

START

372

CASE

POSIT

CASE # 372

COURT OF GENERAL SESSIONS OF THE PEACE,
City and County of New York, Part I.

----- X
THE PEOPLE : Before,
vs. : Hon. JOHN W. GOFF, R.,
JAMES McCUE. : and a jury.
----- X

Tried, New York, June 15th, et seq., 1903.

Indicted for Grand Larceny in the First Degree.

Indictment filed June 4th, 1903.

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

ASST. DIST. ATTY. NATHAN A. SMYTHE, for the People.

CHARLES J. CAMPBELL, ESQ., for the Defense.

Frank S. Beard,

Official Stenographer.

119

CASE # 372

THE PEOPLE'S TESTIMONY.

MR. CAMPBELL: May it please the Court, we ask, on behalf of the defendant, that all the witnesses for the People be excluded from the court room, while the first witness is testifying.

MR. SMYTHE: And the witnesses for the Defense, if your Honor please, also.

THE COURT: Yes.

MR. CAMPBELL: If your Honor please, there are a number of ladies who are witnesses, and may I ask that they be allowed to sit in this adjoining ante-room, because they are rather nervous, on account of the events that occurred in the corridor, this morning?

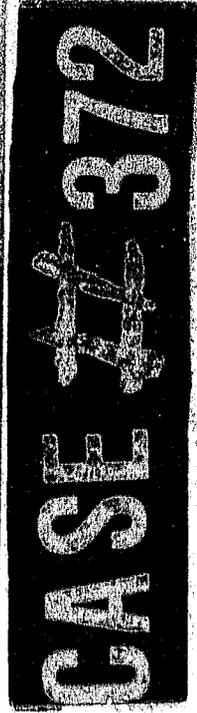
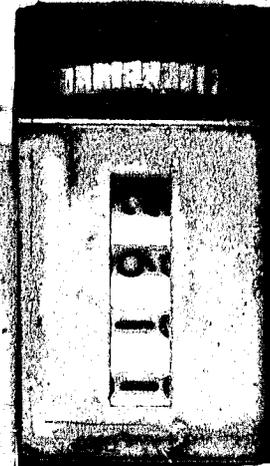
THE COURT: Yes.

H A T T I E S T R A U S S, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMYTHE:

Q Mrs. Strauss, where do you live? A I live at 771 Madison Avenue.

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



Q You live there with your husband? A Yes, sir.

Q And what is your husband's name? A David Strauss.

Q David Strauss? A Yes, sir.

Q On or about the 19th of May, did you wrap up a package of jewelry? A I did.

Q Who was present, when you wrapped up that package?

A My maid, Mollie O'Rourke.

Q Will you tell the jury what you put in that package?

A I placed a pearl necklace--

Q Do you know how many pearls were in the necklace?

A No, sir; I don't know how many, but you can easily get a description of them.

Q Well never mind. What else did you put in the package?

A Three diamond rings, and a diamond watch and pin, and a crescent pin, of diamonds.

Q Yes? A And an antique heart of pearls, and a diamond in the centre, and a long chain, set with pearls, and two small gold chains, plain gold chains. And then there were, also, five checks.

Q Will you describe those checks? A Yes, sir. Three of the checks were of the denomination of \$250 each.

Q And by whom were they drawn? A And they were drawn by Mr. Charles Hermsheim, to his wife.

Q And on what bank were they drawn? A Well some trust

CASE # 372

company, his trust company, that he banked with. And the other check was drawn for \$275, to the Knickerbocker Stables.

Q. By Mr. Hermsheim? A. Yes, sir. Then there was a check for \$1,013 and some odd cents, made by some trust company, payable to Mr. Hermsheim. It was a check for a dividend, on some stock, that he owned.

Q. And did you pack these all up in one package? A. No sir. They were packed up in two parcels, in two wooden boxes, the jewels in one box, and the money in the other box; and I had a list of what the checks were, and I said, "This package contains checks so and so".

Q. And were they wrapped up in two separate parcels? A. No, sir. That was all wrapped up in one parcel. The two boxes were just exactly the same size, and they were placed on top of one another, and were wrapped in one parcel.

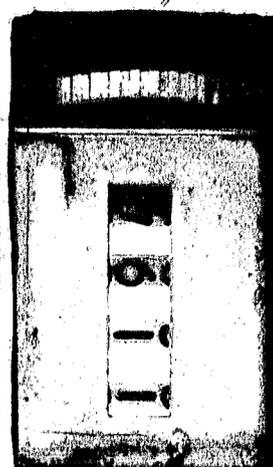
Q. And about how large was that parcel? A. Well it was about that long (indicating).

Q. Indicating about eight inches? A. I should judge eight or nine inches, and about that high. (illustrating).

Q. Yes. And about how wide? A. About that wide (illustrating).

Q. About four inches wide? A. Yes, sir. It was quite narrow.

Q. And did you address that box or package? A. Yes, sir;



CASE 77-372

I addressed it myself.

Q Will you state what you wrote on it? A I addressed it to "Mrs. Charles Hermsheim, Auditorium Hotel, Chicago, Illinois," and also put my name and address, "From Mrs. D. Strauss, 171 Madison Avenue, New York;" and I sealed it three times, with sealing wax, and with my own seal.

MR. SMYTHE: It is conceded, if your Honor please, by the defense, that the value of the articles contained in this package was more than five hundred dollars.

THE COURT: Is that conceded, Mr. Campbell?

MR. CAMPBELL: It is so conceded.

BY MR. SMYTHE:

Q On what day did you wrap up this package? A On Monday, May 8th, in the morning.

Q What did you do with it? A Well, I placed it-- I gave it into the keeping of my maid, the cook.

Q What is her name? A Mary O'Neill.

Q And did you ever see that parcel after that? A Yes, sir.

Q Did you see it after that? A After I gave it to her?

Q Yes. A Yes, sir; because--

Q When did you see it next? A I saw it, that same day,

CASE # 372

and I saw it the next morning, because it was not called for until Tuesday morning; and I wrapped it up early Monday morning.

Q And you saw it again on Tuesday morning? A Yes, sir.

Q And who had it then? A She had it then.

Q Mary O'Neill? A No. I had it in my possession, until I went out, on Tuesday morning, and then I gave it into Mary O'Neill's care, again.

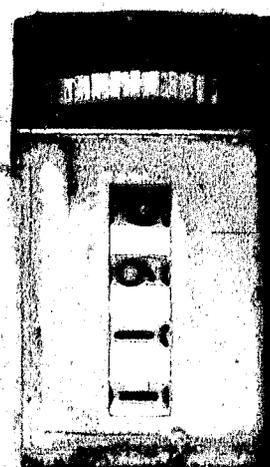
Q And did you ever see it again after that? A No, sir; not after I gave it up to her, I never saw it again.

Q When did you first hear that this package was not given up? A I heard of it-- on May 19th the package was sent, and, a week from the following Thursday, I received word from Mr. King. He came to my house and asked to see--

Q Mr. King? A Yes, sir; of Adams Express Company.

Q Well, never mind what he said, because that is not admissible. And that is the first that you heard of it, that it had not been received? A Yes, sir; that it had not been received.

Q Now did you yourself send word to the express company?
A No, I did not. I had no communication with the Express Company before. I didn't know anything about it.



CASE # 372

CROSS EXAMINATION BY MR. CAMPBELL:

Q Now did you direct word to be sent to the Express Company? A I don't understand you.

Q Did you direct that word should be sent to the Express Company? A No, I did not.

Q Did you hear anybody send word to the Express Company? A No, I did not.

RE-DIRECT EXAMINATION BY MR. SMYTHE:

Q Didn't you telephone? A Did I telephone to advise them--

THE COURT: No, no; wait.

BY MR. SMYTHE:

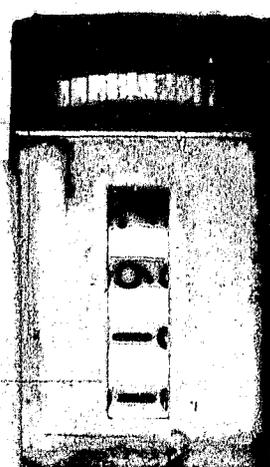
Q Before it was sent? A Oh, yes. I understood--

THE COURT: Wait a minute.

A (Answer continued) I understood this gentleman to ask if I sent word to the Express Company advising them of the loss of the package.

BY MR. CAMPBELL:

Q No, no. We misunderstood each other. I want to know if, after you wrapped the package up, you sent word to the express company? A Yes, sir. I telephoned to them that I had two trunks and a valuable package of jewelry, that I wanted to send Mrs. Hermsheim of Chicago, and could I entrust



CASE # 372

the jewelry in the care of the driver.

MR. SMYTHE: If your Honor please, I don't think that this conversation, in the absence of the defendant, is admissible.

THE COURT: Well, the defendant has brought it out. Do you object to it?

MR. SMYTHE: Yes, sir; at this time, I do object to it.

THE COURT: I must sustain the objection.

MR. CAMPBELL: If your Honor please, this will become very important to the interests of the defendant.

MR. SMYTHE: Well, if it will become important to the defendant, I will withdraw the objection.

THE COURT: Then, I will allow the matter to stand, as the District Attorney withdraws his objection.

BY MR. CAMPBELL:

Q And what was the answer to your message over the telephone? A And the message came over the telephone, all right. And I had also a witness hearing me telephone.

Q And that was on Monday? A On Monday morning.

Q And did you then telephone again? A And then I telephoned again, on Monday; and then, on Tuesday morning, I

CASE # 372

telephoned again. But, the third time I telephoned, I didn't mention anything about what the parcels were, didn't mention anything about it. I said merely, "Why haven't you called for the goods that I telephoned you about, yesterday?"

Q But you did telephone twice, on Monday? A Yes; and once, on Tuesday.

Q And, both times on Monday, you mentioned what the articles were? A No; only the first time, on Monday.

Q The first time that you telephoned, on Monday, was the only time that you mentioned that you had a valuable package? A Yes, sir.

Q And that is when you asked whether you could entrust the valuable package to the same driver and wagon that came for the trunks? A Yes, sir.

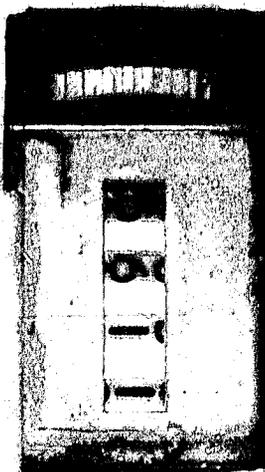
Q And the answer came back, "All right"? A Yes, sir.

Q At what hour on Monday, was it, that you sent that message? A I can't recall just exactly the hour; I don't know just the time.

Q Well, as nearly as you can recall? A Well, it was early in the morning, possibly a little before or after nine o'clock.

Q About nine o'clock? A Yes, sir; around that time. It may have been ten o'clock. I don't remember just the time.

Q But you are sure that it was after eight, and before



CASE 372

ten? A Oh, yes; it was after eight.

Q And before ten? A Well, I don't just recall that; whether it was or not.

Q But your best recollection is, about nine? A Oh, yes; it was after eight; about nine, I should say.

Q Now, when you telephoned the second time, did you recognize the voice over the telephone? A No; I didn't recognize the voice at all.

Q You would not be able to recognize the voice? A No; I would not be able to recognize any voices.

Q And what time in the afternoon did you telephone?
A I don't recall that. It must have been probably in the middle of the afternoon, sometime.

Q About the middle of the afternoon? A Yes, sir.

Q Then you simply inquired why they didn't call? A Yes, sir.

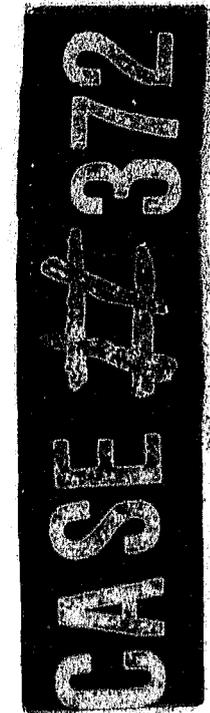
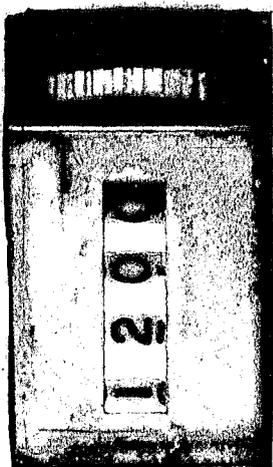
Q And you didn't mention any details? A No, sir; I didn't mention what I had to send or anything.

BY MR. SMYTHE:

Q Did you say what the nature of the valuable package was you had to send? A Yes, sir; I said it was a valuable package of jewelry.

BY MR. CAMPBELL:

Q But you didn't say how valuable? A No, sir; only



said it was a very valuable package.

M A R Y O' N E I L L, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMYTHE:

Q Miss O'Neill, you worked for Mrs. Strauss? A Yes, sir.

Q And in what capacity? A What is that?

Q What do you do for her? A Cook.

Q And where is it that Mrs. Strauss lives? A 771 Madison Avenue.

MR. CAMPBELL: May the witnesses, after they have been examined, remain in the court room?

Pardon the interruption, your Honor.

THE COURT: Yes.

BY MR. SMYTHE:

Q On the 19th day of May of this year, did Mrs. Strauss give you a package? A Yes, sir; she gave me a package.

Q What kind of a package? A Containing diamonds, and about a thousand--

Q Was it done up in paper? A It was done up in a box.

Q And how was it addressed? A "Mrs. Charles Hermsheim, Auditorium Hotel Annex, Chicago, Illinois".

Q Now what time, on the morning of the 19th was it that

713 77 372
CASE 77 372

she gave you this package? A Well, she telephoned some place, about nine, and then, after that, she came out and gave me the package.

Q Now did you see the defendant, that morning? A The man here (indicating the defendant)?

Q Yes. A Yes, sir; that is the man I seen.

Q The defendant, James McCue? A Yes, sir; that was him.

Q About what time did you see him? A I don't know what hour he really called; I can't just say.

Q Well was it during the morning? A Well I don't know whether it was during the forenoon or afternoon.

Q Well do you know whether it was late in the afternoon, or what? A No, it wasn't late; I know it wasn't late. I don't know whether it was before or after lunch.

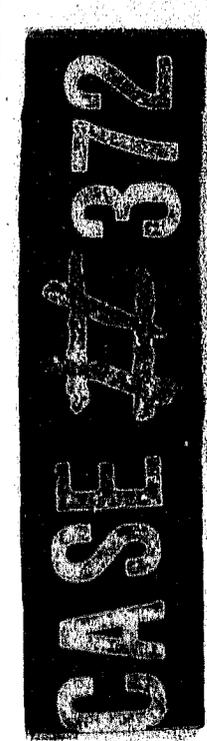
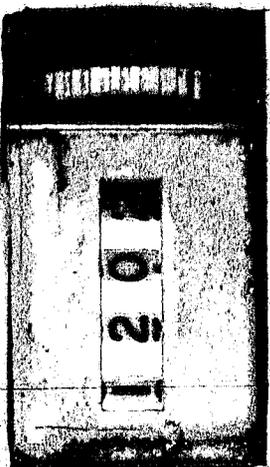
Q It was on the same day; was it? A Yes, sir; on the 19th.

Q And where did you see him? A I seen him up on the elevator, on the 6th floor.

Q Mrs. Strauss' apartment is on the 6th floor; is it? A Yes, sir.

Q And did you talk with the defendant? A Yes, sir; I told him about the two trunks, valued at \$500, and the package, valued at \$10,000.

Q What did you give him the defendant? A The package



Q What did you give him, the defendant? A The package and the two trunks.

Q What did you say about the two trunks? A I told him that I valued those at \$500, and he gave me a receipt.

Q Did the defendant say anything to you, before that? Did he tell who he was, or anything? A He said, "I am from the Adams Express".

Q Then what did you say to him, if anything, about the package, and what did he say? A Well I said, "Here is the package, valued at \$10,000" and he put down a one and three O's, and I asked him to add the other O to it, and he said, "Will it be all right, that it is valued so high, because they may say something, where it goes?" And I said, "Well she is willing to pay it, and it will be all right."

THE COURT: Where did he put it down?

She says that he put it down.

BY MR. SMYTHE:

Q where was it that he wrote down this One and three O's? A On the receipt that he gave me.

Q Is that the receipt that he gave you (indicating)? A Well it looks just like it.

Q Well look at it and see whether it is or not? A Yes, sir; that is it.

Q Did you see him write it? A I seen him write it, be-

1203

CASE # 372

cause I told him to put the other 0 to it.

MR. SMYTHE: The receipt is offered in evidence.

(It is admitted, without objection, and marked People's Exhibit 1".)

BY MR. SMYTHE:

Q Well, after you told the defendant that she was willing to pay it, then what was said? A Then he said, "Well, it's all right."

Q Did you say anything to him about taking the package?

A And I said, "We have telephoned to the express company, if we should give it to you, and I didn't think you could take it", and he said, "Yes; and I can take more valuable packages than that, because I have a safe in my wagon."

Q And then did you give him the package? A Yes, sir; and the two trunks that were in the same hall, to be taken.

Q And who were there, at the time? A Martha O'Rourke, and Arthur, an elevator boy.

Q Now I show you these figures "10,000" on that. Is that where you saw him write the One and three O's, and you asked him to add the other O? A Yes, sir. It was on this that I asked him to add the other O, on this (indicating the receipt); because, after I got the receipt, I noticed that, and then he put it on.

1205

713
CASE # 372

Q He handed you the receipt first, and then did he pass it back to you? A Yes, sir; and it was off of the book, when I told him.

Q What book? A He had the book that he tore that out of.

