, sir.

Q When was that written (indicating)? A At the same time.

Q It was written today? A No, sir.

Q Will you swear that that ink was not written today?

A Yes sir; I will swear it.

MR. GRAY: I will allow it to be introduced in evidence and I will ask that this exhibit, when the case goes to the jury be taken into the juryroom with the jury.

MR. GONTERMAN: If they ask for it.

BY MR. GONTERMAN:

Q Then, on the 9th, all the moneys that you received from the defendant, Whitely, in connection with the transactions, are represented in these papers? A Yes, sir.

Q \$149 for ordinary express charges and \$4.75 for c.o.d.'s?

A Yes, sir.

Q And you received only one c.o.d. settlement on that day? A That is all; yes sir.

Q And that is right? A If there were any others, it would be on there with that, it would be on the same sheet.

Q And then you gave him a receipt for the moneys you received? A Yes, sir.

Q That is your usual custom? A Yes, sir.

Q Now the 9th was on a Saturday and you went again on Monday, didn't you? A Yes, sir.

Q And you received similar statements on that day, did you not? A Yes, sir.

THE COURT: What day is that, Mr. Gonterman?

MR. GONTERMAN: On the 11th.

THE COURT: Yes.

BY MR. GONTERMAN:

Q Now, I show you a paper dated January 11th, 1909, and ask you whether or not you got that from the defendant on that day (hands papers to witness)? A Yes, sir.

Q And it was given in connection with c.o.d. settlements, or express charges? A This is a mixed sheet. There is some stuff going out of town and some local, ordinary express charges.

Q Well, is there any c.o.d.'s on that? A There is no c.o.d.'s here.

Q That represents express charges outside of c.o.d. settlements? A Yes, sir.

Q That was all you got on that day? A Yes, sir.

Q And it was given you at the same time you got the money? A Yes, sir.

Q By him (indicating the defendant) A Yes, sir.

MR. GONTERMAN: I offer that in evidence. (indicating paper.)

BY MR. GRAY:

Q Now, when you got this sheet, and when you got the corresponding packages --

MR. GONTERMAN: No, he does not get any corresponding packages; he did not so testify.

MR. GRAY: Well, doesn't he have to get packages of money?

THE COURT: Ask him that.

BY MR. GRAY:

Q When you got the corresponding packages of money to correspond with these items, did you examine these packages and look at the sheet and check them off? A Yes, sir.

Q I notice there: an item of \$89.33? A Yes, sir.

Q You remember that item? A Yes, sir.

Q American Exchange National Bank? A Yes, sir.

MR. GRAY: I just call that to your attention.

MR. GONTERMAN: Now, all of these items upon Peoples Exhibit No. 4 represent the express charges which you received from the defendant on that day outside of c.o.d. settlements?

THE WITNESS: Yes, sir.

Q On the same day you received some c.o.d. settlements did you not? A Yes, sir.

Q And you received certain statements in connection with them? I hand you this paper dated January 11th, and ask you whether these papers were delivered to you by the defendant on that day (Hands papers to witness) A Yes, sir.

Q And that at the time you got those papers he handed you certain moneys? A Yes, sir.

Q And those statements were handed to you in reference to this money? A Yes, sir.

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Q And is a statement of the moneys received by you?

A Yes, sir.

MR. GONTERMAN: I offer those in evidence.

(Paper received in evidence and marked Peoples Exhibit No. 5 of this date.)

BY MR. GRAY:

Q What time did you call on the 11th to collect money, half past two? A Between two and half past.

Q What are these? Now, we will see? Are these the charges or the c.o.d.'s? A That is a c.o.d. amount, right here (indicating) that is the charges. That is paid for c.o.d. packages (indicating).

Q Who makes these little marks here for each and every charge, do you? A No, those checks simply indicate that it is checked off.

Q You do not know who has checked them off? A No.

Q I call your attention to this (indicating), do you see any such check there? A No check on here, no.

Q I want to call your attention to this (indicating) do you see any check there (referring to Peoples Exhibit No. 4)---

MR. GONTERMAN: I suggest these be marked in evidence.

MR. GRAY: All right, I want them marked in evidence.

(Papers received in evidence and marked Peoples Exhibits Nos. 6 and 7 of this date.)

MR. GONTERMAN: Now, if your Honor please, I have offered these in evidence and I do not want him to cross examine on them. When I have finished. I thought he was asking whether or not they were going to be offered in evidence.

THE COURT: Yes, exactly.

MR. GRAY: Are they not at the disposal of the defendant's counsel for the purpose of cross examination?

MR. GONTERMAN: I am not through with him yet?

MR. GRAY: I thought you were. You stopped. Go ahead.

BY THE COURT:

Q Do you recollect the amount of extra charges that there was on that c.o.d. receipt. There was something extra, a dollar and something? A I do not exactly recall that.

Q You do not recall, the evidence shows that? A (No answer)

BY MR. GONTERMAN:

Q Now, Peoples Exhibit No. 4, dated January 11th, this represents the moneys that you received from the defendant on that day for express charges, exclusive of c.o.d. settlements does it not? (Hands paper to witness) A Yes, sir.

Q And peoples' Exhibits Nos. 6 and 7 represent moneys

which you received from the defendant on that day --

MR. GRAY: Now, if your Honor please --

MR. GONTERMAN: Will you wait until I have finished my question, please.

MR. GRAY: Now, if your Honor please, I object to this method of procedure. These papers have been put in evidence, and he has given his direct examination on them to get them in evidence. I do not think that he should be given an opportunity to examine on them, and then cross examine on them, and then re-direct examination on these same exhibits. The exhibits all are there. Leave them there. They are in evidence.

MR. GONTERMAN: I want to get it a little more perfectly.

THE COURT: I will allow the question.

BY MR. GONTERMAN:

Q And Peoples Exhibits 6 and 7 represent moneys which you received from the defendant on that day on C.O.D. settlements?

A Yes, sir.

Q And are all the C.O.D. settlements that you received from the defendant on that day? A Yes, sir.

Q And Peoples Exhibits 5, 6 and 7, represent all the moneys for which the defendant turned over to you on the 11th day of January, 1909? A Yes, sir.

MR. GONTERMAN: That is all.

RE-CROSS EXAMINATION BY MR. GRAY:

Q Now, we will go back again to this marking part. Who is supposed to have checked off the different items there, as the checking off appears there? A The man that receives these from me downtown when I bring it down to him.

Q That is the custom, to check them off? A Some do and some don't.

Q Oh, then there is no rules fixed about it? A No, the same man don't receive the moneys all the time.

Q What I mean is, there is no rule in the system of receiving money from you?

MR. GONTERMAN: I object to that.

THE COURT: yes, I sustain that objection.

BY MR. GRAY:

Q Is there anything on that sheet to indicate who received it? A Yes sir; there is the man's name right there (indicating).

Q What is his name? A J. J. Moran.

BY MR. GONTERMAN:

Q He received that from you? A Yes, sir.

BY MR. GRAY:

Q How many men received money from you downtown? A Well,

I have got four or five different departments, and each department has got two or three clerks, and they are all entitled to sign for it.

Q What is this man's name here (indicating), on this sheet? A That is Lamar, the chief clerk in the Dock Department.

Q Hovey does not check them off? A No, sir.

Q That is all? A Yes, sir.

Q Now, this man here, is it Moriarty? A No, Morrissey.

Q Hovey does not check them off? A No, sir.

MR. CONTERMAN: I object to that.

THE COURT: Objection sustained. Strike out the question and answer.

Q Now, I see Morrissey's name on this sheet --

THE COURT: We will have no more questions as to Morrissey or his checking off. The same rule applies to that.

Q How many men received money from you on this sheet?

A Four.

Q Four men? Did you turn in this money at four different times, or all at once? A Yes sir; four different times.

Q Four different times? A Yes, sir.

Q You turned in that \$142.39 at four different times.

A Yes sir; four different people.

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Q How long did you remain there that evening to turn in all these different amounts to those four people? A About an hour.

MR. GONTERMAN: I object to that.

Q Can you tell why you did not turn in all this money at one time? A There is --

MR. GONTERMAN: I object to that.

THE COURT: objection sustained.

MR. GRAY: I will take an exception on that.

MR. GONTERMAN: It has all been asked and answered.

MR. GRAY: Exception.

MR. GONTERMAN: I would like to recall the driver and examine him as to that original sheet which he had on his wagon.

W I L L I A M J. F O R D, recalled:

DIRECT EXAMINATION BY MR. GONTERMAN: (Continued)

Q Now, I show you a paper dated January 9th, and ask you whether or not that was a paper which was in your possession on that day, January 9th, 1909? A Yes, that is my own delivery sheet.

Q And whom did you receive it from? A Well, I received it from the 148th Street office, no one personally.