Q He tore that paper out of a book, did he? A Yes, sir.

Q And what did you do with the receipt? A I kept it until Mrs. Hermsheim said that she didn't get her jewelry.

Q And what did the defendant do with the package, after you gave it to him? A Oh, he put it in his pants pocket, the end of it; he put it in his pants pocket.

Q Did part of it stick out of his pocket? A Yes, sir.

Q And then what did he do with it? A He took it out and held it in his hand, when he got on the elevator.

Q Did he take the trunks down on the elevator? A Yes, sir; he took them down all together.

Q Did he come up again after that? A No, sir.

Q When did you see him again after that? A Not until after I seen him here.

Q You mean, not until after he was arrested? A I seen him the first time we were down.

Q At the Magistrate's Court? A Yes, sir.

1209

CASE # 372

CROSS EXAMINATION BY MR. CAMPBELL:

Q When he put down-- when he wrote the receipt, and handed it to you, you called his attention to the fact that he had not the right number of O's there? A Yes, sir; I told him that he had only three O's there.

Q And then what did he say? "Excuse me", or something of the kind? A No, sir; I gave him the receipt and he put it on.

Q And did you see what he put on the receipt, after you gave it back to him? A I did; and he handed it back to me.

Q And you saw everything he wrote on it? A Yes, sir.

Q And what he wrote was to add another cipher? A Yes, sir.

Q After you gave it back to him? A Yes, sir; that's all I seen him write on it.

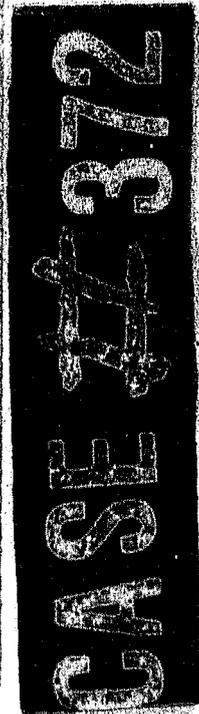
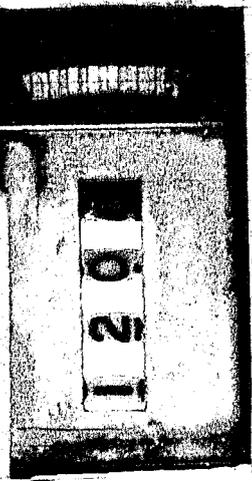
Q And you saw him put that other O on it? A Yes, sir.

Q That other cipher? A Yes, sir.

Q And, if he had written anything else on the sheet, you could have seen it? A I suppose I could, if I looked. I was only looking to see what the valuation was.

Q And you were standing right beside him, when he wrote? A Yes, sir.

Q And he took the receipt, and put on th extra cipher, and handed back the receipt to you? A Yes, sir.



Q Now was this conversation about the safe before or after the receipt was given? A It was before.

Q Before that? A Yes, sir.

Q And what did you ask him about taking a valuable package on that wagon? Did you ask him if it would be safe?

A No. I said, "We telephoned to the express company, and they told us to give it to the driver," and I gave it to him, and I asked him if he could take it, and he said yes.

Q Now are you sure that he said he had a safe on the wagon, or did he say the package would be safe on the wagon?

A No; he said, "I have got a safe on my wagon."

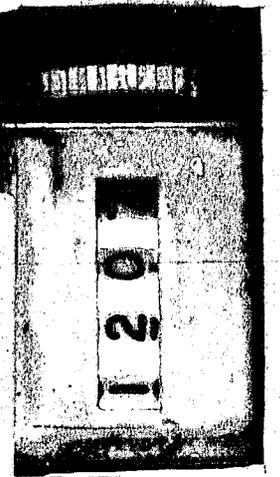
Q He said, "I have got a safe on my wagon?" A Yes, sir; because I turned around to Mollie O'Rourke, and I said, "That's the first time I have ever known"--

Q Was that in the presence of the defendant? Did he hear what you said to Mollie O'Rourke? A I don't know. He was there.

Q And when you told him that the package was valued at \$10,000 he said, "Don't value it too high"; did he? A No.

Q What was it he said about the valuation on the other end? Did he say that they would object to paying such high charges on it? A No. He said, "Is that value in it", don't you know.

Q And he said that there might be some objection?



CASE # 372

A That there might be something said about paying it, and I said she was good for it and could pay it. I gave him to understand, don't you know, that she didn't care.

Q And the trunks were also valued at-- A \$500.

Q Each? Now did you telephone yourself? A No, I didn't. Mrs. Strauss telephoned.

Q Mrs. Strauss telephoned? A Yes, sir.

Q You didn't telephone at all? A I didn't telephone.

Q But you heard Mrs. Strauss when she telephoned?

A I heard, on the first day, that she telephoned.

Q And then she telephoned, and told the office that she had a very valuable package? A Yes, sir. I asked her to telephone and stood there when she asked that.

Q Did she mention the package, do you know? A No, sir; she said, "I have a very valuable package of jewels."

Q And asked if they could send it on the same wagon that they sent for the trunks? A She said, "Can I give it to the driver?" That's what she said.

RE-DIRECT EXAMINATION BY MR. SMYTHE:

Q How near was the defendant to you, when you made this remark to Mollie O'Rourke? A Why, just like-- we were standing all together.

Q Well, was he as near as the stenographer? A Yes, sir;

1291
CASE # 372

he was.

Q And did you speak out loud, or whisper? A No; I just talked as I do talk.

Q Well then what was it you said to him?

MR. CAMPBELL: Objected to.

MR. SMYTHE: It was part of the conversation in the defendant's presence, at the time he took it.

MR. CAMPBELL: I don't see how it can be possibly relevant.

THE COURT: Was it something that the witness said to another servant?

MR. SMYTHE: Yes, sir. They were all standing together, when the package was taken, and the defendant made a remark to her, and then she turned and made a remark to the other servant.

THE COURT: Oh, I do not think that is admissible. I will sustain the objection.

MOLLIE O'Rourke, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMYTHE:

Q Miss O'Rourke, are you employed by Mrs. Strauss, living at 77¹/₂ Madison Avenue? A Yes, sir.

Q And how are you employed there? What do you do?

129

CASE 71-372

A I do chamber work there, and waiting.

Q On the 18th of May of this year, did you see Mrs. Strauss do up a package, containing jewelry? A Yes, sir.

Q And did you see her address it? A Yes, sir.

Q And seal it? A Yes, sir.

Q On the 19th of May, did you see Mary O'Neill have that package? A Yes, sir.

Q The next day? A Yes, sir.

Q Were you present at the time she gave it to this defendant? A Yes, sir.

Q Do you know about what time of day that was? A No; I don't exactly recollect.

Q What? A No; I don't know exactly the time.

Q Well was it in the morning or in the afternoon?

A In the afternoon, I think.

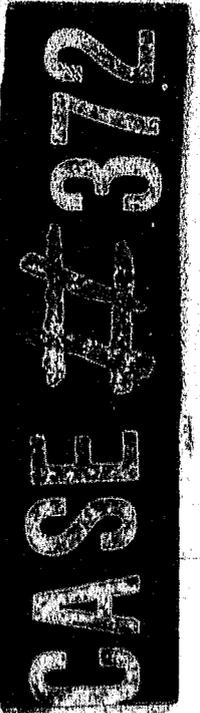
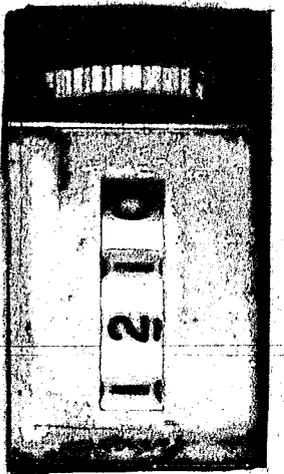
Q Early or late in the afternoon? A I can't exactly say.

Q Well was it before six o'clock? A Yes, sir; it was before six o'clock.

Q Who else was there, when she gave this package to the defendant? A The elevator boy.

Q I can't hear you? A The elevator boy.

Q You will have to speak a good deal louder. Did you hear what she said to McCue, the defendant, and what he said



to her, when she gave him the package? A She told him the value of that package was \$10,000.

Q Yes. A And if it would be all right for him to take it, and he said yes; that he could take more valuable packages than that, because he had a safe on the wagon.

Q Did you see him sign the receipt? A Yes, sir. And Mary O'Neill passed the remark that he only put down One and three Naughts, and that he should put another Naught there.

Q And did you see the receipt, at the time? A Yes, sir; I seen him putting down the other Naught on it.

Q I show you People's Exhibit 1, and ask you if you recognize that? A Yes, sir.

Q That is the receipt; is it? A Yes, sir.

Q Did she give him anything else, besides the package of jewelry, at that time? A Two trunks.

Q And what did he do with the trunks? A Well, she told him the value of the trunks was \$500.

Q And what did he do with the trunks? A He took them on the elevator.

Q He put them on the elevator? A Yes, sir.

Q And what did he do with the package? A He put the package in his pocket.

Q What kind of trunks were these? A One was a large



CASE # 372

trunk and the other was a small trunk.

Q A small trunk, or hat trunk? A It was a hat trunk--
no, not a hat trunk.

Q Any name on the trunk? A Yes, sir.

Q What name? A "Mrs. Hermsheim's name and address.

Q Was Mrs. Strauss' name also on the trunk? A Yes,
sir; but I don't know exactly how, because Mrs. O'Neill atteded
to it.

Q Did you see what the defendant did with the package,
after he put it in his pocket? A Yes, sir; he put it in
his pocket, and he got on the elevator.

Q And did you see him do anything else with it? A No,
sir.

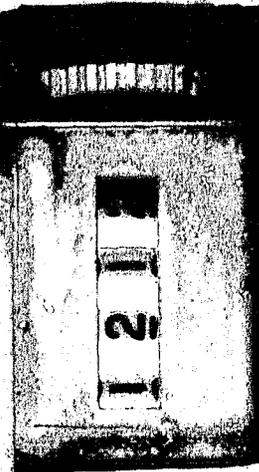
Q And you saw him going down on the elevator? A Yes,
sir.

Q That was the last time you saw him, until you saw him
in the police court? A Yes, sir.

Q Now do you remember anything else that was said by
the defendant, at the time, besides what you have just testi-
fied to? A No, sir; I don't know anything else.

CROSS EXAMINATION BY MR. CAMPBELL:

Q This was really around twelve o'clock in the day
time, was it not, when he called for those things? A I am



CASE 44-372

not sure, sir.

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

DIRECT EXAMINATION BY MR. SMYTHE:

Q Are you employed as an elevator boy at 771 Madison
Avenue? A Yes, sir.

Q Were you there on the morning of the 19th of May?
A Yes, sir.

Q Did you see this defendant there that morning? A Yes,
sir.

Q Did you take him up in the elevator? A Yes, sir.

Q To what floor? A The sixth floor.

Q Did you see Mary O'Neill and Mollie O'Rourke there,
that morning? A Yes, sir.

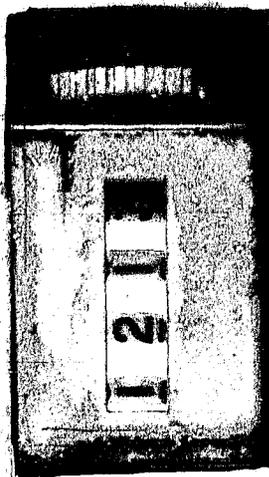
Q Did you see Mary O'Neill give the defendant a pack-
age? A Yes, sir.

Q And what else did she give him? A Two trunks.

Q Did you see-- what did the defendant do, when the
package was givento him? A Well, he got the two trunks
first, and filled out a slip for them.

Q Yes. A Valued at \$500. And then she gave him the
package, and then he filled out a receipt for the package.

Q Did you see the receipt, at the time? A Well I



CASE 77 372

didn't see the receipt, but I saw him fill the receipt out. And there was a remark passed about another 0 to that. She said, "It is only 1,000".

Q And what else was said about the package? A Well she said it was a very valuable package, and to look out for it, and he said that it wasn't so valuable, that he handled more valuable things than that, and that he had a safe on the wagon.

Q And was that all that was said, that you recollect?

A Yes, sir.

Q And what did you see the defendant do, with the package? A Put it in his pocket.

Q And then did he get on the elevator? A He put the two trunks on, first.

Q And then he got on the elevator? A Yes, sir; and then he got on the elevator.

Q Did he have the package in his pocket at the time he got on the elevator? A Yes, sir.

Q And did he do anything with the package, after he was on the elevator? A He took it out, just as he got on, and stuck it in again, half way down.

Q In what part of his clothing did he put it? A In his front pants pocket, on the left hand side; and it stuck out about two or three inches.

1211
CASE 77-372

Q Did his coat cover it? A No, sir.

Q And when you got down to the bottom of the elevator, what did the defendant do? A He took off the two trunks, and put them outside.

Q And then what did you do? A I went upstairs with the elevator. I had another ring.

Q Did you see the defendant again after that? A No, sir.

Q Do you know what time of day it was? A No, sir; not the least idea. It was in the morning.

Q You think it was in the morning? A Yes, sir; I think so.

[No cross examination.]

A. Y A T E S K I N G, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMYTHE:

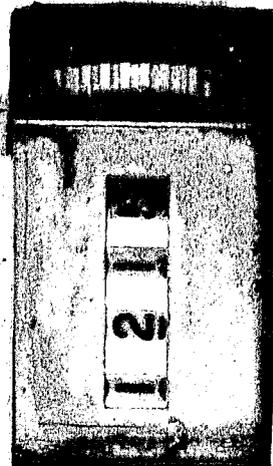
Q Mr King, what is your employment? A I am an agent of the Manhattan Delivery and the Adams Express Company.

Q And where is your place of business? A 1045 Third Avenue.

Q Is that the place of business of the Manhattan Delivery Company, one of their places of business? A Yes, sir.

Q How far up Third Avenue is 1045? A Between 61st and 62nd streets.

Q On which side of the street? A On the east side.



713-372
CASE 71-372

Q. Nearer which street? A Nearer 62nd.

Q How far from the corner? A Two stores from the corner.

It is the third store.

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

Q And have you employed him? A He was employed in my office, yes.

Q For the Manhattan Delivery Company? A Yes, sir.

Q And you were transacting there the business of the Manhattan Delivery Company? A Yes, sir.

Q Were you in charge of that office? A Yes, sir.

Q How many men have you employed in the office? A Six.

Q And you are manager of that office? A I am the agent.

Q You are the agent of that office? A Yes, sir.

Q Now, on the 19th of May, did you receive a class from Mrs Strauss? A Yes, sir.

Q Did you receive it personally? A Yes, sir.

Q Now had you received, personally, any call from her on the telephone? A Yes, sir, about ten minutes past eleven in the morning.

Q In the morning? A Yes, sir.

Q Did you, at that time, speak to this defendant? A Why, I gave him the calls that had accumulated.

Q In what form did you give him the calls? A On a slip of paper.

7137
CASE # 372

Q And you gave him a slip of paper? A Yes, sir.

Q With the name and address? A Yes, sir.

Q And about what time did you give him that? A Fifteen minutes past eleven.

Q And did you tell him what he was to call for? A No, sir; because I had no knowledge of the character of the shipment.

Q And you told him nothing of the character of the shipment, then? A No, sir.

Q And did the defendant go out, at that time? A Yes, sir; about fifteen minutes past eleven.

Q And what was the defendant's business? A He delivered shipments.

Q Did he drive a wagon? A Yes, sir; he drove a wagon.

Q And this call you received as agent of the Manhattan Delivery Company? A Yes, sir.

MR. SMYTHE: If your Honor please, it is conceded by the defendant that the Manhattan Delivery Company is a duly incorporated corporation.

MR. CAMPBELL: Yes; that is conceded.

BY MR. SMYTHE:

Q When did you next see the defendant? A I think it was about three quarters of an hour or an hour afterwards.

Q Did you have any talk with him about this call, at that time? A I checked over the calls that he had been out on, and,

713
372
CASE # 372

when we came to this one, which was entered in the book as 775 Madison Avenue by mistake, he says to me--

Q The real number was 771? A Yes, sir. He said, "That is the wrong address. That number is a church". And I knew that, that the number was wrong, having had calls at the place before, and knowing that it was a large apartment house--

Q No. Never mind that. What did you say to him? A I told him the correct number was 771, and to go and make the call.

Q And did he thereupon go out? A Yes, sir; he went out and made the call.

Q Did you give him any other call to make, at that time? A No, sir.

Q And just about what time of day was that, that you sent him out, the second time? A At noon, or shortly after.

Q How long after that was it that you saw the defendant next? A In the early afternoon.

Q Well, how many hours after he went out? A I should judge about three quarters of an hour.

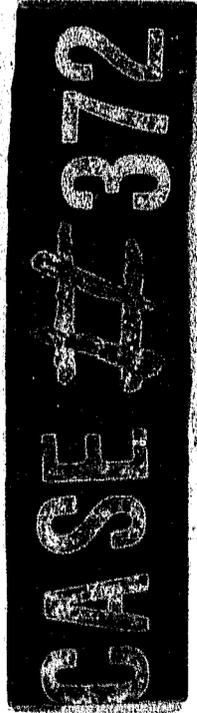
Q After he went out on that call? A Yes, sir.

Q Where did you see him? A At that office.

Q Did he come back in his wagon? A Yes, sir.

Q Did he bring anything in his wagon? A Yes, sir.

Q What? A Two trunks, two traveling trunks.



Q Did he say anything about them? A He did not. I did.

Q Did you say it to him? A Yes, sir.

Q What did you say to him about them? A I went over to where he had laid the trunks, after he had weighed them up, and read the weight on the tag, which is attached to the trunk, and on one of them I couldn't make out the mark of the weight. It looked to me like it might be 75 pounds, and then as though it might be 15 pounds. There was a ring around the numbers. And I asked him, "Is that right? Is that weight correct?" And he said, "Yes". And I doubted it, and I picked up the trunk--

MR. CAMPBELL: No, I object to that, and I move to strike that out.

BY MR. SMYTHE:

Q Well, what did he say? A He said, "15 pounds is the correct weight". And I put the trunk on the scales, to make sure, because it was an unusual weight for a trunk, and found that it was correct. That is all that was said.

Q That was all that was said about the trunks? A Yes, sir.

Q What kind of trunks were they? A Why, traveling trunks. One of them was a hat trunk, the light weight trunk was a small hat trunk.

Q And the other was large? A Yes, sir.



CASE # 372

Q Did you see any name on them? A The name and address where they were going to, to the consignee.

Q Do you remember what that was? A "Mrs Charles Hershheim, Auditorium Hotel Annex, Chicago."

Q Now was that all that the defendant said to you, at that time? A Yes, sir.

Q Did he say anything to you about a package? A No, sir.

Q Did he mention, in any way, the fact of having a package? A No, sir.

Q Did you see any package? A No, sir.

Q Any small package? A No, sir.

Q In his hand, at the time? A No, sir.

Q Did you see any lying near the vicinity of the trunks?

A There was general freight there, lying around the trunks, about eight other pieces of freight, packages, that is, ordinary sized packages.

Q Well, what do you mean by ordinary sized packages?

A Well, 18 inches long and 12 inches wide.

Q Was there any package there as small as eight inches long? A I didn't see any; no, sir.

Q And you didn't see any lying between the trunks?

A No, sir.

Q Did any one come in with the defendant, at that time,

1230

CASE 77-372

when he came in? A His helper was there.

Q The defendant did not deliver to you that package?

A No, sir.

Q What is the name of his helper? A Frank McGovern.

Q Was the defendant-- did the defendant come there, the next day? A No, sir.

Q Did he report for work at all, on the next day? A No, sir.

Q When did he next report for work? A On the 21st.

Q On the 23rd? A On the 21st.

Q 21st? A Yes, sir.

Q Did he stay there all day, on the 21st? A Yes, sir.

Q Did he report for work on the 22nd? A Yes, sir.

Q And when did he leave off work there? A On the 22nd.

Q On the 22nd? A Yes, sir.

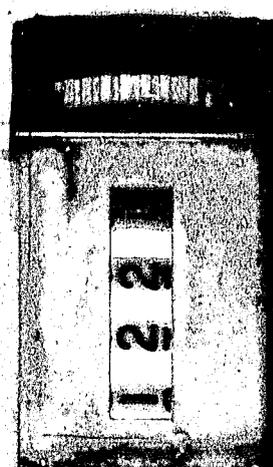
Q Did he leave voluntarily or was he discharged? A He resigned.

Q Were you present at the time of the arrest of the defendant? A Yes, sir.

Q When was that? A When he was arrested?

Q Yes.

(The court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until three o'clock.)



A F T E R R E C E S S .

A. Y A T E S K I N G, his direct examination being continued,
testified as follows:

DIRECT EXAMINATION CONTINUED BY MR. SMYTHE:

Q When was the defendant arrested? A Friday morning.

Q What day of the month? About how long after the 19th
of May? A About nine days.

Q Where was he arrested? A At 111th Street and Lexington
Avenue.

Q Who was there at the time? A Detective Price and myself.

Q How long had this defendant been employed by you as a
driver? A As a driver, since the holidays of last year, the
recent holidays, the Christmas Holidays.

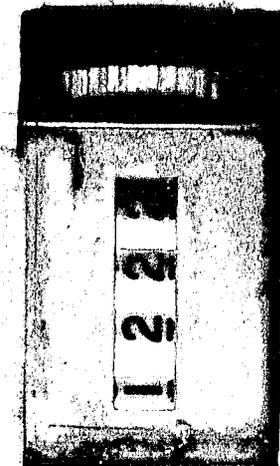
Q The Christmas Holidays of 1902? A Yes, sir, beginning
December, 1902.

Q And, during that time, what had been his duties in your
employ? A To make deliveries of freight, express matter, and to
make calls, pick up.

Q Pick up-- A Express matter, packages.

Q And bring them back to the office? A Yes, sir.

Q I show you this book, and ask you what that is? A This
is the record of calls, received at my office.



CASE # 372

Q By whom were those entries made? A Myself.

Q Is that the book in which you checked over the calls with the defendant? A Yes, sir.

Q Is this call in that book? A Yes, sir.

Q Will you please indicate it? A There it is, sir. (Indicating.)

Q That is made in your own handwriting, that entry?

A Yes, sir.

MR. SMYTHE: I offer this in evidence.

THE COURT: Any objection?

MR. CAMPBELL: No, sir.

THE COURT: Mark it.

(It is marked People's Exhibit 2.)

BY MR. SMYTHE:

Q By whom was the word "McCue" entered in the book? A I didn't see him write it, but it is in his handwriting.

Q Do you know his handwriting? A Yes, sir.

Q Have you seen him write? A Yes, sir.

Q When was this 777 changed to 771? A The day that the call was recorded in the book.

Q Well, at what time? A Well, just before he went out on the call.

Q The first time or second time? A The second time.

Q And was that done in his presence? A I don't think he



saw me do it.

Q Did you give the defendant any receipt for this package?

A No, sir.

Q Who else was in the office, when he came back with the trunks? A I believe the other drivers were there; had come in from their routes, and were about to feed up.

Q Do you know what drivers were there? A Driver Graham, Driver Richmond and the helpers.

Q Was there any one else there, besides the drivers?

A No, sir.

Q No one else, who had charge of the books? A No, sir.

Q And of entries in the books? A No, sir; nobody had charge of the books but myself. I attended to all the books.

Q You were in sole charge? A Yes, sir; in sole charge.

Q And when packages were brought into the office, were they delivered to you? A Ordinary freight. What I mean by that is packages without seals or without a value, were put in the rear of the place.

Q And what about packages sealed or with a value? A They were handed over to me, over the counter, and put in the safe by me.

Q And had the defendant ever followed out that custom?

A Yes, sir.

BY THE COURT:



CASE 77 372

Q Did I understand you correctly, Mr Witness, to say that you received this package from the defendant? A No, sir.

Q You did not? A I did not. I did not see the package. It was not reported to me, as having come into the office.

Q But you received the trunks? A The trunks I received, yes.

Q On the day that they were received by the defendant?
A Yes, sir.

Q From Mrs Strauss? A Yes, sir.

Q Was anything said by him to you about a package? A No, sir.

Q Nothing whatever? A No, sir.

THE COURT: What is that entry, Mr District Attorney? (Indicating) I wish Mr Campbell to understand this.

MR. SMYTHE: This entry is the entry that was made at the time he was sent out on the call, before he collected the package.

BY THE COURT:

Q Well, was there any record or writing made of his return? A Of his having returned from the call?

Q Yes. A Yes, sir; that is the time card (indicating).

Q Yes? A Yes, sir; that is the time card (indicating).

1228
CASE 74-372

Q And was there any entry or writing made as to the things which he brought back with him? A Yes, sir, on this time card, by himself.

Q By himself? A Yes, sir.

Q Well, is that card presented to you? A It is left on the counter, on my counter.

Q At the time that the goods or articles are brought in?
A Yes, sir.

THE COURT: Have you the time card, Mr District Attorney?

MR. SMYTHE: No, sir, I have not.

BY MR. SMYTHE:

Q Is this entry made by you at the time (indicating)?

A Yes, sir.

Q Will you send right up for that time card? A Yes, sir; it is at our office in 23rd Street.

THE COURT: It seems to me that that is very important, Mr District Attorney.

BY THE COURT:

Q Can you send for that? A Yes, sir.

THE COURT: Then go and send for it at once.

BY MR. SMYTHE:

Q Did you make any entries at the time you received these two trunks? A On those sheets, yes (indicating).

1220

CASE # 372

Q I ask you if that is the sheet on which you made the entry? A Yes, sir.

Q Did you make it yourself? A Yes, sir.

Q And at the time you received the trunks did you make that entry? A Yes, sir.

Q Will you point to which entry you made at the time?

A There, sir (indicating).

MR. SMYTHE: This sheet is offered in evidence, if your Honor please.

MR. CAMPBELL: I object to it.

MR. SMYTHE: Then it is offered for identification.

(It is marked People's Exhibit 3 for Identification.)

CROSS EXAMINATION BY MR. CAMPBELL:

Q I understand, Mr King, that you have exclusive control of the office? A Yes, sir.

Q Of the work of the office? A Yes, sir.

Q Were you on duty on May 19th? A Yes, sir.

Q The day these trunks were brought in there? A Yes, sir.

Q At what time did you go on duty that day? A Well, seven o'clock.

Q And remained on duty until when? A Until a quarter past seven o'clock at night.

CASE # 372

Q And when do you go to lunch? A Well, it isn't often that I go to lunch at all. I very seldom do go to lunch.

Q Were you on duty on the 18th? A Yes, sir.

Q And did you remain on duty all day? A Yes, sir.

Q And came on duty when? A Seven o'clock.

Q Did you go to lunch that day? A No, sir, I did not. I don't remember that I did. It is very rarely that I do go out of my office for lunch.

Q And when you do get out for lunch, at what time do you go? A Well, possibly between twelve and one o'clock, if my business will permit me.

Q But you don't remember going on the 18th? A No, sir.

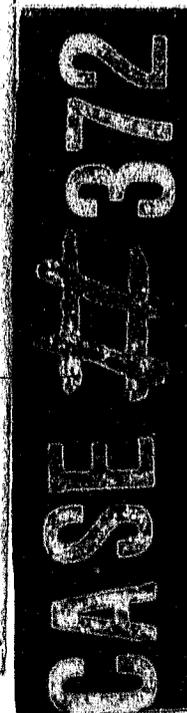
Q You were, then, in the office on the 18th, between the hours of eight and ten A. M.? A Yes, sir.

Q Were you assisted by any other clerk, on that day, or were you doing the work as usual? A I was doing the work as usual.

Q Among other things, you answered the telephone calls which come in, do you not? A Yes, sir.

Q Did you receive any telephone call on the 18th day of May for this address, asking to have a driver sent for a valuable package and two trunks? A No, sir.

Q Will you swear that such a call was not received at the



office, on the 18th of May, between the hours of eight and ten

A. M.? A Yes, sir.

Q You will swear that? A Yes, sir.

Q You were on duty in the afternoon, too; were you?

A Yes, sir.

Q Did you receive any call in the afternoon from that address, in regard to this package and two trunks? A No, sir.

Q Or in regard to any matter? A To any what?

Q As to any matter? A From that address?

Q Yes, from that address? A No.

Q When was the first call that you received? A Ten minutes past eleven, on the 19th.

Q You don't now recollect that any other person than yourself answered the incoming telephone calls, on the 19th of May? A No, sir.

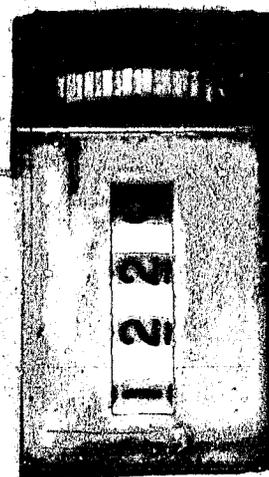
Q As matter of fact, you answered them all yourself?

A Yes, sir; I answered all the calls myself, if I was there.

Q Well, then you did, on that day? A Yes, sir.

Q Well now, on the 19th of May, what time did McCue go out for this call? A He signed the call off at fifteen minutes past eleven.

Q And how many calls did he sign off, at that time? A Six or seven.



CASE # 372

Q When he came back, how many packages did he bring? Other than the trunks, which you say were received at the office?

A That I couldn't answer.

Q He did bring some packages back, did he not? A Yes, sir.

Q And he claimed to you, did he not, that that was among those which he brought in? A He claimed to me that it was?

Q Yes. A He made that statement to the detectives.

Q In your presence? A Yes, sir, in my presence.

Q Have you any-- if you don't know the exact number, have you any idea approximately of the number of packages he brought in, at the time that he claimed to the detectives that he brought in the missing package? A No. I have no idea. I can't recollect. I have so many. I have three wagons running into the office, bringing freight in there, and vans bringing freight in.

Q They come in constantly; do they not? A Yes, sir.

Q And when boys, in McCue's position, drivers, go out and bring in the call packages, they take them and weight them up?

A Yes, sir.

Q And throw them down, in a bunch, on the floor? A Yes, sir; ordinary freight.

Q Ordinary freight? A Yes, sir.



CASE # 372

Q All packages, except prepaid packages are so put; are they not?

A Except prepaid?

Q Yes.

A No, sir. The prepaid packages are put there too.

Q They are put there too?

A Yes, sir; all except valuable packages.

Q When these packages are brought in by the drivers; you don't give the drivers receipts for those packages; do you?

A No, sir; not on ordinary freight.

Q Do you recall ever having given Mr McCue a receipt for any package?

A For any package?

Q Yes.

A No, sir. It was not for me to give it to them. It is for them to get it from me. Those are the instructions of the driver, to protect themselves.



CASE 71 372

B1

Q As a matter of fact, that instruction is not carried out habitually; is it? A It lays with the drivers, to protect their own interests.

Q But they don't do it, do they; none of them do it, do they? A No, sir.

Q Do you know whether or not McCue has been sent out for other valuable packages? A During the Holidays, there was an arrangement made that shippers in our district--

Q Never mind the arrangement with shippers. The question is, do you recall any other occasion that McCue went out for valuable packages? A Not when he was sent out for any package with any stated value on it.

Q I didn't ask that question. Do you recall any occasion, any other occasion, when McCue went out for valuable packages? A He had one house in a district, when he was running a district, that shipped sealed packages, Lambert Brothers, 58th street and 3rd avenue.

Q And did he call for valuable packages there? A There was no stated value on the packages. They never declare the value on their packages.

Q What is their business, Lambert Brothers? A Jewelers.

Q And the packages which he called for there were valuable packages? A I suppose they were valuable packages,

1238

CASE # 372

but the value was covered for the amount that the receipt was issued for, under \$50.

Q And, on those occasions, what did he do with those packages, when he brought them in? A He brought them to the office, and handed them to me, over the counter.

Q Did you give him receipts for them? A No, sir.

Q Do you remember whether or not McCue ever delivered a package to a person by the name of Baker, at 686 Madison Avenue, valued at \$1,000?

MR. SMYTHE: Objected to as immaterial.

THE COURT: Objection sustained.

MR. CAMPBELL: Exception.

BY MR. CAMPBELL:

Q And what time of day was it that McCue came back?

A As near as I can recollect, about one o'clock.

Q And these other drivers were just going to their dinner; weren't they? A Yes, sir; they had just come in from their routes, and were getting their freight weighed up.

Q Do you know in what part of the office they were in?

A In the rear part.

Q And where were you? In the front part? A Behind the counter.

Q And is that in front or rear? A That runs along the

1234

CASE 372

side, about half way from the front to the rear.

Q And where were you when McCue brought in the packages and trunks? A About twnety foot away.

Q About twenty feet away? A Yes, sir.

Q Did you notice him, when he came in, with these packages? A No, sir; I didn't take any particular notice of him.

Q You didn't see what packages he put down there, did you? A No, sir.

Q And you didn't go afterward, immediately, and look those packages over; did you? A Yes, sir.

Q How long afterwards? A Before he got away from them, from weighing them up.

Q Did you look over all the packages that were on the floor there? A Yes, sir; that were on the floor.

Q How many were there? A About nine or ten.

Q Do you remember the dimensions of each package? A No, sir.

Q Do you always look over all the packages, at the time that the drivers bring them in? A As soon as I get to them. Sometimes my duties will not permit me to get back to the freight, just at the exact moment.

Q How soon after McCue came in, with these packages, was it you got back there, to look them over? A Before he

1231

CASE # 372

got away from them. He had weighed up the trunks.

Q I asked you how soon that was? A Immediately.

Q As soon as he came in? A As soon as he came in.

Q You, shortly after he came in, had an altercation with him, before he went out; didn't you? A In reference to these trunks?

Q And also in reference to a dollar of overcharge?

A I don't remember the circumstance.

Q Don't you remember having the dispute with him about that? A No, sir.

Q He continued to work the balance of that day; did he not? A Yes, sir.

Q And, the following day, he came to work, didn't he?

A The following day he was absent.

Q The day after that, did he come back again? A Yes, sir; he reported for work.

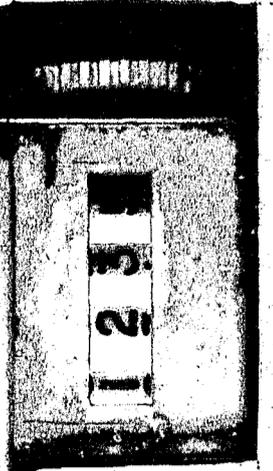
Q And did you have an altercation with him, on that day, about his smoking around the office? A No, sir.

Q When was it you had the altercation? A The following day, the day after that.

Q The day after that? A Yes, sir.

Q And didn't you discharge him, that following day, for violating your instructions? A No, sir.

Q He claimed that you discharged him; didn't he? A I



know he claimed I did, but I have witnesses who will prove that I did not.

THE COURT: Simply answer for yourself, without your witnesses.

THE WITNESS: All right.

BY THE COURT:

Q Did you or did you not? A No, sir; I didn't discharge him.

BY MR. CAMPBELL:

Q What did you say to him?

THE COURT: About what? About his smoking?

MR. CAMPBELL: Yes, sir.