Q And is that sheet which you took with you on your wagon

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on that day? A Yes, sir; that is the sheet right there;
(indicating).

Q And is this the sheet which you took when you delivered
ed the c.o.d. package for \$88.36? A Yes sir; that is the
sheet.

Q And is this the paper upon which you had the memoran-
dum in regard to that, is that the paper that you showed to
the consignee? A Yes sir; when I offered the goods for
delivery, I got the signature on it.

Q And after that, did you return this paper to the de-
fendant? A I returned that to Mr. Whitely, himself.

Q To Mr. Whitely? A Yes, sir.

Q And did he put his name on it in your presence? A Yes
sir; as near as I can remember. I am supposed to put mine
on it, and he is supposed to put his own alongside of the
name.

Q And this is the sheet that you had with you on the
9th when you took the c.o.d. package for \$88.36 and delivered
it? A Yes, sir.

MR. GONTERMAN: I offer that in evidence.

BY THE COURT:

Q Was there any additional charge at that time as to
that \$88.36? A Yes, sir, there was charges for sending the
money back.

Q How much? A On the \$88, I think it was a quarter, and on the \$22 it was a quarter.

THE COURT: That is all.

BY MR. GRAY:

Q Now, who makes this sheet up? A I do.

Q And all the money that you turned in to the money clerk is represented there by that total (indicating) \$2.27? A No, sir.

MR. GONTERMAN: Now, if your Honor please, it is simply a question of the admission of the paper first.

MR. GRAY: I will allow it in evidence, if I have some -- my rights.

THE COURT: You have in regard to the admission, admittedly, but cross examination will bring out any other questions -- wait a minute. He has a right before it is admitted to question about it. Do not mark that as an exhibit until it has been accepted.

MR. GONTERMAN: He says it has been accepted.

THE COURT: Do I understand this is a new offer?

MR. GONTERMAN: Well, I offer it in evidence, and he has not taken -- he has not objected to it.

MR. GRAY: Not yet.

MR. GONTERMAN: He can make any examination as to the contents.

THE COURT: He can make an examination in relation to its admission.

BY MR. GRAY:

Q Now, how much money out of this sheet here did you turn into the money clerk? Just look at it again (Counsel hands paper to witness)? A This sheet?

Q Yes, that one sheet? A I turned \$88.36 and a quarter added and \$2.27 express charges.

Q Is there anything there to show on that sheet, that you turned in \$88.36 outside of your own handwriting? A There is \$88.36 written on the sheet.

Q By you? A Yes sir; and it is O. K'd by Whitely.

Q What is O. K'd? A The c.o.d. there.

Q Don't you know that all Whitely O.K'd was the charges he received from you? A Well, it is O. K'd by Mr. Whitely.

Q Don't you know that all Mr. Whitely O.K'd was the express charges, this \$2.27? Don't you know that? A No, I should say he receipted for everything; no sir.

MR. GRAY: As far as that is concerned, I have no more questions to ask on that. I want it in evidence.

(Paper received in evidence and marked Peoples'

Exhibit No. 8 of this date.)

BY MR. CONTERMAN:

Q At the time that you returned this paper to him, Peo-

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ples Exhibit No. 8, you also, did I understand, turned over to him the \$88.36? A Yes, sir; when I turned in the sheet.

Q And he signed th is at that time, and also signed Peoples Exhibit No. 1? A Yes sir; that is my book.

Q And these are the only papers that you have or know anything about in reference to the receipt of this? A Yes, sir.

Q And the same time you returned to him the express charges that you had collected here? A Yes, sir.

Q Amounting to \$2.27? A Yes, sir.

MR. GONTERMAN: That is all.

CROSS EXAMINATION BY MR. GRAY:

Q Just a question, Mr. Ford. You asked me this morning when I examined you about this other item of \$22.50 which you claim to have turned in, did you not? A Yes, sir.

Q You have been at the office of the Company at lunch hour have you not, and you found this paper? A Which paper?

Q This paper (indicating) ; where did you get it? A I did not get it at all.

Q Weren't you with the man that got it? A No, sir.

MR. GONTERMAN: Now, if your Honor please, it is business.

not that man's ~~responsibility~~ to produce the paper. The

District Attorney produces that paper.

BY MR. GRAY:

Q You haven't got the sheet with the \$22.50 here?

A Yes, sir.

Q You haven't got it? A No, sir.

Q Did you tear one sheet up? Q No, sir.

Q Are you sure of that? A Yes sir; positive.

BY MR. GONTERMAN:

Q You have the entry of that \$22.50 in this other book, have you not? A Yes, sir.

BY MR. GRAY:

Q Who made that entry? A In what?

Q How do you know? Did you see him make it? A No.

MR. GRAY: Then I ask that that entry be stricken out.

THE WITNESS: I didn't see who made it. I said what --

MR. GRAY: Oh --

MR. GONTERMAN: We have been over this before, but as there seems to be some confusion in the minds of counsel I just want to get this thing straightened out.

MR. GRAY: I beg your Honor's pardon, there is no confusion in the mind of this counsel, as far as I am concerned.

MR. GONTERMAN: Oh, I thought there was.

BY MR. GONTERMAN:

Q This book, Peoples Exhibit No. 2, will you turn there to the entry in reference to that item of \$22? A Yes sir; there it is right there (indicating).

Q This is the book that you had with you? A No sir; that book belongs in the office you see.

Q Did you take this with you on the wagon? A No, sir.

Q On that day? A No, sir.

Q And this is the book in which you -- in which are put any c.o.d. consignments which at first had been refused?

A Not exactly that, c.o.d.'s, any shipment that has been refused.

Q And that is the reason that it is in this book?

A That is the reason that it is in that book.

Q And did you make any entries here on that day (indicating)? A On the 9th?

Q Yes. A No, sir.

Q Did Mr. Whitely have this in his possession on that day? A It was in the office, I could not say whether he had it or not. It belongs in the office. It was in the office.

Q Did he talk with you about this book? A Well, it is in his business to receive all these -- goods that come back. You see, when you send the goods out, they give you ^{the} sheet on file. That sheet comes from downtown, and we sign it there.

in our own office.

Q Did you see this book on the day of the delivery of that \$2.50 item? A Yes sir; I seen it and signed it.

Q You signed it? A Yes, sir.

Q Where? A That is my signature right here (indicating) You see this is a separate package altogether.

Q And so you signed it right there (indicating) A Yes, sir.

Q And that is your receipt for that c.o.d. consignment?

A Yes, sir.

Q And that is your receipt for that c.o.d. consignment?

A Yes, sir.

Q And had you signed that before you signed the book?

A Well, I told you that these goods weighed 260 pounds, and that they were loaded on my truck and the book was on top of the goods with the sheet in it. I took the book and signed off, and took the goods.

Q That is merely for the purpose of showing that you signed it? A Yes sir; they have to have a record in the office of all the goods.

Q That is the receipt for that consignment? A Yes, sir.

BY MR. GRAY:

Q You say it is your receipt for it. From whom did you receive it? A Well, no one personally. I got it out of the office.

MR. GRAY: Then I object to it.

THE WITNESS: I gave the receipt.

Q You saw it there on top of the goods and you signed your name to it? You don't know who wrote it? You go and take the stuff out, is that it? A Yes, sir.

Q That is the way it is done? A Yes, sir.

BY MR. GONDERMAN:

Q That is your receipt for it? A Yes, sir.

BY MR. GRAY:

Q But no individual gave you the book? A No individual at all.

Q Who did you turn this sheet in to, Peoples' Exhibit No. 8? A I turned that in to the money clerk.

Q And he signs it here, doesn't he (Indicating)? A Yes sir.

Q And you turned in a similar sheet like this for every day? A We turn in a similar sheet. It is not the same sheet, but it is the same kind of a sheet.

BY MR. GONDERMAN:

Q Do you make a duplicate of that sheet? A We turn in the carbon, and I get the carbon signed.

Q Well, who retains the other one? A The money clerk.

Q He retains both in the office? A Yes sir; this one

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here has got to send downtown the following day, and the duplicate he holds in the office for his own records.

MR. GRAY: That is all.

H E N R Y P L A T T, called as a witness on behalf of the People, being duly sworn, testifies as follows.

DIRECT EXAMINATION BY MR. GONDERMAN:

Q You are an employe of the Adams Express Company? A I am in the employ of Whitman & Vandiver.

Q And you are an investigator in reference to matters connected with the Adams Express Company? A Yes, sir.

Q And you made an examination in regard to this matter, in regard to the charge preferred in this indictment? A We investigated to find out what was in it.

Q Now, have you had any conversations with the defendant in reference to this charge, in reference to a certain two items, c.o.d. settlements, one for \$88.36 and another for \$22.50? A I had in reference to the \$88.36.