MR. SMYTHE: I will object. It is immaterial.

MR. CAMPBELL: If your Honor please, the District Attorney claimed, in his opening, that, after he got the package, the defendant left his employment, and did not return to it. It becomes material in that way.

MR. SMYTHE: I did not make any such statement, in my opening.

THE COURT: Well, I do not see that that involved at all the statement of the District Attorney. Of course, evidence on that point would be material. But, as to whether or not the witness



discharged him for smoking, I do not see that that is material.

MR. CAMPBELL: I will put it in another form.

THE COURT: Yes. I suggest that it is proper and material to the issues in the case, to traverse that allegation that the defendant left.

MR. CAMPBELL: And was not discharged.

THE COURT: Yes; and was not discharged. I will permit you to ask upon that point.

BY MR. CAMPBELL:

Q Now then, I understand you to say, Mr. King, that you didn't discharge him? A I did not.

Q Did you threaten to discharge him? A No, sir.

Q Did you threaten to have him discharged? A No, sir.

Q For any reason? A No, sir.

Q You know, as a matter of fact, do you not, that, some days after that, McCue wrote a letter to the officers of the company, asking to be reinstated?

MR. SMYTHE: Objected to, as immaterial.

THE COURT: Objection sustained.

MR. CAMPBELL: Exception.

THE COURT: Let the letter be produced, if there be such a letter.

EXHIBIT
1231
CASE # 372

BY MR. CAMPBELL:

Q How long have you been in that position? A Two years and six months.

Q How long have you been with the company? A That time.

Q Two years and six months? A Yes, sir.

Q What was your business before that? A I was a salesman.

Q Where? A With William W. Hart & Co.

Q And where is his place of business? A He was at 47 East 12th street.

Q And how long were you with them? A Three or four years.

Q And why did you leave them?

MR. SMYTHE: Objected to as immaterial.

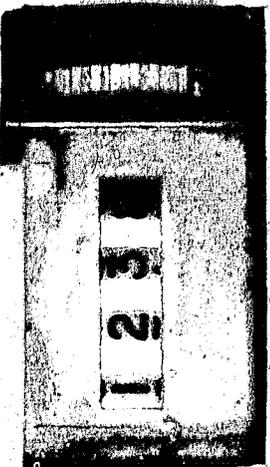
A Mr. Hart was in financial difficulties, and made an assignment, and I couldn't get what was coming to me, in the way of salary, and I got out.

Q Is it not a fact, Mr. King, that you have been frequently short in your cash there, since you have been in that position, and have borrowed of McCue and other drivers, to make your cash good, for the inspectors' examination?

A No, sir.

MR. SMYTHE: I object to the question.

THE WITNESS: I will answer it. No, sir.



BY MR. CAMPBELL:

Q You say that that has never happened? A No, sir.

Q Do you remember a driver, named Richmond, on that very same day that these trunks were brought in, going out for sixteen trunks? A Yes, sir.

Q Twenty-one trunks? A Yes, sir; twenty-one trunks.

Q And collected in the neighborhood of \$16? A Yes, sir.

Q Did you ask either Richmond or McCue, that night, to get that money for you, so that you could put it in your cash draw? A No, sir; not in that way.

Q Well, to be perfectly fair, I will allow you to state it in your own way. A All right. It has always been my custom to collect any money that the drivers had collected, that is, any amounts over five dollars. They don't care to carry it in their clothes, afraid of losing it.

BY THE COURT:

Q You mean, collect it from the drivers? A Yes, sir. This was a prepaid amount of \$15.75, on those trunks. I knew it was going to be prepaid, because the parties had telephoned to me that they were going to prepay the charges; and I knew that either one of the drivers had it; and I asked McCue for it, when he came in, and he said that Richmond had it, and I told him to send Richmond to me; and he went out,

7137372
CASE # 372

and got the money, and brought it in to me, and I put it into the cash draw, and, when driver Richmond came in, I issued him a receipt for it, which I did in every case when I received money from the drivers.

Q At the time you put that money in the cash draw, was the money in your cash draw complete? A Yes, sir.

Q All that your accounts called for? A Yes, sir.

Q Have you ever borrowed from any of the drivers, to make good your supply of cash on hand? A No, sir.

Q Did you not so admit to Mr. McWilliams, the president of the company, that you had borrowed money from the drivers?

A I admitted to Mr. McWilliams?

Q Yes. A No, sir.

Q Didn't you tell him, to Mr. McWilliams, that you had borrowed from McCue? A No, sir.

Q Did you hear Mr. McWilliams testify in the police court? A No, sir.

Q Now you say you didn't see the packages brought in by McCue? A I don't remember seeing them brought in; no, sir.

MR. SMYTHE: what packages do you mean?

BY MR. CAMPBELL:

Q Any of the packages that McCue brought in, at the time he went out on this call? A I don't recollect seeing him

1260

2137372
CASE # 372

bring them in, no sir.

Q You are not prepared to swear that McCue didn't bring this particular missing package into that office, and leave it there? A I will swear that he didn't bring it to me, and hand it to me, as he should have, it being a valuable package.

MR. CAMPBELL: Now I move to strike out the last part of the answer, "that he didn't bring it to me, et cetera."

THE COURT: Yes. Strike that portion of the answer out.

BY MR. CAMPBELL:

Q Will you swear that McCue didn't bring that package into the office, and leave it there, with the other packages?

A I will.

Q Do you remember your testimony, in the police court?

A Yes, sir.

Q Do you remember being asked, in the police court, whether you swore that McCue didn't bring that package into the office, and that you answered, no, you couldn't swear to that? A I don't remember.

Q Did you swear in the police court that you didn't see this package brought in, but you would not swear that it was not brought in? A I don't remember of having sworn to any



such statement.

Q Or anything like that? A I don't remember.

Q You were extremely interested in what you testified to in the police court; weren't you? A Yes, sir.

Q Well, if you did so testify, in the police court, was it true or not?

THE COURT: No, no. Do not answer. Excluded.

MR. CAMPBELL: Exception.

BY MR. CAMPBELL:

Q Are you able to describe all of the packages that you saw there, on the floor, in that pile, when you went back to weigh them up? A No, sir.

1242

CASE # 372

MR. SMYTHE: I object to that, as having been gone over two or three times already.

A No, sir; I couldn't describe all of them.

BY MR. CAMPBELL:

Q How many of them can you describe? A Well, I can describe the two trunks.

Q But not the packages? A No, sir.

RE-DIRECT EXAMINATION BY MR. SMYTHE:

Q You have testified with regard to seeing certain packages which the defendant brought in. Did the defendant bring in any packages at the time he brought in the trunks, that you saw, other than two trunks? A No, sir; I didn't take notice of any package in particular.

Q Had you seen him bring in packages shortly before that? A No, sir; I hadn't taken particular notice of it.

Q At the time you checked over the call with him, had he already, at that time, brought in packages? A Yes, sir.

Q What? A He had.

Q And it was at that time that he reported to you that he had not succeeded in making this particular call on Madison Avenue? A Yes, sir.

MR. CAMPBELL: I object to that, as assuming something that has not been already testified to.



CASE # 372

MR. SMYTHE: It has been testified to, if your Honor please, I think.

THE COURT: Objection overruled.

MR. CAMPBELL: Exception.

BY MR. SMYTHE:

Q And, at the time he was sent out for these trunks, did you send him to any other place? A No, sir; that was the only call.

Q That was the only call? A Yes, sir.

Q That he went out on? A Yes, sir.

BY THE COURT:

Q The call of Mrs Strauss? A Yes, sir; to make it, before he fed his horse. That was the only call.

BY MR. SMYTHE:

Q And you sent him; did you not? A Yes, sir.

BY THE COURT:

Q In the morning? A Well, it was in the forenoon, in the noon hour.

BY MR. SMYTHE:

Q Now, first, he went out on a call and came back, and reported that he had not found any one at 777 Madison Avenue?

A He had several calls when he went out with that call.

Q And the others he checked over? A The others, he checked over. His O. K. is on the book there.



Q For the others? A Yes, sir. It appears on all of them.

Q Yes. And having then reported that, you sent him specially to Mrs Strauss, at 771? A Yes, sir; because there had been an error in taking the address.

Q And was it after that that you saw him, with the two trunks? A Yes, sir; it was after that.

Q And did you see him bring the two trunks into the office? A I don't remember seeing him bring them in but I remember that they were there; that I was there, when he got there, and was through weighing them; and I remember what appeared to be the error in weighing one of the trunks; that it was only 15 pounds.

Q And was he standing there at the time? A Yes, sir.

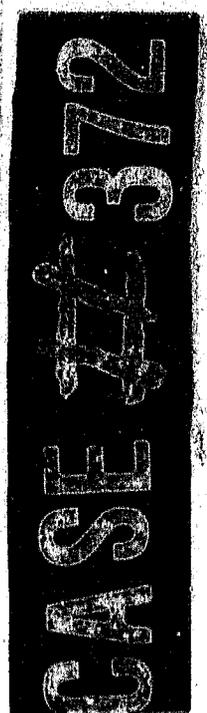
Q And did he check the O. K. on the trunks? A Yes, sir.

Q And when, with reference to the time that you talked with him about the weight of the trunk? A How is that?

Q You had a talk with him about the weight of that trunk? A Yes, sir.

Q Did he check his O. K. on the call from Mrs Strauss, before or after you had that talk with him? A That I couldn't say, sir. The drivers were in the habit of coming up and O. King the calls, after I had checked them off.

Q And what did you do with the trunks? A I wrote his deliveries up then, while he was standing there, at the time he



was weighing up the packages.

Q And you were standing there, by the trunks, when you wrote that? A Yes, sir; and I had to stand by the trunks to get the addressed on them.

Q And the packages that were there were entered on that sheet? A Yes, sir; all of them.

MR. SMYTHE: It is offered in evidence, if your Honor please.

MR. CAMPBELL: Objected to, as not binding on this defendant, what this man entered on that sheet.

MR. SMYTHE: It is offered to show what packages were on that floor at the time. It refreshes his recollection as to the packages that were there.

THE COURT: But there is no marking of the defendant, on that sheet?

MR. SMYTHE: No, sir.

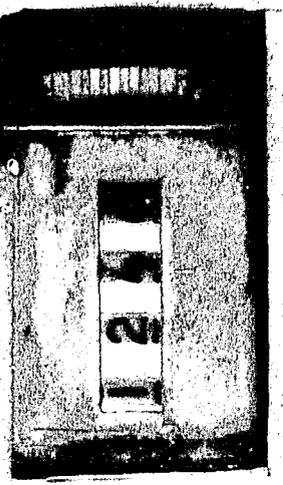
THE COURT: Objection sustained.

BY MR. SMYTHE:

Q Just one other question. When was it that he made this statement to the detectives, in your presence, about having left this package with the other packages? A It was about a quarter of seven, on Friday morning, when the detective arrested him.

Q At the time of his arrest? A Yes, sir.

Q Will you state just what he said? A After the detective



CASE 372

had made known his mission, and who he was, at that time, I had stepped up to where they were, and he said to driver McCue, "You remember having a call at 771 Madison Avenue?" "Yes", the reply was. "What did you do over there?" "I took two trunks". "Did you take anything else?" "Yes; a package valued at-- a package." "Did you give any valuation on that package? Did you put any value on that package?"

Q Who asked these questions? A What is that, sir?

BY THE COURT:

Q Commence again, and state the questions that were asked by the detective, and state the answers that were given by the defendant. A The detective said to McCue, "Do you remember having called at 771 Madison Avenue?" And the answer was, "Yes".

BY MR. SMYTHE:

Q Who answered it? A Mr McCue. The conversation was between the detective and McCue. "Do you remember what you took out of there?" The detective said, and McCue answered, "Yes". "What was it?"

Q Who said that? A The detective. He said, "What was it?" And McCue answered, "Two trunks." The detective then said, "Did you take anything else out of there?" And McCue answered, "Yes, a package". The detective says, "Was there any valuation on that package, given on that package?" And McCue answered, and

713
CASE 71 372

said, "Yes". The detective said, "What is the valuation on that package?" McCue said, "\$10,000".

Q That is, you say that McCue's answer was, "\$10,000"?

A Yes, sir. The detective then says, "Well, that package is missing, and we are hunting for it". I said to McCue--

Q Did McCue say anything, when the detective said that?

A No, sir.

Q Now then, state? A I said to McCue, "Did you put any valuation on that package? Did you mark the valuation on that package, the \$10,000?" And he said, "No, I didn't". That was all.

BY MR. SMYTHE:

Q Was that all the conversation? A That was all; yes.

Q Well, what was said-- you testified that he said something about leaving it with the other packages. When was that said? A Oh, no; he didn't say that in my presence at all.

Q You didn't hear him say that? A No, sir; I didn't hear him say that.

RE-CROSS EXAMINATION BY MR. CAMPBELL:

Q Have you related all the conversation that was had in your presence, between the detective and McCue? A Yes, sir.

Q Now you say you didn't see him bring in these trunks?

A I didn't see him bring them in, pass by me with the trunks.



CASE # 372

I was busy.

Q He had these trunks weighed up, when your attention was called to them? A Yes, sir; he had them weighed up. He had weighed them up, when I walked over to where they were.

Q And you say that two other drivers were in there, when he came in? A Yes, sir.

Q And any other persons? A No, sir; no other persons.

Q No customers? A No customers.

Q Any helpers? A The helpers were there. I believe they were there, as near as I can recollect.

Q Well, how many helpers? A Well, there is a helper for each wagon. That would be two helpers, three helpers.

Q Three helpers and two drivers and yourself? A Yes, sir.

Q In that office? A Yes, sir.

Q When McCue came in, with these things? A Yes, sir.

THE SEVENTH JUROR: Your Honor, can I ask the witness a question?

THE COURT: Yes.

BY THE SEVENTH JUROR:

Q What message did you receive from Mrs Strauss, on the telephone?

THE COURT: Just wait a moment. Do you consent



that that question be answered?

MR. CAMPBELL: What was the question?

(The juror's question is repeated by the stenographer.)

MR. CAMPBELL: Will the juror fix the date?

THE COURT: Well, gentlemen, I think that we had better not go into hearsay. It opens up, and I must not allow hearsay testimony over the telephone. I think we had better not go into it.

713
CASE 372

B1

61

MR. CAMPBELL: I am perfectly willing, if your Honor please, to let the question be answered.

MR. SMYTHE: And I have no objection.

THE COURT: Then, both sides being willing to have it answered, it may be answered.

BY THE COURT:

Q Did you receive a message on the telephone from Mrs. Strauss? A From Mrs. Strauss' apartments. I could not say whether it was Mrs. Strauss who delivered the message, or one of the servants.

BY THE SEVENTH JUROR:

Q Well what was the message, if it referred to the package? A No, sir.

BY THE COURT:

Q Did you receive that message? A Yes, sir.

Q From her apartments? A Yes, sir.

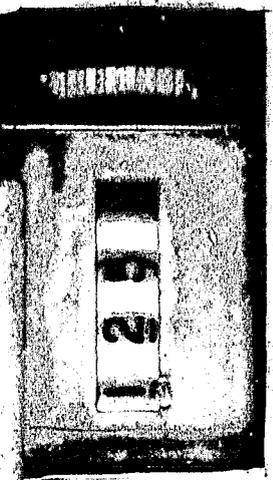
THE COURT: Now you may put your question, Mr. Juror, both sides consenting that it may be asked.

BY THE SEVENTH JUROR:

Q What was the message? Did she mention anything about a valuable package? A No, sir; at no time.

BY THE COURT:

Q Did you receive all the telephonic messages that passed



between Mrs. Strauss or her apartments and your office?

A Yes, sir.

Q All of them? A Yes, sir.

Q How many of them? A Well there was only one.

Q Only one? A Yes, sir; only one-- two messages.

One was received at 15 minutes past 11, or 10 minutes past 11, and that is the time that I got the address wrong; and then I got another telephone message, asking to please send for the goods; and that is the time that I told her that we had the address wrong.

Q Well, witness, if my recollection serves me right, Mrs. Strauss has testified that she telephoned to your office, about nine o'clock in the morning. Do you know anything about that telephonic message? A No, sir; the record shows that I only received--

THE COURT: Well, never mind the record.

BY MR. CAMPBELL:

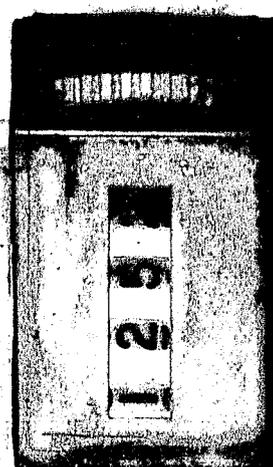
Q You were in the office at nine o'clock, weren't you?

A Yes, sir.

Q And it was your business to answer the telephone calls that came? A Yes, sir.

Q And you did answer all the telephone calls that came?

A Yes, sir.



H A T T I E S T R A U S S, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. SMYTHE:

Q. Mrs. Strauss, to what office was it that you telephoned, on the 18th of May? A. Why, I looked in the telephone book, and called up a number. I think it is 4326 18th something.

MR. CAMPBELL: That is objected to.

A (Answer continued) Well, it is the Adams Express Company, in the book. And a lady answered the phone, and she said--

MR. CAMPBELL: That is objected to.

BY MR. SMYTHE:

Q. Well was that the same voice that you heard, when you called up the next morning?

MR. CAMPBELL: Objected to.

THE COURT: One moment, gentlemen.

BY THE COURT:

Q. You called up, about nine o'clock in the morning, Mrs. Strauss? A. Well, I called up around that time; I called up the Adams Express Company.

Q. Now did you call up the same place again? A. Yes, sir; always the same number.

Q. The same number? A. Yes, sir.

Q. When did you call it again? A. I called, Monday



morning, Monday afternoon, and Tuesday morning.