Q Did you have any conversation in reference to the item of \$22.50? A I do not remember that.

Q And where did you have this conversation? A It took place in the police court when he brought him down from his house, during the evening.

Q And what did he say to you and what did you say to him

in reference to it? A I asked him about the \$88.36, what became of it. He says he never received it, or he did not know what became of it. It was a mystery to him.

Q Did you at any time get any other explanation? A That is the only explanation he gave. He says he perhaps received it. He did not know what became of it.

Q Did he say who he perhaps received it from? A No, he did not mention the name, not that I remember.

Q Did he make any further statements to you, about this matter? A That was all.

Q About what date did he make this statement that you refer to? A It was around -- sometime around eleventh or twelve twelfth of February, I believe.

Q You had no further conversation with him? A No.

CROSS EXAMINATION BY MR. GRAY:

Q And there was no mention made of a driver's book that was shown to you on the day that you got any message that there was -- A Nothing to me.

Q Not at all? A Except in admitting ^{receiving} the money and not knowing what became of it.

Q He did not say anything at all that the methods at that office were so loose that it was possible for anybody else to add an entry to it afterwards? A He told me, said he perhaps received the money but he did not know what became

of it.

Q What is your position, investigator? A I am a special investigator with Whitman & Vandiver.

Q They are attorneys, are they not? A Yes, sir.

Q How long have you worked for them? A I am working for them over a year.

Q Where were you working before that? A The District Attorney's office.

MR. GRAY: That is all.

MR. GONDERMAN: That is all, that is the people's case.

THE PEOPLE REST

MR. GRAY: Now, I ask your Honor, to dismiss the indictment against this man on the ground that there has been no direct proof shown that he at any time received this money. In the first place, there has been no direct proof shown that he at any time received this money, in the first place. There has been no direct proof shown that he has/turned over this money, if he did receive it, to the money messenger, in the second place; and on the further and separate ground that the People have absolutely failed to prove their case as set forth in the indictment against this defendant.

THE COURT: The motion is denied.

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MR. GRAY: I would ask your Honor to instruct this jury that this motion is not necessary?

THE COURT: Oh, certainly.

MR. GRAY: Not necessarily a circumstance to be taken against this defendant, or decisive of this man's guilt.

THE COURT: Yes, the jury have nothing to do whatever with the motion made by the attorney at all. Their province is to consider the facts in the case in the case, and I so instruct you.

(Mr. Gray opens the case to the jury in behalf of the defence.)

JOHN W. WHITEY, the defendant, called as a witness in his own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GRAY:

Q Mr. Whitely, where do you live? A I live in Boston Road, 1057.

Q When did you enter into the employ of the Adams Express Company? A On December the 2nd.

Q 1908? A Yes, sir.

Q Who recommended you there?

MR. CONDERMAN: I object to that, if your Honor please, it does not make any difference who recommended

him.

MR. GRAY: It is immaterial, but I think in this case latitude ought to be allowed?

THE COURT: Yes, it is immaterial to the issues in the case, and you must follow them as closely as possible. Objection sustained.

Q In what capacity did you enter the employ of the Adams Express Company on December the 2nd? A As a clerk.

Q As a clerk? A As a clerk.

Q Was there anything said to you at that time about taking the position of money clerk? A Never mentioned.

Q When was that position put before you for the first time? A I went to see the Superintendent.

Q What is his name? A Mr. Howard.

Q When did you go to see him? A On December the 1st, at the same time I was employed, and we talked the matter over. I was recommended --

MR. GONDERMAN: I object to that.

MR. GRAY: never mind by whom you were recommended.

A And we talked the matter over, and he told me that he could give me a position as long as I lived in the Bronx, in the branch office in the Bronx.

Q In the Bronx? A Ye, sir.

Q And your position was in the Bronx branch at Bergen Avenue? A 148th Street and Bergen Avenue.

Q Well, now, under what circumstances did you go to work as a clerk, you say? A As a clerk.

Q When was the first intimation given to you of your prospective appointment as a money clerk? A After being there about a week.

Q Was there anything said in that first week from December the 2nd to the 9th, about your taking a position as money clerk there by anybody? A No sir; there was not.

Q Well, what was said there on the 9th? A Well, he started in to show me the details.

Q Who did? A Mr. Kent, he started in to show me the details of the office.

Q That was the manager, the agent? A That was the manager, the agent.

Q Well, now, what was said after that with reference to this appointment? What did he tell you, what did he do? A He called me in and told me he would show me how to do this, and he was all the time saying that my work was very unsatisfactory to him.

Q To him? A To him.

Q He was all the time complaining about you? A All the time complaining.

MR. GONDERMAN: I object to that and ask that it be stricken out.

MR. GRAY: I think, if your Honor please, that there

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ought to be a little latitude shown to the defendant here to show animosity on the part of these men, to show why.

THE COURT: I think you ought to confine yourself as closely as possible to the issues in the case.

MR. GRAY: I think you ought to allow counsel some latitude.

THE COURT: You will have all the latitude necessary, but you will not have any unnecessary latitude.

BY MR. GRAY:

Q How long was Mr. Kent instructing you in your duties as money clerk before you actually entered upon the duties of the position? A About five days about.

Q During that five days did you work at anything else, anything else around the office? A Everything.

Q Everything? A Everything.

Q How often during that five days were you actually in the money cage? A None.

Q None at all? A Only when he called me to show me how to make up this account and that account.

Q How long were you there as a matter of fact at a time? A About half an hour, towards the latter end of it.

Q And that was all the instruction that you got as to your duties as money clerk from Mr. Kent? A That was all the instruction.

Q Now, when did you actually take up the position in the cage, enter upon the duties of the position? A After Mr. Furman called, on the 14th.

Q The 14th? A Yes, sir.

THE COURT: 14th of what?

Q The 14th of December? A The 14th of December.

Q What were your duties as money clerk? What were your duties, detail your duties to the jury here, in your own way? A Well, my duties were never explained to me, never. My duties was everything. There was receiving clerk, porter, shipping clerk, porter, everything, telephone boy. I had no opportunity to do anything.

Q And did you remain as money clerk from December the 12th until when? A Until Saturday morning, I think it was, December 15th or 16th -- I mean January 15th or 16th.

Q During the time you were there, were you confined all the time to that cage? A I had only an opportunity to go in the cage when the drivers came to bring in money.

Q Outside of the time when the drivers did not come in to present any money, you were attending to what? A Attending to everything.

MR. GONDERMAN: I wish that you would not lead the witness.

MR. GRAY: That is so.

Q Did Mr. Kent during that month ever ask you to do any

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thing for him outside of your duties as money clerk? A Oh, occasionally.

Q For what? A To go around and to adjust this matter and that matter. On one occasion to go to one place in regard to one thing, and on another to another place, to adjust another difference, and so on.

Q And during the time or times that you were absent from the building, was the cage open, if you remember, or did you lock it up after you? A I always locked it but found it open.

Q Now, during the dinner hour who took care of your duties as money clerk? A Well, I locked it when I went to my dinner.

Q You locked it? Did you at any time ever -- did you at any time come back and find anybody in the cage?

MR. GONDERMAN: Now, I object to that.

THE COURT: Now, please do not lead the witness. I have not any objection to the questions asked up to this time, as to the materiality of the evidence to the case. now, however, I will ask you not to lead the witness.

BY MR. GRAY:

Q On those occasions when you had left the cage, did you find the cage in the same condition when you came back as when you left it?

THE COURT: There is another leading question.

BY MR. GRAY:

Q How did you find it? A Open.

Q On how many occasions? A Several.

Q You mean several? A A few times.

Q Did you find it open? A Yes, sir.

MR. GONDERMAN: Now, if your Honor please--

THE COURT: Question allowed.

Q When you had come back and found that cage -- A I found on one particular occasion when I made a note of it, that it was open.

Q During your incumbency as money clerk? A Yes sir, I went to my dinner, and I did not happen to stay the hour out, I just had a quick lunch around at a lunch place, and I found the agent in the cage.

Q Who is the agent? A Mr. Kent. He and another man were in there going through all the papers, and throwing out a lot, they were destroying them and burning them, they destroyed them and burned them up. I have the date of it in a little book. I made a note of it at the time.

Q On another occasion, did you find anything extraordinary when you got back?

MR. GONDERMAN: Now, if your Honor please---

THE COURT: Objection sustained as to the form of the question. It is objectionable for several reasons.

BY MR. GRAY:

Q I show you a little note book. Was that in your possession on the day specified, January the 7th (Exhibits book to witness)? A Yes, sir.

Q Did you on that day write what is in that book there?
A Yes, sir.

Q You remember it? A Yes, sir.

Q I will ask you to turn over a page, another page -- do you remember where it is marked there -- another page -- another page -- did you make the several entries in this notebook at the time and on the dates specified? A Yes sir, ^{I did} indeed.

Q That is in relation to existing circumstances there specified? A I did.

MR. GONDERGAN: Your Honor, he has just examined as to the --

Q You made these entries? A I made those entries.

Q On these dates? A On those dates.

MR. GRAY: If your Honor please, I offer in evidence these entries.

THE COURT: What dates?

MR. GRAY: On January 7th, 1909, another under date of January 13th, 1909, the date in the indictment here, and another under date of January 14th, 1909, and another under date of January 16th, 1909. Now, this man swears

that he made those notes on those dates, and I submit that they ought to be offered in evidence.

THE COURT: Oh, I know, but they might be about something altogether different from this case.

MR. GRAY: No sir; they are in relation to this case. Your Honor can examine them before I make any more comments on them.

THE COURT: Parallel with the item here is the date of the 11th of January.

MR. GONDERMAN: Your Honor, I think an inspection will show that it has no bearing upon this case.

MR. GRAY: I might remind your Honor that it has been brought out in the direct examination, in the testimony of Mr. Kent that he saw this man writing in a book on that date.

THE COURT: I know.

BY THE COURT:

Q This is what, a sort of a general diary, is it? A Yes sir; a diary.

Q Not kept particularly with reference to your work or anything else; but a diary? A It is a diary pertaining to my work.

THE COURT: Excluded.

BY MR. GRAY:

Q Is it kept particularly with reference to these occa-

sions? A Yes, sir.

Q And containing no other entries? A Containing no other entries.

THE COURT: Exclude it.

MR. GRAY: I will take an exception, your honor.

BY MR. GRAY:

Q Now, when were you first informed that this money was missing? A On Saturday afternoon.

Q What day, can you remember the day? A I think it was January the 15th or 16th. I fail to remember the exact day.

Q Who informed you? A Mr. Kent.

Q What was said by him to you at that time? A He asked me "Where is that entry for \$88.36."

Q What did you say to that? A I says "I don't know."

Q What did he say then? Go on, continue the conversation? What conversation took place between you and him at that time? A He says, "Well, we will investigate and find out." We investigated, we looked through the money cage. We looked through the safe. We could not find anything there about it at that time, and he says, "Why, it is in the book. It has been received."

Q What book? A The driver's book. I says, "Then, I must have received it."

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Q You must have received it, that is when he first spoke to you? A When he first spoke to me I says, "I must have received it," and we went on looking for it. And after we had looked through the money cage and everywhere, and we could not find it, and I says then in the excitement, "I do not know what to do in a case like this," and I says, "Wait a moment and I will go and see if I can raise the money, and then we will look it up afterwards."

Q This was at the time that Mr. Kent first drew your attention to it? A First brought my attention to it.

Q Then you went out, what did you do after that? A It was about fifteen minutes, and then I went out, and then I realized --

MR. GONDERMAN: I object to that, what he realized.

MR. GRAY: Oh, it is your duty to give this man a chance just as much as any other man.

MR. GONDERMAN: Now, if your Honor please, the witness is the defendant in his own behalf, and he must testify in accordance with the rules of evidence.

THE COURT: Very true, in accordance with the ^{strict} rules of evidence, we would have to strike out what he realized.

MR. GRAY: Strike out what he realized.

BY MR. GRAY:

Q What did you do? A I came back and when I entered

I found Mr. Kent there and the other drivers, two or three drivers in the cage, handling the money and the very minute I saw that, I says, "I resign, and you will accept my resignation", I says, "Is this up to you." I said, "I hold myself responsible no longer." I went to work in the midst of that and left the place. After I had gone away I realized the fact --

Q Never mind what you realized, tell what you did? A After I left the place I found that I had the keys -- and I realized ---

Q That is very objectionable to the District Attorney, you know?

THE COURT: And so is it objectionable to the Court, that kind of a remark from you, Mr. Gray.

THE WITNESS: So I returned the keys.

Q You did deliver the keys, and when you got back you found him in the cage with another man? A Yes, sir.

Q You had resigned at that time? A I did immediately.

Q When did you commence hearing about this case after January 16th? A A month, nearly.

Q A month after that? A Nearly, on the 11th.

Q You did not hear from anybody? A For nearly a month after that, on the 11th I did. I was home after that and I stayed home all the time.

Q Did you change your residence in the meantime? A No, sir.

Q Or go out of town? A No.

Q Are you married? A I am married, yes sir.

Q Now, about this driver's book, that was the book that was shown to you by Mr. Kent, was it not? A Yes, sir.

Q And your stamp appears here and your name appears here (Indicating)? A Yes, sir.

Q Do you remember the time when you stamped this particular sheet, or these particular sheets (Indicating)? Do you remember anything about the particular time when you stamped the two of them? A Well, I would have to look at it and refresh my memory.

Q This was stamped in the morning (Indicating) and this in the afternoon (indicating)? A Well, morning means about half past one for this driver.

Q Now have you got any habit or custom about stamping these things any particular place? A At the bottom of the totals as near as possible, and then usually put down the totals with my name. If you will look the book --

Q At the bottom of the totals? A Yes sir; you will find usually that they are -- that I put the total as well as my name.

Q You put the total down as well as your name? A Yes, sir; there is \$91.85 it is down there, it says -- I do not

know, but you will find by looking them all over that I put the amount of money I received as well as my name after stamping it, with each stamp.

Q Have you any recollection of receiving this amount of money? A No, I have no recollection of receiving it.

Q You say you are supposed to have received it according to this book on the 9th of January, and your attention was brought to it on the 15th? A That is it.

Q Now, do you remember anything about the turning in of this \$22.50 on this Thursday here? A No, sir; I do not.

Q Do you remember anything that occurred or transpired any incident between you and this man Ford? A I do.
the history

Q Just tell the jury/about this, what occurred between you and Ford? A He came in on Friday evening and handed in his sheets.

Q What day? A Friday, the 15th.

Q Was it the day before you resigned, was it? A Yes, sir.

Q What happened that day? What time of the day was it?

A In the evening, about half past six or quarter to seven, he handed in his Friday morning sheets, and also handed in a duplicate with it, and the duplicate I signed, and he kept his book and I took the two sheets and sent them downtown.

Q Well? A The express charges which he collected goes

on another sheet, and I signed for each and every one of them, and I found there was \$12 or nearly \$12 -- yes, it was \$12 over, and I asked him what this was and he says, "That is for a c.o.d."

Q Did he mention the amount? A \$22.50. He says, "I have had this c.o.d. for several days." He says, "Keep this for me and when I get my pay tomorrow, I will give you the difference, \$10.50." I said, "Where is the slip for it, the register", he says, "I tore it up." I says, "What?" He says, "That will be all right. I will see you tomorrow." That was on Friday. I takes the money, puts it all into the drawer, just in the usual way.

Q Now, was there anybody present at that conversation between you and Ford? A Well, there was several of them around there, standing there. My little daughter was standing there waiting for me to go home to supper.

Q Standing right there at the door? A Right there at the cage.

Q Was she able to hear the conversation? A She could hear the conversation.

Q I show you these exhibits, is that exhibit in your handwriting (Referring to Exhibit No. 7)? A Yes, sir.

Q It is in your handwriting? A That is in my handwriting.

Q Is that exhibit in your handwriting (Referring to Peoples' Exhibit No. 6)? A That is in my handwriting.

Q I do the same with the rest here, I will show them all to you (Hands Peoples exhibits Nos. 3, 4 and 5 to witness)

A This is mine (Witness refers to Peoples' Exhibit No. 5); that is mine (Witness refers to Peoples' Exhibit No. 4); and this is also mine (Witness refers to Peoples' Exhibit No. 3).

Q Now, you notice on these Exhibits here that there is no mention made of any \$88.36. Can you account for that in any way? A No, sir.

Q Do you remember having received it at any time? A I did not receive it.

Q If you had received it, what would you have done with it, I mean to say, ordinarily, according to custom?

MR. CONDERMAN: I object to that.

THE COURT: Objection sustained.

Q What was your custom in regard to the \$88.00 if you had received it?

THE COURT: That is just the issue here. Objection sustained.

Q What was your duty in regard to any moneys that you received in the course of your duties as money clerk? A Well, moneys that I received in the usual way for express charges, I put them into the drawer, and money I received with o.o.d.'s

It did likewise.

Q You say there is a safe in that cage? A Yes, sir.

Q Who has the combination of that safe that you know of? A Well, I had the combination.

Q Do you know of anybody else that has got the combination of that safe? A Well, Mr. Howard had the combination sent to him.

Q Do you know whether the combination was changed since the previous money clerk was there? A Oh, yes.

Q You know that? A It was changed.