Q the same place? A Yes, sir; but I don't know whether I was connected with the same office, because the Adams Express has an exchange, and they connect you with different places.

MR. CAMPBELL: That is objected to, and I move that it be stricken out.

THE COURT: The motion is granted.

THE WITNESS: Well I don't know what to answer.

THE COURT: No; you have answered sufficiently. Strike out that part of the evidence in which she says, "Because the Adams Express Company et cetera."

MR. CAMPBELL: May I ask to have the testimony read, as it stands, so we may be straight as to the record?

THE COURT: The last answer of the witness was that she telephoned in the morning and in the afternoon and the next morning to the Adams Express Company's office.

BY THE COURT:

Q Now, madam, is that so? A Yes, sir.

MR. CAMPBELL: And I understood her to say, also, and that your Honor allowed it to stand, that

129A

CASE 23-372

she telephoned the same office or place, each time?

THE COURT: Yes.

BY MR. SMYTHE:

Q Was it a man, that answered you, each time?

MR. CAMPBELL: Objected to.

THE COURT: Objection sustained.

F R A N K S. P R I C E, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMYTHE:

Q Are you connected with the police force of the city of New York? A Yes, sir.

Q And attached to the Detective Bureau? A Yes, sir.

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

Q What day? A On the 29th of May.

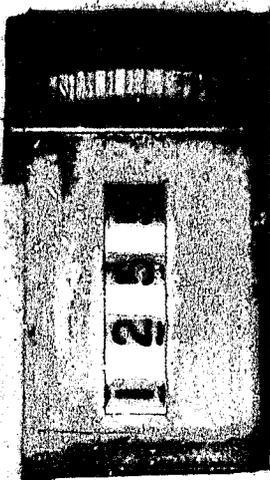
Q Where? A About 25 minutes to 7, at the corner of 111th street and Lexington avenue.

Q 25 minutes of 7, in the morning? A Yes, sir.

Q Or afternoon? A In the morning.

Q And who was with you at the time? A Mr. King, the agent.

Q Anyone else? A No one else.



CASE # 372

Q Did you have a conversation with the defendant, at that time? A I did.

Q Will you-- where was the defendant? On the street?

A On the street.

Q Where? A On the street.

Q Will you state what that conversation was? A I went across Lexington avenue-- I was on the west side--and he came out of the house at 1795 Lexington avenue. He came down three or four doors from his house, and I crossed over the avenue to him, and said, "Are you McCue?" And he said, "Yes". And I said, "I am Sergeant Price, from Police Headquarters, and you have got to go down to Police Headquarters with me."

Q Was Mr. King there then? A No, sir; not then. He was over on the corner. I crossed the street with him, and he said, "I see you have got King there". And I said, "Yes; there he is, on the corner".

And I said, "You are going down to Headquarters for a package containing \$10,000 in jewelry and checks, that you got from a house at 771 Madison avenue", and he said, "Yes, that is right. I got that package there".

1290

CASE 77-372

And I said, "Did you sign for it, and give a receipt for it?"
And he said, "Yes".

And I said, "Do you know Mr King here?" By that time we
had got to Mr King. And he said, "Yes".

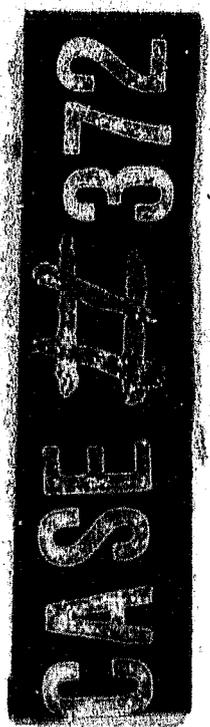
And, going down the street, I said, "Did you give that
package to King?" And he said, "No". And I said, "Did you ever
speak a word to King about that \$10,000 package?" And he said,
"No". And when we got over as far as Madison Avenue, we took
the Madison Avenue car to Headquarters.

Q Did you ask him any more questions about it? A Yes, sir.
When we got down to Headquarters, I talked to him some more
about it.

Q What was that? A I asked him if he had told the wagon
boy, when he came down out of that house, that he had a \$10,000
package, and he said, "No, I ain't in the habit of telling the
wagon boy anything about my business". And I said, "Is there
anybody that you have told since you got the package?" And he
said, "No". I never told a soul about it". And I said, "What did
you do with the package, when you got over to the store?" And
he said, "I thrown it down between two trunks". And I took him
to the Police Court, and he complained about being remanded to
Police Headquarters.

BY THE COURT:

Q No. What did he say about that? A He said, "I don't



want to go over to Police Headquarters. I want to go to the Tombs. I want to see my lawyers. They are Howe & Hummel." And the Judge remanded him to police Headquarters.

BY MR. SMYTHE:

Q And did you have any further talk with him? A Yes, sir. When we got to headquarters, I told him, if he wanted to write a note, or send word to any of his friends, he could. And I went down with the paper and an envelope to him, and I said, "Here is the paper and envelope, if you want to send out word to any of your friends or your lawyer", and he said, "I don't care to write to anybody. I will see my lawyer in the morning."

And I said, "Jimmie, can you bring yourself to remember what you done with that package?" And he said, "I throwed it between the two trunks. And, if I didn't do that, I left it in the wagon, and, when I fed my horse, around the corner, somebody swiped it out of the wagon".

Q Did you have any further conversation with him about the matter? A Yes, sir, in the morning.

Q And what was that? A The next morning, going down to court, I asked him if he could tell me anything more about the package, or about anybody employed up in that office; that, if he knew anything about anybody employed in that office, that I would go as far to show that he was innocent, as to prove that he was guilty, if he knew anything about the character of any-



body in that office; and he complained--

Q No. State what he said? A He said that Mr King was sore on him; that Mr King-- he had refused to lend Mr King the money, and that was the reason Mr King was sore on him; and I said, "Do you know anything wrong about Mr King?" And he said, "No; I don't know anything wrong about him; only he is sore on me, because I would lend him money."

Q Did he say anything more about the package? A No, sir.

Q Did you have any more conversation with him, about the package? A No, sir; not about the package.

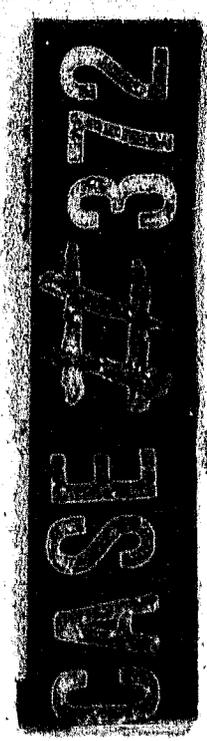
CROSS EXAMINATION BY MR. CAMPBELL:

Q Is that everything that he said to you, about the package?
A Yes, sir.

Q He said that he either put it in between the two trunks or, if he hadn't done that, somebody had swiped it out of his wagon? A He said, "If I didn't throw the package in between the two trunks, I left it under the seat and, when I fed my horse, around the corner, at noon time, somebody swiped it out of the wagon".

Q And that either one of those two things was so?

THE COURT: No, no. You have heard the witness's answer.



MR. CAMPBELL: That is all, Officer.

A. Y A T E S K I N G, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. SMYTHE:

Q I show you this, and ask you what that is? A That is the time card.

Q By whom is that written (indicating)? A The time and figures are written by McCue.

Q The defendant? A Yes, sir.

Q And was that the time card that was turned in, that day, May 19th? A Yes, sir.

MR. SMYTHE: I offer that in evidence.

THE COURT: Show it to the defendant's counsel.

MR. CAMPBELL: (No objection.

BY MR. SMYTHE:

Q Did the defendant write in the time? A Yes, sir; those are his figures.

BY THE COURT:

Q Whose handwriting is the writing in the column headed "Signature"? A That is my handwriting, sir.

Q And then when did you make the handwriting, when did you sign it? A At the end of the day.

D
E
P
O
S
I
T

213-77-ESW
CASE # 372

Q Then you write your name? A Yes, sir.

THE COURT: Mark it, the defendant consenting.

(The paper is admitted in evidence, and marked
People's Exhibit 4.)

CROSS EXAMINATION BY MR. CAMPBELL:

Q Mr King, from the time packages are received in the office,
from the drivers, until they are sent out again, you are
responsible for them, are you not? A What is that question?

Q From the time when packages are brought in by the drivers,
who have collected them, until they go out again with other
drivers, you are responsible for them, are you not? A Where I
give a signature for them, yes.

Q What is that? A Where I give a signature for them, yes,
sir.

Q But you don't give drivers receipts for them; do you?
A I do, when I am asked for them.

Q Yes. But you are not asked for them? A No; they don't
follow the instructions.

Q And have you been asked by any of them, habitually?
A I take them from the messengers that bring freight to my
office.

Q But only when you are asked for them? A When the
messengers bring incoming freight to my office, I give them a



receipt for it. My own drivers, when they bring in freight, don't get any signature for it.

Q But they are entitled to it? A Yes, sir. Their instructions are to get a signature. They have the book of instructions, the printed rules of the company, that give them their instructions.

Q Well, those rules are not followed; are they? A No, sir.

Q And it is not the habit of the office to follow that rule; is it? A No, sir; it doesn't seem so.

Q And in many other respects the rules are violated?

MR. SMYTHE: Objected to.

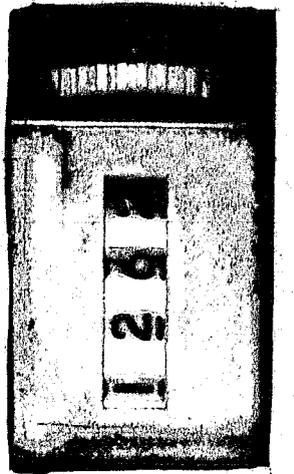
THE COURT: Objection sustained.

BY MR. CAMPBELL:

Q Now your signature on this card indicates that the entries are correct? A Oh, no. That is only the time card, and not a signature for any shipments brought into the office! That is only a time card, showing how many trips the wagon made on that day, what time they went out and returned, and when they reported for work, in the office.

Q And what they collected? A Yes, sir. But that is not a signature for what they collected. That is no receipt for it at all.

Q Take this second entry on this card, "Left office 7:40



A. M., five calls. Returned 8:05 A. M." And under this column "Collected, 4. Signature King". That is what he puts in.

Q And that signature "King" refers only to a part of the entries? A To the time only. It is not signature for the goods.

Q And it doesn't refer to the number of calls, nor to the number of pieces collected? A It doesn't refer to the number of pieces collected, because the drivers fill that in themselves.

Q And will you explain why then there is a blank left on the card for the number of pieces collected, and a blank left for your signature? A Just let me see the card.

Q Yes? A It says, "Arrived at office at 7 A. M." My signature is there. He reported at--

Q Now wait. One moment. We know what is said on that card, and I ask you a question about that card. Please repeat.

A What was the question?

Q (Question repeated.) As to explaining? A I don't see that there is a blank left for my own signature..

Q Look again. A I don't see it.

Q You see your signature on that blank? A That shows that he went out, with 37 deliveries, and came back without anything. He just went out on a delivery. He didn't pick up any freight then. That was just a delivery.

Q And what entry are you referring to now? A The top

CASE # 372

entry; the one that is blank.

Q The top entry? A Well, the one that you said was blank.

Q Well, does your signature have any significance, when it is opposite the blank places? A Only the time when he returned to the office from the delivery.

Q And you want us to understand that, although your signature is in that blank, it is not binding upon you as to the number of pieces entered on the card? A By no means. The driver could fill in fifteen pieces, and have me put my signature to it.

RE-DIRECT EXAMINATION BY MR. SMYTHE:

Q For what purpose is the card? A To show the time that the report-- that the driver reports for his work, in the office, and the number of trips he makes during the day, and the time he quits, at night.

Q It is for the purpose of keeping track of the driver? A Yes, sir; of the number of trips he makes. It has nothing to do with the number of pieces collected.

MR. CAMPBELL: That is objected to, and I move to strike it out, because the card shows that it does have something to do with it.



THE COURT: No. Your question opened the door for the question and answer. I will deny your motion.

MR. CAMPBELL: Exception.

BY MR. SMYTHE:

Q Had you seen that card every time he returned from a trip? A No, sir.

Q When had you seen it? A At night.

BY THE COURT:

Q Where are the figures made by McCue? A All of the figures here, as to his time (indicating).

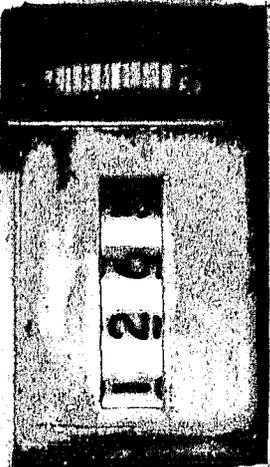
Q All of the figures? A Yes, sir; the time that he left the office, and the number of deliveries that he took out.

BY MR. SMYTHE:

Q Do you keep any check on these time cards? A Check?

Q Yes. Do you keep any record yourself? A No, sir. I send those to our headquarters, at 12 West 23rd Street.

Q No. But do you keep any record yourself of when they come in or out? A No, sir; the driver does that.



B1

76

BY THE COURT:

Q Can you point out, from this card, which of the entries, if any, refer to his responding, or being sent to the house in Madison avenue, of Mrs. Strauss? A Yes, sir; that is it right there (indicating)-- "11:15".

Q Just that (indicating)? Just that entry, commencing 11:15? A Yes, sir; "Calls and subs"; that is, making calls and sub-agencies.

Q What is that? A Our sub-agencies or offices.

Q That is, calls at houses and sub-agencies? A Yes, sir. That is recorded there. And the time he returned on those was 12:10. The call that he was sent special on to Mrs. Strauss, does not appear on that card. He hasn't entered it on the card.

Q Well if he had entered it, how would it have appeared on the card?

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

THE COURT: I grant your motion.

A He signed the call off at 15 minutes past 11., according to the book.

BY THE COURT.

Q That is he left the office? A Yes, sir. And he went out and came back at 12:10; and that is the time that

EXHIBIT

7137372
CASE 77-372

I checked up the calls on the call book, and found that he had the wrong address; and then I sent him out specially for that call, because there had been an error on it, and that does not appear there at all.

Q The second time? A Yes, sir, because he says here that he returned at 12:10, and, at 12:45 went to feed.

BY MR. CAMPBELL:

Q Now just one or two more questions. You mean to say that you started in and signed your name on all those blanks on that card? A Yes, sir.

Q At the end of the day? A Yes, sir.

Q without having any personal recollection as to whether the hours were correct? A No, sir.

BY MR. SMYTHE:

Q What was your answer? A No, sir.

Q You mean that you had no recollection? A No; I had no recollection.

F R A N K M c G O V E R N, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMYTHE:

Q Mr. McGovern, what is your business? A Helper for the Manhattan Delivery Company.

Q Well what did you help? A Wagon 52, 1045 3rd avenue.

126

713
CASE 372

Q Well were you with this defendant, McCue, on the morning of the 19th of May? A Yes, sir.

Q Were you in his wagon? A Yes, sir.

Q Helping him? A Yes, sir.

Q Did you go with him to 771 Madison avenue? A Yes, sir.

Q Did you go into the building with him? A No, sir; only as far as the basement, the cellar.

Q What did you do, when he went into the building?

A He took one trunk, and I took the other trunk, out.

Q Well what did you do, when he went into the building, first? A I was sitting on the wagon.

Q You remained sitting on the wagon? A Yes, sir.

Q And, when he came out again, did he have anything with him? A One trunk. That's all I seen. And he put that trunk on the wagon, and sent me in for the other trunk.

Q And what were you doing, while he put that trunk on the wagon? A I was taking the other trunk out of the house.

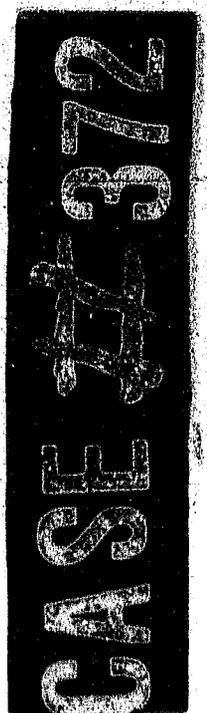
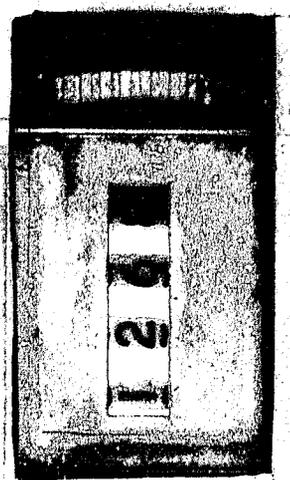
Q Did you help him to put that trunk on the wagon?

A No, sir.

Q Which trunk did he put on the wagon? The Large one?

A No, sir; the small one.

Q Did he say anything to you at that time? A He just told me to go in and get the other trunk off the elevator.



Q Did he say anything about a package? A No, sir; he didn't open his mouth.

Q Did he show you any package? A No, sir.

Q Did he, at any time, say anything to you about a package, after he had been to that house? A No, sir.

Q When you came out, with your trunk, what was he doing? A He was sitting on a wagon, talking to a friend.

Q Sitting on the wagon, talking to a friend? A Yes, sir.

Q Do you know who the man was? A A young man named "William", that is all I know.

Q Named "William"? A Yes, sir; it is. I don't know what his surname is.

Q Where was the friend? A He was sitting on the seat of the wagon with him.

Q And what did you do, when you came out with the trunk? A He helped me to put it on the wagon.

Q And what did you do? A He sent me up to 68th street.