Q Do you remember ever having left the safe open during your absence from the money cage? I mean without the combination being left on? A After I went in the morning and opened it I always left it open.

Q So that it could be opened by just turning the knob, to anybody going in the cage? A Yes, sir.

Q And you placed your money in the safe or money drawer? A Most always in the money drawer.

Q What would be the custom in regard to c.o.d. packages? For instance packages as big as this of \$88? A I put them in the safe.

Q That would go in the safe? A Yes, sir.

Q Now, Mr. Whitely, you are charged here with stealing this money, by that I mean appropriating it to your own use, were you guilty of that? A Not guilty.

Q Did you take this money? A I did not.

Q You do not know, and you have no recollection of it at all? A Not a bit.

Q As to receiving or parting with it? A I have not.

Q Where were you employed before you entered the ^{employ of the} Adams Express Company? A The Consolidated Gas Company.

Q How long were you there? A The last time I was with the Gas Company was about a year.

Q Where were you before that time? A New York Central and Hudson River Railroad Company.

Q Where were you then? A I was with the engineering department.

Q How long were you there? A Nearly seven years.

MR. GRAY: That is all.

CROSS EXAMINATION BY MR. GONDERMAN:

Q You signed your name to this, didn't you? (Referring to Peoples' Exhibit 8)? A No, I never signed those. I only stamped them as they were turned in.

Q Is that your signature there?

MR. GRAY: Just look at it and see.

(Witness examines paper)

THE WITNESS: No.

BY MR. GONDERMAN:

Q What? It is not your signature? A No.

Q Is that your signature at the top of ^{any} one of these sheets (Referring to peoples' Exhibit numbers 3 to 7)?

A (Witness examines papers) Yes, those are mine. Let me see this one again (Referring to peoples' Exhibit No. 8).

Q Peoples' Exhibit numbers 3, 4, 5, 6 and 7? A (Witness examines peoples' Exhibit No. 8 again)

Q You say it is not your signature (Referring to peoples' Exhibit No. 8)?

MR. GRAY: Is there any signature there, in the first place? I do not see any signature there.

MR. GONDERMAN: There is something that appears to be "O. K., Whitely." Did you sign that, "O. K., Whitely"?
A No, I did not sign that.

Q You did not sign it at all? A No.

Q Did you receive the express charges on that day, January 9th? A No.

Q No charges at all? A Oh, yes, I received the charges. I would not have stamped it if I had not received them.

Q You are positive you did not sign it? A I did stamp it, but I did not sign it.

Q Then you got the \$2.27? A Yes sir, and turned it in to the Company.

Q Oh, you did put your stamp on it? A Yes sir, I did stamp it.

Q Now, it was your custom to receipt for moneys that

you got from this driver Ford, was it not, in this book?

A Yes, sir.

Q That is the book that he used all the time, was it not, (Referring to Peoples' Exhibit No. 1)? A Yes sir; that is all right.

Q That is Peoples' Exhibit No. 1 is the book which the driver used? A Yes, sir. Well, that signature that you see there and that stamp is --

Q And you, when you got moneys put your stamp upon it?

A That is right.

Q Did you ever put your stamp upon it when you did not get the money? A I don't think I did. I would not.

Q Sometimes you put your stamp at the top and sometimes at the side? A Yes sir; according to how much money there was, whether it was covered entirely.

Q You put it down there (indicating) and sometimes along the side? A You could not put it down there.

Q Here is a page with the figures \$6.25 at the bottom, and there is the stamp, there is the verification, that means that you received the \$6.25? A Yes, sir.

Q. Although this \$6.25 is below the stamp? A Yes, sir.

Q You got that first item of \$1.25? Did you ever turn that \$1.25 in? A Well, if it totals up \$6.25 I did.

Q Do you remember whether you turned that \$1.25 in? A No,

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there were too many items of \$1.25 to remember them all.

Q Do you remember any complaint in reference to that \$1.25? A Not that I remember.

Q No one ever speak to you in regard to it? A Not that I remember of.

Q And don't you remember that there was a tracer sent for that \$1.25? Look at these papers and see if you ever saw those before (Hands paper to witness)

MR. GRAY: Now, if your Honor please, I have to object to this. I do not see that we have brought out anything in the direct examination in regard to \$1.25.

THE COURT: Objection allowed.

MR. GONDERMAN: I will take an exception to that.

BY MR. GONDERMAN:

Q Did you ever hear of those papers before? A No, sir.

Q You did not? A How could I. I have not been in the employ of the Company since January 16th, and that is February 19th.

Q Did you see a date here, December 30th? A I do not remember seeing it. I do not remember it. I do not know anything about it.

Q You never saw any of those papers here before (Indicating)? A Why, certainly not.

Q You do not remember any inquiry in regard to that

item of December 30th? A No, certainly not, those things have all come up a month later, and I do not know anything about them.

Q Now, you knew enough about the business to make out these sheets, did you not, Peoples' Exhibits numbers, 3, 4, 5, 6 and 7, you made all these sheets out? A Yes sir, with Mr. Kent standing alongside of me.

Q All the time? A Mostly.

Q Was he standing besides you on January 9th? A January the 9th?

Q Yes. A He might have been.

Q As a matter of fact, don't you know he was not there?

A He was there on January 9th.

Q On January 9th? A Yes sir; he was there on the 11th.

Q Well, did he stand besides you on the 11th when you made this sheet out? A He could not, he was not there.

Q Well, you knew the proper way to make out your account with the Company? You knew all about that, didn't you? A Oh, I had business tact enough to know that much.

Q You do not want the jury to understand that you did not know your business at all? A Oh, I was not entirely a fool.

Q And you knew when you got a c.o.d. package on a se-

parate sheet and the other moneys for ordinary charges on another sheet? A Yes sir; and sometimes I have made an error and put both of them on one sheet, the two of them on one sheet.

Q Do you remember when you made that error? A No, but I have gone over it and changed it quickly and made another sheet.

Q And do you know when you got those moneys for c.o.d. packages you were to put the money in a separate envelope, it goes in a separate envelope from the other moneys, the c.o.d. settlements? A Oh, yes.

Q And you did not have any doubt in your mind as to the proper way to do that? A Oh, no.

Q You knew how to do that? A If I had an envelope, with so much money for a c.o.d., why, I put it up.

Q You do not want this jury to understand that when you got the money you did not know what to do with it? A Oh, no, I do not want the jury to understand that.

Q And you paid it over to Mr. Foley when he came round?

A I paid it over to Mr. Foley when he came round.

Q Now, you did not pay any money to Mr. Foley for this item in the account, on the 9th? A I did not, no.

Q Well, do you know whether you put any money up on the 9th?

MR. GRAY: He has answered the question very plainly,

he does not know.

Q When Mr. Foley gets any money from you, who gets his receipt? A He signs the carbon sheet.

Q Did you ever see any form -- have you got ny receipts of Mr. Foley for these moneys, this \$88? A How could I? They are retained by the Company.

Q Don't you get a duplicate at that time? A The Company has all the duplicates.

Q At that time? A They are filed.

Q And you do not know whether -- you haven't any record of not having paid him, have you? A What is that?

Q You do not know whether you ever paid that money over to Mr. Foley or not? You haven't any record of whether you did or not? A I have no record. What record have I?

Q You do not remember ever having receipted for these moneys, do you? A I have no recollection, nothing at all from one day to the other.

Q And you haven't any independent recollection of ever having paid this money to him? A I have no recollection of it.

Q Have you any recollection of any of the other moneys that you got? A I haven't any recollection of any money. All the money I got was turned over to the Company in the proper form.

Q Have you any recollection of these items on Peoples' Exhibits numbers 3, 4, 5 and 6? A I have no recollection of any one of them.

Q And you did not see anybody take the money? A I certainly did not, if I had I would have stopped them.

Q And you locked the place up when you went to lunch?
A Always, that is, I shut the cage.

Q When you came back on the 15th and saw Mr. Kent, the money was gone? A Oh, yes, that was the 16th.

Q That was after the money was missing, that is, they claimed it was missing? A Well, he was around in there, and Mr. Ford was in, he and Mr. Ford together.

Q You did not find any record? A We did not find any record of it any place, not a thing.

Q And this book, Peoples' Exhibit No. 1 was shown to you at the time, and you did tell him if it was in there you probably got it? A Why, yes, that is so.

Q And do you say that now, or do you say differently?

A I says, "I realize the fact that maybe I am mistaken, that maybe I did not get it."

Q Is that what you say now? A That is what I said before.

Q Do you say the same now that you said to him? A (No answer.)

Q When, when this money could not be found you say you resigned right at once? A No.

Q Well, how soon did you resign? A We looked for the money, and we could not find it, and I went and said that sooner than lose my position under the circumstances, it is my place to make it good until it shows up. I said, "I will see if I can realize that amount of money, and make it good, and we will look for it afterwards," I thought it would turn up afterwards, and so I went out to see if I could not raise the money, or, in other words, I went to work and thought it over, and I came back, and I says to him, "The way it seems to me, is for me to make the money good, and we will look it up when I get back," and I went out, and when I came back I found Mr. Kent and Mr. Smith in the cage.

Q And you said to Mr. Kent that you resigned? A I says, "Mr. Kent, as long as you have assumed all the responsibility and taken entire charge of this matter, I resign," but I was gone about fifteen minutes and then returned.

Q You went out to get some money and then came back and resigned? A Well, I went out with that intention.

Q Well now, in regard to that \$22 item, that item of \$22.50 --

if you intend

MR. GRAY: I would ask your Honor/to adjourn promptly at four o'clock, to suspend the examination of this witness and allow a doctor whom I have here to be examined

as to this man's previous good character, for about five minutes, as his office hours are from ten to twelve in the morning, and it would be rather inconvenient for him to get here at that time.

THE COURT: I will allow it, yes.

MR. GRAY: It is rather unusual, but --

P. D A W I D S H U L T Z, called as a witness in behalf of the defence, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GRAY:

Q What is your business, a practicing physician? A I am a physician.

Q In active practice? A Yes, sir.

Q Where do you live? A 223 West 48th street.

Q How long have you been in practice in the City of New York, as a physician? A Thirteen years.

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

Q How long have you know him? A Oh, I have known him for three or four years.

Q Do you know his family? A I know his family.

Q Do you know the neighborhood in which he lives, and has lived for that time? A Yes, sir.

Q Do you know what his reputation is for truth, honesty, and veracity, in that neighborhood in which he has resided?

A I do.

Q Is that reputation good or bad? A It is good.

Q Have you had any opportunity --

MR. GRAY: Well, that is all.

CROSS EXAMINATION BY MR. GONDERMAN:

Q Do you know very many people who know him? A Yes,
I know quite a number of people that know him.

Q Have you ever heard them talk about him? A Yes, sir.

Q That is what you base your statement upon -- I am not
asking you for any specific instances? A I have always heard
them speak kindly of him.

Q That is what I say, you have heard them talk about
that? A Yes, sir.

Q And that is what you base your opinion on? A Yes,
sir.

Q And that is what you base your opinion on? A Yes,
sir.

Q You have not anything to base a personal opinion on?
A I am giving you a personal opinion of the man, what I know
of him.

RE-DIRECT EXAMINATION BY MR. GRAY:

Q You are giving your own personal opinion of him, and
what you know of him as well? A Yes, sir.

Q That is what you base your opinion on about him?

A Yes, sir.

JOHN W. WHITELEY, recalled:

CROSS EXAMINATION BY MR. GONDERMAN (Continued)

Q Now, about this item of \$22.50, you did get that money? A I did not get it.

Q Well, didn't you testify a little while ago that this driver turned ^{it} in to you on the 15th? A No sir; I said this driver turned in over \$12 and said he would give me the \$10.50 the next day, and I asked him how about it, and he told me and I put it on a little piece of paper, that is all I put on it, just a memorandum of what it was.

BY MR. GRAY:

Q Have you got that piece of paper with you? A Yes sir; I have got it with me.

Q Just produce it? (Witness produces paper)

BY MR. GONDERMAN:

Q Well, who made this memorandum (Examining paper produced by witness)? A I made the memorandum, I put the \$10.50 in my own handwriting, and I put it down in my own handwriting, as a sort of memorandum.

BY MR. GRAY:

Q When was that made? A At the time, that was made at the time, and I did not see him ---

BY MR. GONDERMAN:

Q Wait a moment, you put all this down, wrote it there,

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didn't you? A Yes sir; I put all that down, and he said this \$10.50 was to come out of his pay the following night, and I says, "Where is the slip", and he says, "Oh, I tore it up", and he says, "I will see you tomorrow."

Q Do you know when that \$22.50 package was sent out for delivery? A I do not. I would like to know, if we could get the number of the register, it is usually on the back there, there is the number of the register.

Q Well, you see that entry of the \$22.50 on January the 9th, signed with your stamp? A No sir; not in writing, did I sign it?

Q It is stamped on this page, was that all put on there afterwards? A That I do not know anything about, and if that is so, I would not know anything about it, only he pays me in a portion of it, and then don't pay me the rest.

Q Did he mention \$22.50 specifically?

BY MR. GRAY:

Q Did he mention \$22.50 specifically? A He did, indeed.

Q And that is what puts you in mind of it now? A Yes, sir.

(The Court then admonished the Jury in accordance with Section 415 of the Code of Criminal Procedure and adjourned the further trial until tomorrow morning at 10:30 o'clock.)

THE PEOPLE v. JOHN W. WHITELY.

New York, April 13, 1909.

TRIAL CONTINUED

APPEARANCES:

For the People, Assistant District Attorney Appleton.

For the Defense, John B. Gray, Esq.

MR. APPLETON: If your Honor please, Mr. Conderman is ill and cannot come to court today, and if your Honor will permit, I will continue the case.

THE COURT: Very well.

MR. GRAY: I would like to recall Mr. George Kent to the stand, if your Honor please.

MR. APPLETON: I do not see, your Honor, why Mr. Kent should be recalled at this time.

MR. GRAY: I have this privilege.

MR. APPLETON: Now, you see, you are interrupting me, I was addressing the Court.

MR. GRAY: Go ahead.

MR. APPLETON: The authorities all say that where a witness has been called and examined in direct and cross examination, that witness shall not be recalled until the conclusion of the testimony of the rest of the witnesses. He has finished his cross examination of this witness, and the witness has left the stand, and now he wishes to re-

call him, which he not be allowed to do, but should proceed with his defense so that the jury will understand.

MR. GRAY: At the conclusion of the cross examination of Mr. Kent, I asked your Honor for permission to recall Mr. Kent.

THE COURT: How many witnesses have you more to call, Mr. Gray?

MR. GRAY: Four more.

THE COURT: What is the necessity for putting Mr. Kent on now?

MR. GRAY: Some information which I received from the defendant since yesterday, which he neglected to tell me.

THE COURT: Call your other witnesses first.

J O H N W. W H I T E L Y, recalled:

RE-DIRECT EXAMINATION BY MR. GRAY:

Q Now, Mr. Whitely, you remember the incident of your coming back to that store on the 16th of January? Do you remember about what time of the day you got back?

MR. APPLETON: His daughter has been in the court room all the time he has been testifying.

THE WITNESS: Between three and three-thirty.

BY MR. GRAY:

Q Between three and three-thirty? A Yes, sir.

Q Now, I want you to tell to the Court and jury what conversation you had with Mr. Kent and what conversation he had with you?

MR. APPLETON: I object to that. The form of the question is very bad.

THE COURT: Objection sustained.

BY MR. GRAY:

Q Have you anything further to say to the Court and jury in regard to this matter?

MR. APPLETON: I object to that as improper re-direct examination.

THE COURT: Objection sustained.

BY MR. GRAY:

Q Did you tell Mr. Kent the reason for your resignation?

MR. APPLETON: I object to that as improper re-direct examination.

THE COURT: Objection sustained.

BY MR. GRAY:

Q Did you tell Mr. Kent the reason for your resignation on that day?

MR. APPLETON: I object to that.

THE COURT: Objection sustained.

BY MR. GRAY:

Q Had you any other reason for resigning?

MR. APPLETON: Don't answer. I object to what his

reason was.

THE COURT: Objection sustained.

MR. GRAY: I take an exception to each and every one of your Honor's rulings in this matter. That is all- Oh, by the way, one more question.

BY MR. GRAY:

Q When Mr. Furman, the Inspector, gave you your instructions prior to your entering upon your duties of your position as money clerk, did he hand you any sheet such as this (indicating)? A He handed me that sheet.

MR. APPLETON: I object to that as --

Q Did he hand you this sheet as an example of what you had to do?

MR. APPLETON: I object to that as improper re-direct examination. It was all gone into yesterday.

MR. GRAY: And I left the witness.

THE COURT: Objection sustained.

MR. GRAY: And I will take an exception.

BY JUROR NO. EIGHT:

Q On what date did you get this \$12 that you claim you got out of the \$22.50? A I got that on the night of the 15th of January.

Q You got it on the 9th? A No, on the 15th, just one week after.

Q Did you turn in any moneys to the money clerk for that?

A How do you mean?

Q Did you turn in moneys for that to the money messenger? A No, I resigned. Mr. Kent assumed the responsibilities. Mr. Kent turned the moneys in on that day.

MR. APPLETON: You see that is not responsive to the Juror's question.

MR. GRAY: It certainly is.