Q But did you get on the wagon yourself? A Yes, sir.

Q And did you drive with him at all? A I drove as far as 66th street and Park avenue.

Q Now about where, on Madison avenue, is 771? A On the southeast corner.

Q Of what street? A Of 66th street and Madison avenue.

FBI

713 77 372
CASE 77 372

Q After you got on the wagon, and drove away, what did this friend do? A He was sitting in the wagon.

Q He was still in the wagon? A Yes, sir.

Q And where did you drive? In what direction? After leaving the house? A We drove east, as far as Park avenue.

Q Where? A We drove east, as far as Park avenue.

Q On which street? A Through 66th street.

Q And, on reaching Park avenue, where did you drive?

A He sent me up to 35 East 68th street.

Q Did the wagon stop? A He stopped at the corner of 66th street and Park avenue.

Q And what did the defendant say to you, before you went to 35 East 68th street? A He told me to go up there and collect 35 cents for a package we had left there; and he also sent me to a house in 67th street-- I forget where the address is-- to collect 35 cents.

Q And did he say what you were to do? A He told me to come back and he would meet me on the same corner that he let me off at.

Q That is 66th street and Park avenue? A Yes, sir.

Q And did you go and make those two collections? A Yes, sir.

Q And did you walk? A Yes, sir.

Q And how many blocks did you walk altogether? A Two

EXHIBIT
1270

CASE 372

blocks up and one block across.

Q And then back again? A And as I was getting back I met him coming from 68th street, from Lexington avenue.

Q Was he alone at the time? A Yes, sir.

Q Did you get on the wagon then? A Yes, sir; I got on the wagon.

Q Did you have any conversation with him? A No, sir.

Q Did he say anything to you at all? A He didn't open his mouth, until he got to the office.

Q What? A We didn't speak to each other, until we got to the office.

Q And then did you go back to the office? A Yes, sir.

Q Started down from there? A Yes, sir.

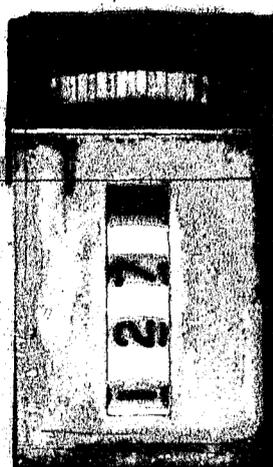
Q And when you got down to the office what did you do?
A We took the trunks off, while I fed the horse.

Q And did you feed the horse? A Yes, sir; I put the nose bag on the horse.

Q Where did you feed the horse? A Right in front of the office there.

Q And how long did you stay there, feeding the horse?
A About five minutes altogether; that backing him up and putting the nose bag on him. I put him alongside of the curb, and put the nose bag on, and went into the office.

Q And how long did the horse stand there, feeding?



A One hour.

Q And what did you do in that time? A I went home, and got my dinner, and came back again.

Q And you left after how long? About five minutes?

A Yes, sir.

Q And you came back at the end of the hour? A Yes, sir.

Q And was the horse still there? A Yes, sir, the horse and wagon was still in front of the store.

Q Was the nose bag still on the nose of the horse?

A Yes, sir; he was still feeding.

Q Was it still on the horse, when you got back? A It was still on.

Q And did you take it off? A Yes, sir.

Q One horse or two? A One horse; a white horse.

Q During all that time, did you see any package in the defendant's possession? A No, sir.

Q Did he say anything about a package? A No, sir; he didn't mention anything about a package.

Q How long had you been helping the defendant? A I was with him for about a week before.

Q For about a week? A Yes, sir.

Q During that time, had you collected any packages that you know of on which a valuation had been placed?

1278

713-372
CASE # 372

MR. CAMPBELL: Objected to, as immaterial.

A There was one package, sealed package, that we picked up--

THE COURT: Wait. I sustain the objection.

BY MR. SMYTHE:

Q Did the defendant have a safe in his wagon? A No, sir.

Q Was there any receptacle for packages? A There was only a small box, about the size of a cigar box, or a little larger.

Q Where was that kept? A Under the seat.

Q In the front of the wagon? A Yes, sir.

Q Did the defendant put anything in that, while you were out with him, on that trip? A No, sir.

MR. CAMPBELL: Objected to. I didn't have an opportunity to object to the question, before it was answered.

THE COURT: I will allow it to stand.

MR. CAMPBELL: Exception.

CROSS EXAMINATION BY MR. CAMPBELL:

Q You say that you have been working as his helper for about a week? A Yes, sir.

Q And, when you got back to the office-- what part of the wagon did you ride in? On the seat? A Yes, sir; I rode

CASE 21 372

on the seat all the way down.

Q Now, McCue came out with a small trunk; did he?

A Yes, sir.

Q And put that on the wagon? A Yes, sir.

Q Is that right? A Yes, sir;

Q And you said that you went for the heavy one? A Yes, sir.

Q Was that before or after he put the small one on the wagon? that he sent you in for the heavy one? A The trunk was alongside of the wagon, and he sent me in, and he put the trunk in the wagon, while I was getting the other one out.

Q And, when you came back, and put the other trunk in, you got in, and sat on the seat? A Yes, sir; he got down to help me put the other trunk on the wagon, and then we both got on the wagon.

Q And you both sat on the seat? A Yes, sir.

Q And you didn't look in the back of the wagon at all?

A I was facing the back of the wagon, all the way to the office.

Q That is, he was facing the horse, and you were facing the back? A Yes, sir.

Q You had your feet around in the back part of the wagon?

A Yes, sir.

1271

CASE 372

Q Did you look under the seat? A Yes, sir; before I sat down. There was nothing under there.

Q (Question repeated) A Yes, sir.

Q Before you sat down? A Yes, sir.

Q How did you happen to look under the seat? A Well, because I couldn't go up to the front part of the wagon, without looking under the seat.

Q Did you look specially under the seat? A No, sir.

Q Did you pay any particular attention to what was under the seat? A No, sir.

Q Now how high is that seat? A About a foot or two foot high.

Q About a foot or two feet high? A Yes, sir.

Q And which way did you enter the seat? From the front or rear of the wagon? A From the rear of the wagon.

Q Now you won't swear, will you, that there were no packages in that wagon, when you entered it? A I didn't see any packages in it.

MR. SMYTHE: I object to the question in that

form. He may ask him whether he did see any or not.

BY MR. CAMPBELL:

Q Will you swear that there were not any packages in that wagon, at the time you went in?

MR. SMYTHE: I object to the form of the question

7167372
CASE 77-372

THE COURT: Objection sustained. He is swearing to every word that he utters.

MR. CAMPBELL: Exception.

BY MR. CAMPBELL:

Q Will you say to this jury that there wasn't any package in that wagon, when you got in?

MR. SMYTHE: Objected to.

THE COURT: I sustain the objection to that.

MR. CAMPBELL: Exception.

THE COURT: Ask him the direct question, not what he will do.

BY MR. CAMPBELL:

Q Did you see any package there? A No, sir; only the two trunks. that was all that was on the wagon.

Q You had been working with McCue about a week? A Yes, sir.

Q Did you carry a gun?

MR. SMYTHE: Objected to. It is immaterial whether he did or not.

THE COURT: I do not see any materiality.

MR. CAMPBELL: It might show a reason for

McCue's not telling him.

THE COURT: I sustain the objection.



BY MR. CAMPBELL:

Q Did you ever show McCue a gun? A No, sir.

MR. SMYTHE: I object to that question.

THE COURT: He has answered. I will let it stand.

BY MR. CAMPBELL:

Q Where did you work, before you went with them? A I worked for the Manhattan Delivery, last winter, from December 12th, to January 15th.

THE COURT:

MR. CAMPBELL: I want to ask this witness one or two more questions. Will you take the stand again?

THE COURT: No; he has been examined and cross-examined and re-examined .

MR. CAMPBELL: Does your Honor refuse me permission to further cross-examine this witness?

THE COURT: Call the next witness, Mr. District Attorney.

MR. CAMPBELL: I take an exception to your Honor's refusal to recall this witness for further cross-examination.

1271

CASE 372

J E F F E R S O N M c W I L L I A M S, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMYTHE:

Q Mr. McWilliams, what is your occupation? A President of the Manhattan Delivery Company; or an expressman, possibly.

Q Do you know this defendant? A Yes, sir.

Q Have you had any conversation with him, since the time of his arrest? A I did, twice.

Q Where were those conversations held? A I held conversation in Inspector McClusky's office, the first one, and the second one in the court room.

Q Who was present at the first conversation? A McClusky and myself.

Q Will you state to the jury all that was said to the defendant, and that he said? A The principal part of the conversation was what had he done with the \$10,000--

THE COURT: No, that will not do.

MR. CAMPBELL: I object to that.

BY MR. SMYTHE:

Q You will have to give the conversation, in the words.

A I am not to give it?

Q Yes; you will have to give the words.

1271

CASE # 372

BY THE COURT:

Q Narrate the conversation, as nearly as you can remember it, word for word, and if you can't remember the exact words that were used, give the substance, to the best of your recollection. A My recollection was that I asked him what he had done with the package. He said that he had taken it in the office, with two trunks and threw the package on the floor. I said, "Do you mean to tell me that you would throw a \$10,000 package on the floor?" And he said, "Yes, I didn't know any better, and I am liable to--" No, he said, "I am forgetful." And I said, "You have a book of rules?" And he said, "I don't know anything about a book of rules." That was the substance of that conversation.

Q (By Mr. Smythe) Then when was the next conversation? A In the court room, when he was remanded. I think it was Justice Deuel's court room. I am not certain.

Q And what conversation did you have with him there? A I said, "You have a book of rules?" And he said, "Oh, yes; I have got it at home in my pocket, but I never looked at it." That was all.

Q Now I show you this book (indicating) and ask you what that is? A That is a book of rules. That applies to the Adams Express Company and the Manhattan Delivery Company, which is one system, above 59th street.

713-372
CASE # 372

Q Are those rules given the drivers? A Yes, sir.

Q And is that the book of rules to which you had reference?

A Yes, sir. And that is his receipt for it (indicating).

Q Now will you explain what that is? That is headed "Adams Express Company", is it not? A Yes, sir.

Q And is that also a book of rules for the Manhattan Delivery Company? A Yes, sir.

Q And are they connected? A Yes, sir, above 59th Street, they are one. We represent the Adams Express Company above that street.

MR. SMYTHE: I offer that book of rules in evidence.

MR. CAMPBELL: Objected to. They haven't shown that the defendant read that book of rules and their own agent has admitted that they didn't follow the rules.

THE COURT: That does not alter the question. The defendant, according to the testimony of the witness, admitted that he had it in his home, in his possession. It was clearly, therefore, within his power to read the rules; and, if he did not read them, that is a question for his own responsibility. I will overrule your objection.

MR. CAMPBELL: Exception.

(The book is marked People's Exhibit 5.)

1299

CASE # 372

THE COURT: Apart from the question of the competency, what materiality, Mr District Attorney, do you claim for these rules?

MR. SMYTHE: Why, simply to show that it was his duty to take that package direct to the office when he received it, according to the instructions given to the driver.

THE COURT: Let me see the part of the rules that you refer to.

MR. SMYTHE: If your Honor will allow me to point out the section that I have reference to?

THE COURT: Yes. Just point out the section.

MR. CAMPBELL: I move to strike out--

THE COURT: Just one moment.

MR. SMYTHE: 42 is the section, if your Honor please.

BY THE COURT:

Q You say that a copy of these rules was given to the defendant? A Yes, sir; and I hold his receipt for it.

MR. SMYTHE: I can produce the next witness, to show that he receipted for one of these books.

THE COURT: I will withdraw my ruling, and exclude this book from evidence.

MR. SMYTHE: Then I will simply have it marked for

SEARCHED
SERIALIZED
INDEXED
FILED
MAY 19 1964
FBI - MEMPHIS
CASE 44-372

identification at the present time.

THE COURT: Yes. Strike out the marking in evidence.

(It is marked People's Exhibit 5 for Identification.)

CROSS EXAMINATION BY MR. CAMPBELL:

Q Did you receive a letter from the defendant, Mr McWilliams, asking to be reinstated in the employ of the company?

MR. SMYTHE: Objected to.

THE COURT: Objection sustained.

BY MR. CAMPBELL:

Q I will ask Mr McWilliams to hand me the letter, if you have it? A Pardon me. I didn't catch your question.

Q I ask you to hand me a letter, which you received from the defendant.

MR. SMYTHE: I object to that, in that form.

THE COURT: If Mr McWilliams has a letter, and he wishes to hand it to counsel, he may.

THE WITNESS: I have it on my desk, but not here.

BY MR. SMYTHE:

Q And you can produce it? A Yes, sir.

BY MR. CAMPBELL:

Q Will you produce it, tomorrow morning? A Yes, sir, I

71377
CASE # 372

will.

Q Did the witness King admit to you, or say to you that he had borrowed money from these drivers, up there, to make good his cash?

MR. SMYTHE: Objected to, as entirely irrelevant.

THE COURT: Objection sustained.

MR. CAMPBELL: Exception.

MR. CAMPBELL: I ask that, if your Honor please, only to show--

THE COURT: No, no; I do not want to hear. We are wasting a great deal of time.

MR. CAMPBELL: Then that is all.

J A M E S L. C A R S W E L L E, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMYTHE:

Q What is your occupation? A Agent for the Manhattan Delivery, 46th Street and Broadway.

Q Did you, as such agent, deliver a copy of the book of instructions to drivers to this defendant? A Yes, sir.

BY THE COURT:

Q When? At what time?

CASE 372

BY MR. SMYTHE:

Q When was it that you delivered it to him? A About the 5th or 7th of January of this year.

Q And did he, at that time, sign a receipt for it?

A Yes, sir.

Q I show you this paper, and ask you what it is. State, first, what the paper is.

THE COURT: No, no.

MR. CAMPBELL: I object.

BY MR. SMYTHE:

Q Well, have you seen that before? A Yes, sir; 2073 was his number.

Q Well, was that the receipt that Mr McCue gave?

THE COURT: No, no.

BY THE COURT:

Q Did you see the signature of the defendant on that book?

A Yes, sir.

Q Did he sign it, in your presence? A Yes, sir.

Q Point it out to the District Attorney.

BY MR. SMYTHE:

Q Will you point it out, please? A Yes, sir, "James McCue, 2073".

MR. SMYTHE: And I offer it in evidence.

BY MR. SMYTHE:



Q And is that a book of instructions, a copy of which you gave him? A Yes, sir.

MR. SMYTHE: I now offer the receipt in evidence.

MR. CAMPBELL: I object to it, as not being, in terms a receipt.

THE COURT: Never mind about the terms. I will see what it is.

BY THE COURT:

Q Where is the signature? Which of them? A "No. 2073, K. K." on the other side of it (indicating).

Q Did you hand him, at the time the defendant signed this, a book? A Yes, sir.

THE COURT: Mr Campbell, has your client that book?

MR. CAMPBELL: Sir?

THE COURT: Have you that book?

MR. CAMPBELL: He says that he has not book like that.

THE COURT: Show the defendant this book.

MR. SMYTHE: Yes, sir.

THE COURT: Mr Campbell, is there any question but that the book which the District Attorney has referred to is a correct copy of the book handed to the defendant?



CASE 27-372

MR. CAMPBELL: I don't know anything about it, sit.

THE COURT: Hand the book to the witness here.

BY THE COURT:

Q Look at a book handed to you by the District Attorney. Look over it. Examine it? A Yes, sir.

Q Are you able to state whether or not the book which you now hold in your hands is a correct and accurate printed copy of the book which you refer to as having delivered to the defendant?

A Yes, sir.

Q It is? A Yes, sir; an exact copy.

THE COURT: Mark it in evidence.

MR. CAMPBELL: I object and except.

MR. SMYTHE: I understand that both of the papers are admitted in evidence?

THE COURT: Yes.

MR. CAMPBELL: And I object to both and except.

(The book and paper are admitted in evidence and marked People's Exhibits 5 and 6.)

MR. SMYTHE: The People rest.

THE COURT: How about the proof, in this case, as to the incorporation, Mr District Attorney? The indictment alleges that the Manhattan Delivery Company is a corporation.



CASE 372

MR. SMYTHE: It is conceded.

MR. CAMPBELL: It is conceded. Now, if your Honor please, I move that your Honor direct a verdict of acquittal, on the ground that the People have failed to make out a case, beyond a reasonable doubt, of the defendant's guilt; that they have failed to prove the material allegations in the indictment.

THE COURT: Motion denied.

MR. CAMPBELL: Exception.

CASE # 372

THE DEFENSE.
--

J A M E S F. O ' D O N N E L L, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q Mr O'Donnell, how old are you? A Thirty-three.

Q How long have you lived in New York City? A I have lived here fifteen years and a half.

Q What is your business? A My business, at present, is bartender or manager of a bar, of a saloon.

Q How long have you known the defendant? A About thirteen years.

Q And do you know other people who know him? A Yes, sir.

Q Do you know what his reputation is for honesty? A I know that--

THE COURT: Say yes or no.

BY MR. CAMPBELL:

Q Do you know what his reputation is for honesty? Good or bad? A Yes, good.

CROSS EXAMINATION BY MR. SMYTHE:

Q Does he come into your saloon and drink there? A No, sir.

713
372
CASE 372

Q Has he ever been in there? A On one or two occasions.

Q How have you known him? A Well, I have known him, as I say, for thirteen years.

F R A N K B O W E R, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q What is your business, Mr Bower? A Real estate.

Q Do you know this defendant? A Yes, sir.

Q How long have you known him? A Well, I should judge about ten years.

Q How long have you been in the real estate business in New York City? A Five years.

Q And how long have you been in business in New York City?
A Five years.

Q Do you know other people who know this defendant?

A Well, I know a few.

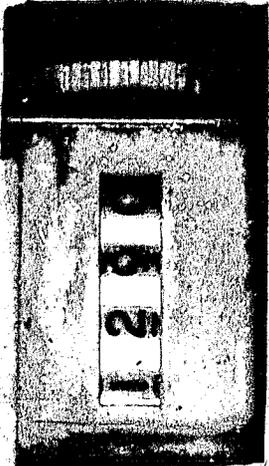
Q Do you know his family? A Yes, sir.

Q Do you know what his reputation is, among those who know him, for honesty?

MR. SMYTHE: Objected to, as to whether he knows his family or not.

THE COURT: It is immaterial, but let it go.

CASE 372



BY MR. CAMPBELL:

Q Well, do you know his reputation for honesty? A Well, I will say on the--

THE COURT: No, no.

BY THE COURT:

Q Do you know his reputation for honesty? A I should judge his reputation--

Q No, no. Do you know his reputation for honesty? A Well I haven't known anything wrong about him.

Q No. It is a very simple matter. Do you know what his reputation is, what reputation he bears among those who know him for honesty? A Well, I should say it was good, so far as I know.

CROSS EXAMINATION: (None).

W I L L I A M E. M E R K E N T, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q Mr Merkent, what is your business? A At present, retired.

Q How long have you lived in New York? A Well, all except the time within the two and a half years of '98, during the war, all my life.



Q Do you know this defendant? A I do.

Q Do you know other persons who know him? A I do.

Q Do you know what his reputation is for honesty? A Always found him honest.

BY THE COURT:

Q Well, do you know his reputation for honesty? Yes or no.

A I do.

BY MR. CAMPBELL:

Q What is it? Good or bad? A Good.

(No cross examination.)

J A M E S M c C U E, the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CAMPBELL:

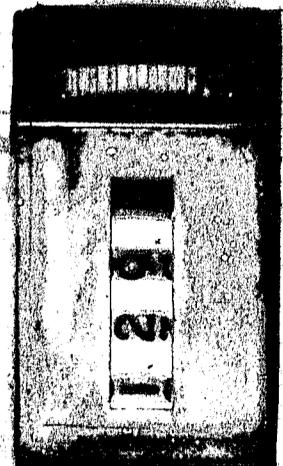
Q Now, McCue, how old are you? A About twenty-two or twenty-three.

Q And do you remember calling at 777 Madison Avenue, for these two trunks and a package? A Not 777; no, sir; 771.

Q Well, 771. Did you call there for the trunks and a package? A Yes, sir.

Q And did you have the conversations there which have been related, in court? A Yes, sir.

Q And what did you do with that package? A Well, I give the woman a receipt for a thousand--



Q No. What did you do with the package? A When I first took the package, I put it in my pocket.

Q Did you turn it into the office? Yes or no. A Turned it into the office.

Q What did you do with it, when you got to the office?
A I took it in with the --

Q What did you do with the package, when you got into the office? A I put it on the floor, with other packages.

THE COURT: It would be better to let the witness tell what he did, Mr Campbell.

BY MR. CAMPBELL:

Q What did you do with the package, after you received it?
A After I received the package off the woman, I gave a receipt. She told me the value was \$10,000. I said to her, "Now, lady, if the package is valued that much, there will a extra charge, on the other end, on valuable packages", and she said, "Oh, that is all right. The woman will pay it". And I wrote out the receipt. And I left a naught off, and the woman corrected me, and I put another naught on; and she said, "Them two trunks is valued at \$500", and I wrote another receipt, and gave it to her, for the trunks.

And I stuck the package in my pocket, and went down on the elevator, with the others and I pulled the trunks off the eleva-

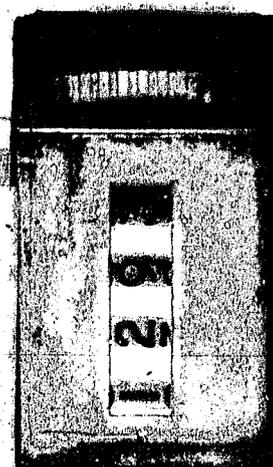
CASE 77-372

tor, and went out with one trunk, on my shoulder, and I called Mr McGovern, and told him to go and get the other trunk.

And he went and got the other trunk, and I throwed my trunk on the front of the wagon, and helped him to put his trunk on.

And then I went to the sub office, at 66 Street and Park Avenue, and sent McGovern up for a collection, and waited for him.

And then I went to a few other houses-- I don't recollect the houses or the numbers now, because it is some time ago-- and then, after I collected some other packages, I went to the office, with the freight, and I put it in, and McGogern put the nose bag on the horse.



As I put the package on the floor with the two trunks, the agent called me up to the desk.

Q Mr. King? A Yes, sir. He said, "McCue, come here," and I said, "What is the matter?" And he said, "Did you charge this man a dollar, this morning?" And I looked at him, and I said, "Yes. Is that the man from Park avenue?" And he said, "Yes; I am the harness man," and I said, "Yes, I charged him a dollar."

And he said, "What did you want to do it ~~for~~?" And I said, "It was on my sheet to collect one dollar," and he said, "The man told you the package was from Newark," and if I said, "Well, the man told me the package was from down the street, that wouldn't make any difference. He had nothing to show that the package was from Newark."

Q Did you ever see the package again, after you left it on the floor?

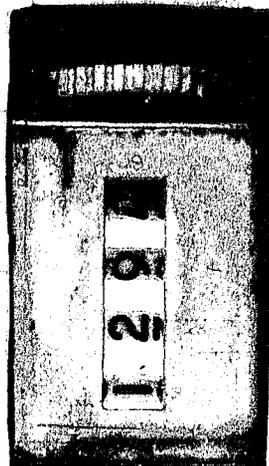
THE COURT: He has not yet said that he put the package on the floor, I think.

MR. CAMPBELL: I beg your Honor's pardon. I so understood him.

A I brought the packages in, two or three, and put them on the floor;

BY THE COURT:

Q What packages have you referred to, A Every package



CASE # 372

that I had on my wagon. That included 771 Madison avenue.

Q Did you put the package that you had receipted for, as valued at \$10,000, on the floor? A Yes, sir.

THE COURT: Now that is the question that you want to ask. We are not inquiring about other packages.

BY MR. CAMPBELL:

Q With the others? A Yes, sir; with the others.

CROSS EXAMINATION BY MR. SMYTHE:

Q From where had you got these other packages?

MR. CAMPBELL: One moment. I will ask one more question.

BY MR. CAMPBELL:

Q Did you ever see that package again, or have it in your possession again, after that time? A No, sir.

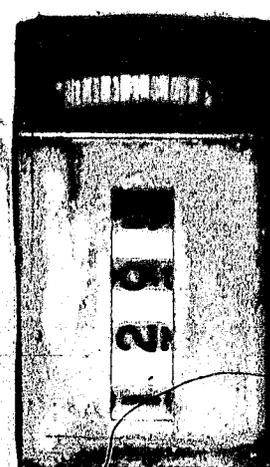
MR. CAMPBELL: That is all.

THE COURT: Now, you mean, Mr. Campbell, the particular package, valued at \$10,000?

MR. CAMPBELL: Yes, sir; mentioned in this indictment.

BY MR. SMYTHE:

Q Where had you got these other packages? A Well, the particular houses, I don't remember. I had several calls



at the Sutherland. I remember this particular house, at 771 Madison avenue, because I went there many and many a day.

Q And that is the only one you recollect? A Yes, sir.

Q And you had gone out, shortly before that, on another call? A No, sir; I was out on deliveries, and making the sub-offices.

Q Did you go to look at 777 first, instead of 771?

A Sir?

Q Did you first try to find this order, 777? A No, sir.

Q Did you go back and tell Mr. King that you couldn't find it? A No, sir.

Q Did Mr. King send you out on a special order to 771? A No, sir.

Q And you made the collection of these trunks, together with all those other collections? did you? A Yes, sir.

Q And you didn't go out on a special order? A No, sir; I did not.

Q Now you turned in a time card that night, didn't you? A Yes, sir.

Q And you wrote down, on the time card, the time when you went out for these calls, didn't you? A Yes, sir.

Q And you wrote down on there the number of pieces--
A The number of pieces I brought in.



Q Yes. For the Adams Company and for the Manhattan Company? A Yes, sir.

Q Now when did you write that down? Immediately after bringing them in? A As soon as we come into the office we put it down.

Q Now these trunks and packages were for the Manhattan Company? A Sir?

Q (Question repeated) A No, sir; it was for the Adams Company.

Q The trunks were for the Adams Company? A Yes, sir; south and west freight.

Q Did you have any packages for the Manhattan Company? A Well, that is, I don't recollect.

Q You don't recollect? A No, sir.

Q And how many packages did you bring in that time? A Well I think two or three, three.

Q On that trip, did you collect more than three packages? A No, sir.

Q Well, do you count the trunks as two packages? A No, sir.

Q Do you count them as one package? A Yes, sir; I don't count them as a package at all; as a trunk; as a piece.

Q Well did you enter them as a piece on this time card? A Yes, sir.

1297

CASE 7-372

Q As one piece? A Yes, sir.

Q Now, after you left 771 Madison avenue, where did you go? A Well I went to 66th street and Park avenue.

Q Went to 66th street and Park avenue? A Yes, sir.

Q And what did you do there? A I have got a drug store there, an office.

Q An office in the drug store? A Yes, sir; an office of the company.

Q Did you send the boy, McGovern, off from there?

A Yes, sir; I sent him off the wagon to 68th street- I don't recollect the number-- for some express charges.

Q To make some collections there? A Yes, sir.

Q And then where did you go, after you sent him away?

A I waited for him.

Q There, on that corner? A No, sir; drove up to 68th street.

Q And you met him coming through 68th street? A Yes, sir.

Q Now where was it in 68th street that he was to make this collection? A I don't recollect the number.

Q Why did you go down to Lexington avenue? A I went on Lexington avenue.

Q You were coming from Lexington avenue; weren't You?

A sir?

1281

372

Q You were coming from Lexington avenue; weren't you?

A No, sir.

Q Why didn't you drive around, and make those collections yourself? A Why, because I wanted to get in, in time.

Q What did you do there, at the sub-station, where the drug store is? A I went in there to look at the book, to see if there was anything for me there to do.

Q That is all you did there? A Yes, sir.

Q And you sent the boy to walk up, and make these collections, to get in quicker? A Yes, sir.

Q And what did you do then, when you met him? A He got on the wagon then.

Q And went back straight to the office? A Well I think I stoppéd in a place or two. I can't swear to that, thogh.

Q And when you got back to the office there, there were the two trunks in the wagon, and this package that you got from Mrs. Strauss? A Yes, sir.

Q And were there other packages in the wagon? A Yes, sir.

Q How many? A Well, about three packages was in the wagon.

Q Well what kind of packages? A Well different sizes.

Q Will you describe some of them? A Well, that Strauss

1299

CASE 372

package was about that big and that wide and that thick (illustrating); and then there was two others, flat ones.

Q Do you know about how they were addressed? A No, sir; I never paid any attention to anything only prepays.

Q You didn't see but two other packages, you say?

A Yes, sir.

Q Then there were not three other packages? A Well there were three all together.

Q Did you take those trunks in yourself? A Yes, sir.

Q And the packages? A Yes, sir.

Q And did you put them all there on the floor together?

A Yes, sir.

Q Now you had received packages with a value on them, before had you not? A Yes, sir.

Q And is it not true that you had always turned them over to Mr. King, in person? A No, sir; I never turned anything over to Mr. King.

Q You never gave him anything, personally? A No, sir.

Q You simply left those packages with that value marked on them, on the floor there? A Well I never collected anything, with the real value marked on it.

Q Well you went over and spoke to Mr. King, and the other man? A To the other man?

Q Yes. Or was Mr. King alone? A Mr. King and this

CASE 77-372

man, about the dollar.

Q You went over and spoke to Mr. King, about the dollar? A Yes, sir.

Q And when you went back you didn't see the package there? A I went for my dinner.

Q Well did you see where you had left the package, after that? A Sir?

Q I say, did you go to the place where you had left the package, after you had talked with Mr. King? A Well, Mr. King and I had a run in, and I was in a passion, and I never thought anything more about it.

Q And you had been told that it was valued at \$10,000? A Yes, sir.

Q And you had asked specially if they would be willing to pay for that valuation? A \$10,000, yes, sir.

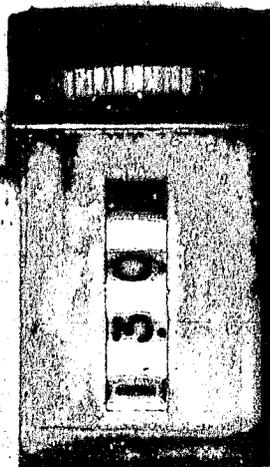
Q And yet you threw it on the floor, and said nothing to anybody about it? A Yes, sir; because I was in such a passion. These people told me, when I went over there--

THE COURT: No, stop. Wait until you are asked a question.

BY MR. SMYTHE:

Q Where were you the next day? A Well, the next day, I got up twenty minutes after eight. I was late.

Q Then you didn't go to the office, the next day, at



all? A No, sir; because I had pains.

Q You had what? A Pains.

Q You had pains? A Yes, sir.

Q And when did you leave the place?

THE COURT: When did he leave the employment,
do you mean?

A Two days previous.

BY MR. SMYTHE:

Q Two days after that, you mean? A Yes, sir.

Q You resigned; didn't you? A No, sir; I was discharged. I was told to get out of the door.

Q By whom? A By Mr. King. For smoking.

Q Is it not true that, at all times prior to this, when you had collected a package which was valuable, that you had spoken to McGovern about it? A No, sir.

Q And given him special instructions to look after it? A No, sir.

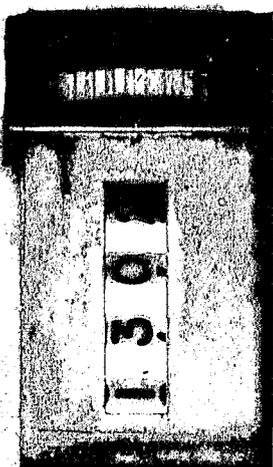
Q Where did you put this small package, on the front of the wagon, when you put it in? A Sir?

Q (Question repeated) A Right in front of the wagon.

Q Lying right in front of the wagon? A Lying right up near the foot board.

Q In plain sight? A Yes, sir.

Q Who was this friend with whom you were taking, when--



A I don't recollect having any friend on the wagon.

Q You don't recollect having any friend on the wagon?

A No, sir.

Q You are sure of that? A Well there was several people rode on my wagon, since I have been working for the company, but the day and dates I can't swear to.

Q But you remember getting the package very well?

A Yes, sir.

Q And sending McGovern in to get a big trunk? A Yes, sir.

Q And don't you remember speaking to a friend? A No, sir.

Q While he was there? A No, I don't.

Q And you drove down 68th street towards Lexington avenue? A No, sir.

Q Not at all, that day? A No, sir.

Q And the only reason you can give for saying-- for sending McGovern to make those collections on foot, was that you wanted to save time? A Yes, sir.

Q Why didn't you drive there? A Because I saw that, when he got there, he would be there, and by the time I got there he would have the money, and he would be on his way back again.

Q And you were just going in to look at the book; weren't

7130
CASE # 372

you? A Yes, sir.

Q And is that a sub-office of the company there?

A Yes, sir. They have got six sub-offices-- five sub-offices.

THE COURT: Show him that receipt.

BY MR. SMYTHE:

Q Is that the receipt you signed, that day (indicating People's Exhibit 1)? A Yes, sir.

Q And is this the time card that you turned in, that day (indicating People's Exhibit 4)? A Yes, sir.

Q And did you receive a copy of these instructions (indicating People's Exhibit 5)? A I don't recollect ever receiving a book like this. I know I received a book, but I can't swear that I received a book like this.

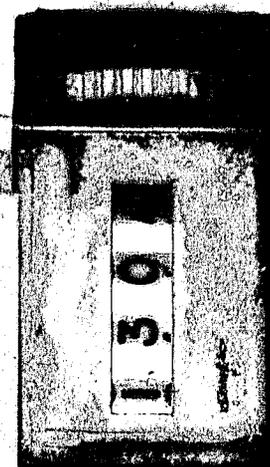
Q From whom did you receive that book? Did you sign this paper? Is that your signature there (indicating People's Exhibit 6)? A Yes, sir; that is my signature.

BY THE COURT:

Q When you signed that paper, did you receive a book of instructions or rules? A Well I must have received that book.

THE COURT: Read what that paper says?

THE WITNESS: I received the book and signed the paper.



BY THE COURT:

Q Did you receive a book of instructions or rules?

A I suppose so.

BY MR. SMYTHE:

Q What did you do with the book? A I lost it.

BY THE COURT:

Q Lost it? A Yes, sir.

MR. CAMPBELL: The defense rests. And I renew all my motions, if your Honor please.

THE COURT: I deny your motions.

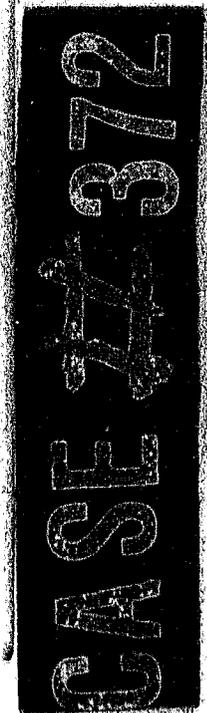
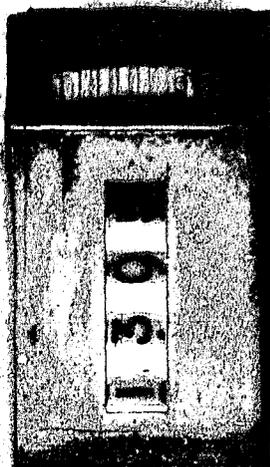
MR. CAMPBELL: Exception. Will your Honor permit me to sum up this case, tomorrow morning?