BY JUROR NO. EIGHT:

Q Did you make any explanation to Mr. Kent about this driver and the \$12? A I had no opportunity to tell him.

BY MR. GRAY:

Q Had the money clerk or money messenger come around on the next day after you received this \$12?

MR. APPLETON: I object to that.

THE COURT: I will allow the question.

THE WITNESS: He was there at that time.

BY MR. GRAY:

Q Did you turn in any moneys at that time? A I did not.

I R E N E W H I T E L Y, called as a witness in behalf of the defence, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GRAY:

Q Now, Miss Whitely, do you remember being present in the

Bergen Avenue store with your father on any night in the month of January? A Yes, sir.

Q Can you tell about what night it was? Can you tell about the day with reference to his resignation? How close it was to the day he resigned? How far away? A It was on Friday night.

Q Was that the day before he resigned, or the day after?

A The day before.

MR. APPLETON: Now, Your Honor, I do not want to have to object because it is not polite.

THE COURT: The form of the question is objectionable. I do not object to direct questions being leading, but when it comes down to the rest of the examination I do.

BY MR. GRAY:

Q Did you hear any conversation between your father and anybody else that night? A Yes, sir.

Q Do you know the man's name who was there talking to your father that night? A Yes sir; Mr. Ford.

Q Ford, stand up. (Ford stands up) Is that the young man? A Yes, sir.

Q Now, just tell what conversation he had with your father and your father had with him on that night? A I was standing at the cage and Papa was taking in some money, and

he gave Papa some money, and Papa asked him some questions and he said he tore it up.

Q He says he tore it up? A He says he tore it up.
and papa said, "What." Mr. Ford, says, "That is all right, I will see you tomorrow."

Q Well then what else occurred, what other conversations if any, took place between your father and Mr. Ford?

MR. APPLETON: Will your Honor instruct the witness that she is not to say anything only what she heard Mr. Ford say.

BY MR. GRAY:

Q Do you remember anything else passing between Mr. Ford and your father outside of that? A No, sir.

CROSS EXAMINATION BY MR. APPLETON:

Q You were here in the court room yesterday were you not, young lady? A Yes, sir.

Q And was there anybody else there at the cage at the time Mr. Ford turned in his money that day? A Yes, sir.

Q Wasn't Smith there? A Yes, sir.

Q Smith was there? A Yes, sir.

Q And your father subpoenaed Smith, didn't he?

MR. GRAY: I object to that. That is not within the knowledge of this witness.

THE COURT: Objection --

Q You heard what Mr. Gray said just now? A Yes, sir.

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MR. APPLETON: That is all.

SAMUEL DIXON, called as a witness in behalf of the defense, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. GRAY:

Q Where do you reside, Doctor? A 123 East 74th Street.

Q What is your business or profession? A Physician.

Q Are you engaged in practice in the City of New York?

A Yes, sir.

Q How long have you been in active practice as a physician in the City of New York? A About 22 or 23 years.

Q Do you know the defendant at the bar, John W. Whitely?

A Yes, sir.

Q How long have you known him, Doctor? A I am not sure, something over ten years.

Q Ten years? Do you know people that know him? A I can only say that I know his family.

Q Do you know the reputation that he has borne for the past ten years? Do you know whether or not --

MR. APPLETON: Just a moment. He has not qualified yet.

BY MR. GRAY:

Q Do you know his reputation in the neighborhood in which he resides now and has lived for the last ten years?

MR. APPLETON: I object to that. The Doctor says

he knows only his family.

BY MR . APPLETON:

Q Do you mean his immediate family? A Yes, sir.

MR. GRAY: He has testified that he knew the family for ten years.

MR. APPLETON: never mind. I withdraw the objection.

BY MR. GRAY:

Q Do you know what his reputation for truth^{honesty} and veracity is in the neighborhood in which he lives now and has lived for the past ten years? A I have never heard anything against it, sir.

Q Do you know whether it is good or bad? A As far as I must know, it is good, but I ~~cannot~~ say that I know very little about his surroundings at present.

Q But you have known him rather intimately, for that period of ten years? A No, sir.

Q For how long during that ten years have you known him intimately then? A Oh, I should judge about one to two years.

Q And during that time what was his reputation? A Good.

MR. GRAY: Now, will your Honor permit me to recall Mr. Kent?

THE COURT: Yes.

G E O R G E K E N T, recalled by the defense:

RE-CROSS EXAMINATION BY MR. GRAY ((Continued))

Q Mr. Kent, how many clerks were employed in that Bergen Avenue branch office besides yourself and Mr. Whitely? A During what time?

MR. APPLETON: That is objected to. (Now, Mr. Kent, when a question is asked and look at me and see if my hand is raised and if it is, do not answer until I have had time to object.) I object to that, the witness was examined and cross examined at great length yesterday.

THE COURT: I will allow the question.

BY MR. GRAY:

Q How many, Mr. Kent? A During the holiday times -- it was in the holiday months -- what time have you reference to?

Q I mean during the time Mr. Whitely was employed in the office? A Mr. Whitely was employed during the holidays, and we had four extra clerks besides Mr. Whitely.

Q Did he perform any other services besides the duties of money clerk? A During the time -- any specific time?

Q All my question referred to was during the time he was employed there? A There was sometimes that he would answer telephones; yes sir; and other things.

Q What were those services? A Giving receipts, as a clerk.

Q As a clerk? A As an ordinary clerk.

Q Did he act as telephone operator? A The telephone was in his booth, or in the cage.

Q Did he have to go outside of the cage very frequently to perform these services?

MR. APPLETON: I object to that, because it is apparent the defendant had different jobs during that time, let him specify the time.

MR. GRAY: I will leave it to the jury.

BY MR. GRAY:

Q You frequently relieved him during his lunch hour, did you not? Don't look at Mr. Appleton.

MR. APPLETON: I told him to look at me to see if I was objecting.

THE WITNESS: I relieved him every day.

Q Do you remember relieving him on January the 14th? That was two days before he resigned? A I do not recall any particular day.

Q Do you remember on this particular day leaving the office at 11:15 in the forenoon and returning at one o'clock to relieve him? A I do not.

Q You do not? A No, sir.

Q Well, what time of the day did Foley usually come to collect his money, to make up his moneys? A Well, it differed.

Q What was his usual time, if he had any usual time?

THE COURT: I think right here is the place to caution the attorney that we are not going to allow anything but what is fit and proper re-direct examination.

Q Did you ever direct him to make out the sheets, or deliver the money to him?

MR. APPLETON: I object to it, it is improper re-direct examination.

THE COURT: If it refers to these sheets, very well and good; if it refers to other sheets, no.

Q Do you remember the time that Mr. Furman came to instruct this man in his duties (Referring to the defendant)?

MR. APPLETON: I object to that, it is improper re-cross examination.

MR. GRAY: Now, this, if your Honor please -- we will say in these two questions, that this is the most material point that has been brought out in the entire examination.

THE COURT: Let us hear the question again, Mr. Stenographer?

(Question read by Stenographer)

THE COURT: Allowed.

BY MR. GRAY:

Q Do you remember that day? A Yes, sir.

Q You were acting as money clerk prior to that time, were you not, yourself? A Yes, sir.

Q I hand you a sheet here which you told us you turned over to Mr. Whitely, the incoming money clerk (Handing sheet to witness)?

MR. APPLETON: I object to that.

MR. GRAY: Just a moment.

Q (Continuing) I show you a little item here (indicating) marked 75 cents. Do you remember that you made that good out of your own pocket?

MR. APPLETON: I object to that.

THE COURT: Objection sustained. At the beginning of the term of employment of this defendant as money clerk, was that at the beginning?

MR. GRAY: At the beginning.

THE COURT: After which this man served as money clerk.

MR. GRAY: Yes, sir.

RE-RE-DIRECT EXAMINATION BY MR. APPLETON:

Q I show you Peoples' Exhibit 8 and ask you first, if during the time that Mr. Whitely was employed there at the Express Company's office, you saw him write? Will you just put down the sheet in your lap and listen to me a moment, the question will be repeated after I am through.

(Question read by Stenographer)

MR. APPLETON: Will you put that sheet down in your lap and listen to the question, and answer it yes or no?

A No, sir; I did not.

MR. APPLETON: That is all. That is an answer then.
That is all.

MR. GRAY. Now, I renew my motions made at the close
of the case for a disposition on the same grounds.

MR. APPLETON: It seems to me that it would be proper
to rest first, and give the People an opportunity
to call witnesses in rebuttal.

MR. GRAY: Oh, well, it is assumed that I had rested.

THE DEFENCE RESTS

THE PEOPLES' REBUTTAL

FRANK J. SMITH, called as a witness by the
People, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q Mr. Smith, in the month of January of this year, where
were you? A 148th Street and Bergen Avenue.

Q And by whom and for whom were you working? A The
Adams Express Company.

Q In what capacity? A As helper.

Q For whom? A The Adams Express Company.

Q What particular driver were you with? A William
Ford.

Q Now, did you go in with Ford when he made his return

to the defendant, Whitely, in the early part of January, yes or no? A Well --

Q Yes or no? A Yes.

Now

Q /Were you there how many times during the early part of January? Can you tell that?

MR. GRAY: I object to that as incompetent and immaterial to the issues here.

THE COURT: Allowed.

MR. GRAY: I will take an exception.

THE WITNESS: Five times.

BY MR. APPLETON:

Q Did you at any time see the witness, Irene Whitely stand there inside or near the cashier's cage when you and Ford went in to make returns to Whitely? A No, sir.

Q What? A No, sir.

MR. APPLETON: That is all.

CROSS EXAMINATION BY MR. GRAY:

Q How long have you been a driver's helper? A Six months.

Q Six months? A Yes, sir.

Q What was your position before that? A Money clerk.

Q Money clerk? How long were you money clerk there?

A About a year.

Q Were you discharged from that position or were you transferred to your present one? A I was neither.

Q How did you come to change from being money clerk to being driver's helper? A I resigned.

Q You resigned? A Yes, sir.

Q Why did you resign? A For my health.

MR. APPLETON: I object to that as immaterial.

THE COURT: Yes, objection sustained.

BY MR. GRAY:

Q You resigned as money clerk? A Yes, sir.

Q Was there any shortage found in your accounts when you left as money clerk? A No, sir.

Q Sure of that? A No.

W I L L I A M J. F O R D, recalled:

RE-RE-DIRECT EXAMINATION BY MR. APPLETON:

Q When did you give the defendant the sum of money \$22.50, if that is the correct amount? A On January the 9th.

Q Are you sure of that? A Yes, sir.

Q I show you Peoples' Exhibit 1 and call your attention to the items all of the items on the left hand page under date of January 9th, and ask you if all those items were on that page when the defendant, Whitely, signed his name his name, "Whitely" on the opposite page? A Yes, sir.

Q And was that money delivered to the defendant on that day? A On that day, January the 9th.

Q Now, did you at any time, after the 9th day of January, and before the 16th -- we will say the 17th day of January, 1909, go to the defendant Whitely, and give him the \$11 and tell Whitely that you had made a collection of \$22.50, and that you would owe him \$10.50 and that you would pay it when you got it from your pay, when you were paid off on Saturday?

A No, sir.

Q Did you ever have any such conversation with him?

A No, sir.

Q Did you ever see the witness, Irene Whitely, at the cashier's case at any time when you made returns of money to Whitely? A No sir, I never seen the girl, she may have been there.

Q Did you ever before today? A I saw her in Court yesterday.

Q Did you ever see her before yesterday? A No, sir.

MR. APPLETON: That is all. The people rest.

MR. GRAY: The defense rests.

BOTH SIDES REST

MR. GRAY: I make a formal motion to renew my previous motion made at the close of the peoples' case, on the same grounds.

THE COURT: On the same grounds?

MR. GRAY: Motion denied!

Mr. Gray sums up to the jury on behalf of the defense.

Mr. Appleton sums up to the jury in behalf of the People.

THE PEOPLE v. JOHN W. WHITELEY.

New York, April 13, 1909.

C H A R G E T O J U R Y

O'SULLIVAN, J.

Gentlemen of the jury; the defendant at the bar is charged with grand larceny in the second degree. Now, grand larceny in the second degree is committed whenever a person steals or unlawfully appropriates an amount of property valued at more than \$25 but not exceeding \$500; one who steals or unlawfully appropriates property above the value of \$25, but not above the value of \$500 is guilty of grand larceny in the second degree.

Now, this defendant, in the indictment, has been charged with stealing an amount of money in excess of \$25, but not in excess of \$500. The total sum which the indictment charges as having been stolen is \$110.86 in money, and the first charge against him is that he committed the crime of grand larceny ^{in the second} degree by taking such property feloniously from the Adams Express Company; that is to say, with intent to deprive the true owner of his property he took it, or in the language of the law, did steal, take and carry away that amount of money.

If you find, beyond a reasonable doubt, that that is true, it would be your duty to convict of that charge.

There is another count in the indictment charging substantially the doing of the same thing, but going into the services which the defendant was giving to the company, when he feloniously, according to the indictment, took some money. That is to say, that if a person with intent to defraud the true owner of his money, while that person is the servant of the agent, or the clerk, as the law says, of an association or corporation, having in his possession, property, money, or under his control any money or property, appropriate that money to his own use, that he steals such property then and is guilty of larceny, and if that property be above twenty-five dollars in value and under five hundred dollars in value, it is grand larceny in the second degree.

Now, then, you see the first count simply alleges that the defendant did criminally, feloniously steal, take and carry away that property.

Now, that is without any regard at all to his services, ^{or any} but in way that a man might steal, take or carry away with intent to deprive the true owner of his property, without describing his relations, to the principal from whom he stole it, or anything else. But, as the law says, if it is stolen in any way. Well, this first count simply

lays down to you that he did with criminal intent take the property.

Then we come to the next count, and we ask what is the next count. In the next count you describe the same of act transaction and yet charge a different kind, which charges the same act, the same amount of money stolen.

There was one time when a man in the employment of the Company, because he received the money, but received it lawfully, you understand, and then took it to his own use, that was embezzlement, but our law today no longer calls that embezzlement, it calls it theft, which is not quite as polite a word for it. It calls it larceny, and although a man may begin by getting this money in a lawful method, that is to say, it is handed over to him, the difference in the methods of thieves are these; the thief takes it unlawfully at the very first moment he touches that money; that is an unlawful act, but the man who received the money in the ordinary course of business, he received it lawfully, but the moment that man received that money with the intent to devote it to his own use and does devote it to his own use, under our law, he is as much a thief as the thief who takes from your pocket.

Now, then, Gentlemen, the question here is, not what other moneys this man handled, not what other moneys anybody

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else handled, but is the indictment true, that this man did appropriate criminally and with intent to deprive the true owner of that money. There is the question. If you find that he received it then and there was no criminal or felonious intent in his failure to turn it over to the Company, then he is entitled to an acquittal, taking it ^{from} all the testimony, and all the testimony relates as you know, to this transaction. If a man were ignorant of the methods, and through some mistaken transaction the money slipped away, and he had no guilty intent in its disappearance or no connection with it; why then he is not guilty. But if you find from the facts in the case, that no matter what the man's duties were, if he were there long enough to understand the methods and he did understand, and he did receive this money, and he knew what the proper thing to do with it was, and he did not do the proper thing, but did the improper thing, you ask yourselves right there if that improper thing was done with what intent? Was it done with that intent? With what intent was it done? And if you find it was the intent to deprive the association of that money, you will find the defendant guilty.

In every criminal action the defendant is presumed to be innocent until the contrary appears, and that the contrary must be established beyond a reasonable doubt in order to convict. You carry with you into the jury box

that same intelligence which you use in the transaction of your important affairs on the outside, and you devote to it just that amount of intellect that you devote to any ordinary business transaction of your own. There is nothing ~~about~~ mysterious about the intelligence which a jury man carries into the services of his fellowmen. It is the same intelligence which he uses every day, and in using that, use it to determine in this transaction whether or not there is evidence satisfying you to an extent sufficient to convict. That is to say, is there any reasonable doubt in this thing. If there be none, convict. If there be, after that intelligent, reasonable and just examination which you have given this testimony, then it will be your duty to acquit the defendant.

Are there any requests to charge?

MR. GRAY: I will ask your Honor to charge that evidence of good character may of itself create a doubt in the minds of a jury.

THE COURT: yes, evidence ^{of itself} may create a doubt in the minds of the Jury where but for the introduction of that evidence no reasonable doubt would exist, and I say again, gentlemen, that it may.

I would not say to you concerning any facts that you find, that you must do this or do that. You are

the judges of the facts, and if you find that there is character testimony of such a nature, as to render it reasonably doubtful whether this man committed such an act, why, that would be a reasonable doubt; but it is for you to say from the character of the testimony whether there is any reasonable doubt.

MR. APPLETON: Do you consent that the Jurors take Peoples' Exhibit No. 1 into the jury room with them?

MR. GRAY: I would desire that they do it.

THE COURT: Gentlemen will have such exhibits as counsel are satisfied that they should have.

(All the exhibits were taken into the juryroom by the jury.)

THE COURT: Gentlemen, the case is with you.

Jury retired.

The jury returned and rendered a verdict of not guilty.

THE COURT: Any other charge?

MR. APPLETON: No other charge.

THE COURT: Defendant discharged.