THE COURT: We have a special jury here, tomorrow morning, a case specially set down, with a special jury, tomorrow morning.

MR. CAMPBELL: I will only take a very short time, in the morning, if your Honor please. And I live out of town, and I would like to go home tonight.

THE COURT: I will grant your request. You may sum up in the morning.

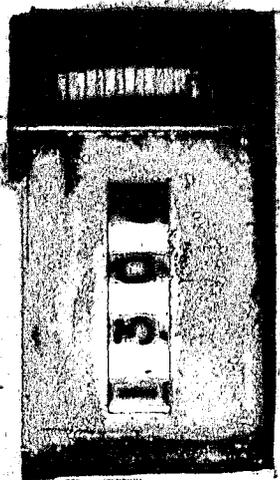
Gentlemen of the jury, you will remember my caution to you, not to talk about this case among yourselves or with any one else.



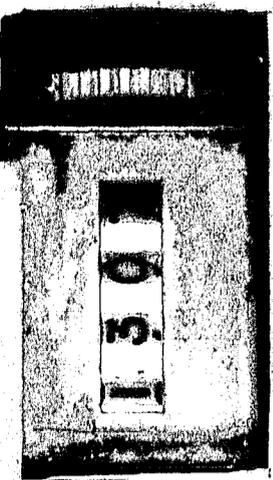
115

Adjourned court until tomorrow morning, at
half past ten o'clock.

(The trial was then adjourned until Tuesday
morning, June 16th, 1903, at 10:30 a. m.)



CASE 2-372



TRIAL RESUMED.

New York, June 16, 1903.

MR. CAMPBELL: If your Honor please, the District Attorney and I have agreed upon a stipulation, which I ask your Honor to allow to go on the record. This is the stipulation:

It is conceded that the defendant wrote to the President of the Company by which he was employed on the 24th day of May, 1903, stating he had been discharged and asking for an investigation of his case.

And it is further conceded that the agent, King, immediately upon being informed of this, denied that the defendant had been discharged, and stated that he was left on his own account.

THE COURT: It may be so noted.

MR. CAMPBELL: In view of that stipulation, which has been added to the record, before going to the jury I ask you, if your Honor please, that your Honor direct a verdict of not guilty in this case upon the ground that the People have failed to

71377372
CASE 77372

prove their case beyond a reasonable doubt, and have failed to prove the material allegations in the indictment.

THE COURT: I deny the motion.

MR. CAMPBELL: Exception. I ask your Honor to direct the District Attorney to state upon which count of the indictment he elects to go to the jury.

THE COURT: I decline to grant the request.

MR. CAMPBELL: Exception.

CASE 372

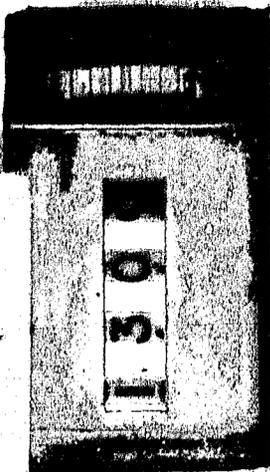
THE COURT'S CHARGE.

Gentlemen of the Jury,

The defendant is indicted for the crime of Grand Larceny in the first degree. The indictment contains two counts, one charging him with stealing those articles which are recited in the indictment, and which have been referred to in the testimony, and which it is not necessary for me to recite now. That is what is known, in the law, as common law larceny.

The second count of the indictment charges him with the same degree of crime, in that, while he was a clerk and servant of a certain corporation, known as the Manhattan Delivery Company, he had in his possession, as such clerk and servant, goods and property of the value charged in the first count of the indictment, and that he stole that property, by appropriating it to his own use.

The evidence of the prosecution charges the defendant with the grave crime described in the indictment, grand larceny in the first degree, and the law defining that crime is as follows:



"A person who, with the intent to deprive or defraud the true owner of his property, or of the use and benefit thereof; or to appropriate the same to the use of the taker, or of any other person; either takes from the possession of the true owner, or of any other person, or obtains from such possession by color or aid of any fraudulent or false representation or pretense, or by any false token or writing, or secretes, withholds or appropriates to his own use, or that of any other person, other than the true owner, any money, personal property, thing in action, evidence of debt, or contract, or article of value of any kind; or, having in his possession, custody or control, as a bailee, servant, attorney, agent, clerk or trustee, or officer of any person or corporation, any money, property, evidence of debt, or contract, or article of value of any kind, appropriates the same to his own use, or that of any other person other than the true owner, or the person entitled to the benefit thereof, steals such property, and is guilty of larceny."

There is no dispute here as to the value of the property claimed to have been stolen. It is conceded

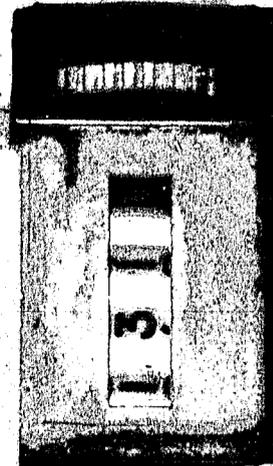
CASE # 372

by the defense that the package in question contained property of the value of more than \$500; and the law provides that, where property of the value of more than \$500 is stolen, it constitutes the grade of grand larceny in the first degree, and that is the grade of crime charged against the defendant.

There are certain facts in this case which are not disputed by the defendant, and it will aid you and facilitate you in your work of consideration of the testimony to appreciate and understand those facts, and then the situation is clear for you to approach the question of the guilt or innocence of the defendant.

It is charged that the defendant was a servant or agent of the Manhattan Delivery Company, a corporation engaged in the collection of parcels and luggage or baggage in this city, and in delivering the same to their points of destination. The defendant admits that he was in the employ of this Company as a driver.

It is charged that he received from Mrs. Strauss a package, of the estimated value of \$10,000, in response to a message that Mrs. Strauss sent to the office of the Express Company, he was sent there to collect certain pieces of baggage, two trunks and this package, and the defendant received this particular package and gave a receipt for it, in which he stated that the estimated



CASE 372

value, placed by Mrs. Strauss upon the package, received by him on behalf of the Company, was \$10,000.

The defendant admits that he went to Mrs. Strauss' house, and that he received into his possession such package, and that he signed the receipt produced in evidence, in which the estimated value of the package is placed at \$10,000.

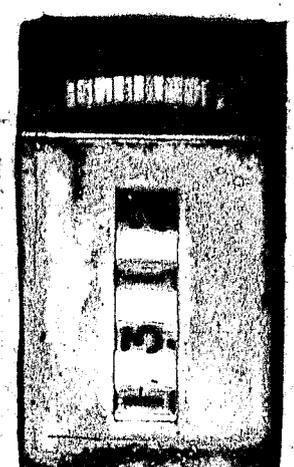
It is charged by the prosecution that, after the defendant received that package, he never delivered it to the office of the Express Company, but that he secreted it or appropriated it to his own use, with an intent to deprive or defraud the true owner of that property. On that point, the defendant denies the charge of the prosecution.

So that, you will observe, gentlemen, how clearly the question is presented to you for determination.

You find, on the conceded facts in this case, that the defendant received that package into his possession.

What did he do with that package?

The prosecution claims that he appropriated it to his own use, that he stole it. The defendant claims that he placed it in the office of the Express Company,



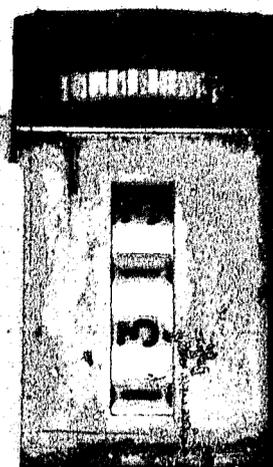
CASE 372

and threw it between two trunks, that he delivered, from Mrs. Strauss's house, and which he had received from that house, a short time before.

Now, gentlemen, at first, you must bear in mind that the prosecution of the defendant is not based upon any act of negligence on his part. If it be true, that he received that package, as he admits he did, and if it be true that he threw it into the wagon as he says he did, in the fore part of the wagon, and that, in delivering the trunks to the Express Office, he threw the package between the trunks, no matter how negligent or careless or reprehensible that conduct may be, yet it does not constitute a crime, and the defendant cannot be convicted.

The defendant can only be convicted of the crime charged against him, and that is, of stealing this package, and it is for you, as the exclusive judges of the facts, to say, on this evidence, whether or not the defendant took that package and used it in the way he describes, or whether he received the package into his possession, and secreted it or withheld it or appropriated it to his own use, and stole it.

Now, gentlemen, I have no comment to make upon the testimony. You are the exclusive judges of that, and

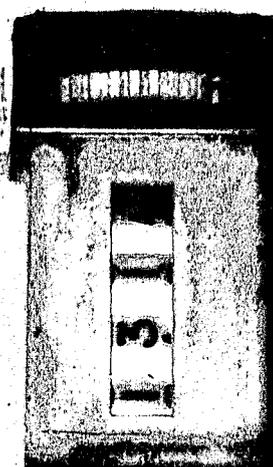


713
CASE 713 372

of the credibility of every witness that testified.

In presenting the case to you, the learned counsel for the defense made use of language in which he said that it was up to King, who was the agent of the Express Company in charge of the office. The learned District Attorney, in his reply, stated that it was not up to King, but that it was up to this defendant.

Now, gentlemen of the jury, of course, a Court is not organized for the purpose of the correction of language, or the maintenance of a standard of diction, on the part of counsel, but it is a duty devolving on the Court to, as far as it can, correct any errors that counsel may fall into, and to prevent, on the part of the jury any misunderstanding or misinterpretation of language used by learned counsel on either side. A court of law is a place where the officers charged with its administration, and counsel are officers of the Court, should use language of such precision and accepted meaning that a jury will not be likely to labor under a misapprehension of the meaning of that language. I do not know what that language means, and I doubt very much whether, on an analysis of the language, counsel themselves could give a very clear explanation of what it means. The English language is expressive enough, and susceptible of clear expression, and ample enough in its vocabulary to enable



CASE 22 372

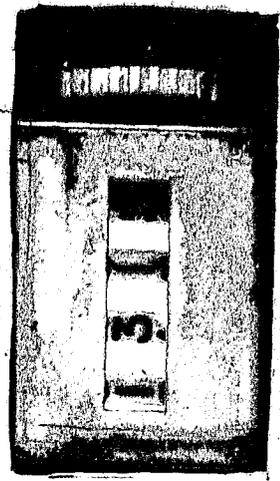
counsel to present their respective cases to the jury, in a Court of law, in plain, simple, unvarnished language, without the use of what may be termed slang phrases, which are difficult to comprehend, and which should certainly not be encouraged in their use, in a Court of law.

Now, the question for you to determine is not, whether King stole this property or not. Mr. King is not on trial. You have nothing at all to do with that.

It would be an exceedingly unjust thing for you to sit in judgment on Mr. King, as to his guilt or innocence of a crime with which he is not charged. So that you will dismiss that absolutely from your consideration and determination.

The question for you to determine is, did the defendant on trial steal that package?

You are not called upon to determine whether anybody else stole it or not; and I repeat to you that it would be a monstrous act of injustice to even allow it to enter into your determination, in the slightest degree.

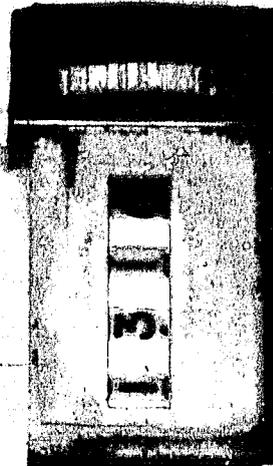


CASE 77-372

To condemn a man as guilty of a crime with which he has not been charged, and for which he is not on trial, and to which he has had no opportunity to offer a defense, such a thing is intolerable, in a Court of law.

The issue here is very fairly and unmistakably presented. The defendant received this package, this valuable package, into his possession as the agent or servant of the Manhattan Delivery Company. He acknowledges that he received it into his possession.

Now, it is for you to say, judging of the defendant himself from his testimony, whether or not it is probable, on this evidence, whether or not you can draw a reasonable deduction from this evidence, that the defendant received a package of the value of ten thousand dollars into his possession, and took no other care or caution or responsibility regarding it than that which he himself describes. Is that true?



CASE 77-372

Is it true that he, as the agent and driver of this Manhattan Delivery Company, received this valuable package, and threw it into the wagon, as he himself described, and threw it between the trunks, when he delivered it in the common express office, without calling the attention of the agent in charge to its presence, without saying anything at all about it, and leaving it there, the same as an ordinary piece of freight or luggage, to which no particular value was attached? Is that true? Does that claim of the defendant present itself to you in a favorable light? Does it commend itself to you for your belief?

The prosecution claims, on the other hand, that he, being aware of the value of this package, and his attention being specifically called to its value, by the servant who delivered him the package, when she called his attention to an error in the figures that he was marking as the value of the package, asking him, in stead of only \$1,000, to make it \$10,000, and he himself acknowledges that, that he put the additional naught or cipher to the figures, in response to the servant's suggestion; and that, with that knowledge in his possession, he said that he had a safe in his wagon, into which he could place valuable packages, of the character

CASE 372

of the one which he had received.

He said that in answer, it is claimed, to the inquiry of the servant as to whether he could take such valuable packages. He further said, it is claimed, that the express company was in the habit of taking more valuable packages than that.

And the prosecution further claims that, with that knowledge in his possession, he put that package in his pocket; and that, in order to afford himself an opportunity to secrete or do away with it in some way, he sent his helper into the house for the remaining trunk, to carry it out; and that he never delivered the package to the office, or threw it in between the trunks, as he claims he did.

Gentlemen, these are the two contending claims made by the prosecution and the defense. It is for you, as judges of the facts, to say where the truth lies.

The defendant has introduced evidence regarding his good character for honesty. This evidence is proper evidence to be considered by a jury, in connection with all the other facts in the case. Sometimes evidence of good character may create a reasonable doubt, where otherwise it would not exist; but its value, in every case, is for the jury to determine.

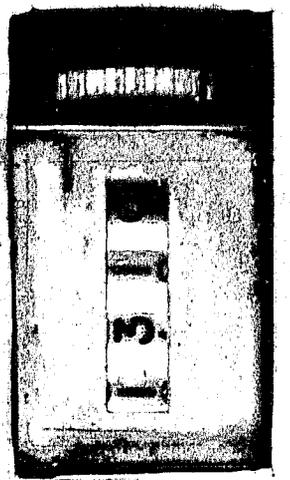
CASE # 372

If, after considering the whole case, all the testimony introduced, including that of good character, you come to the conclusion, beyond a reasonable doubt, that the defendant stole the articles mentioned in the indictment, as testified to by the witnesses, then I charge you that good character, of itself, forms no defense to crime.

If you are satisfied, on all the testimony, inclusive of that of good character, that the defendant stole that package, it is your bounden duty to render a verdict of guilty of the crime charged. If you are satisfied that he did not, of course, or, that the evidence of the prosecution lacks the quality that would satisfy you beyond a reasonable doubt of the defendant's guilt, you should acquit him.

The defendant is entitled to the benefit of a reasonable doubt, on the whole evidence, or the lack of evidence, in the case. I am sure that you understand what a reasonable doubt is, without any further explanation from me.

If you entertain such a reasonable doubt as the law contemplates, give him the benefit of it, and acquit him, but, if you believe he stole that package, and your belief is of such a character that there is no reasonable doubt about it, then it is your duty to render



CASE 47372

a verdict of guilty of the crime charged.

Your verdict will be either guilty or not guilty.

You may retire, gentlemen.

MR. CAMPBELL: If your Honor please, I ask your Honor to charge the jury that, where circumstantial evidence is susceptible of two constructions, namely, a construction of innocence and a construction of guilt, that the construction of innocence must be put upon it.

THE COURT: Yes; I so charge.

MR. CAMPBELL: And, with all due respect and deference to the Court, I desire to except to that portion of your Honor's charge beginning, "Is it true that he, as the agent and driver, received this valuable package, and threw it into the wagon, as he has described, and threw it between the two trunks," and the balance of the charge. I desire to except to that portion of the charge as prejudicial to the rights of the defendant.

THE COURT: Do you except to it on the ground that it incorrectly states the testimony of the defendant?

MR. CAMPBELL: No, sir; not that it incorrectly states the testimony of the defendant, but that it is argumentative.

THE COURT: Yes, I understand. That is another

CASE 77372

question. That is all, gentlemen; you may retire.

(The jury returned to the court room at 1:35, having deliberated for one hour.)

THE COURT: Gentlemen, I have received the following communication from you, in which you say: "The jury would like to see the minutes of the testimony, particularly with regards to the testimony of witness McGovern." The stenographer has been instructed to read to you the testimony of McGovern, and he will now read it to you.

(The stenographer then read the entire testimony of the witness Frank McGovern, to the jury.)

THE COURT: You may retire, gentlemen.

(The jury found the defendant guilty of grand larceny in the first degree, with a recommendation to the mercy of the Court.)



213 # 372
CASE # 372

1322

STATE OF THE STATE OF NEW YORK

Before:

-vs-

HON. JAMES T. MALONE, J.,

MICHAEL LAICH.

and a Jury.

New York, April 28, 1908.

-: TRANSCRIPT OF STENOGRAPHER'S MINUTES :-

Hon. James T. Malone

James E. Lynch,
Official Stenographer.

CASE # 372