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COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK, PART IV.

3283

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

vs. :

THOMAS J. REILLY (real name
Thomas J. Reardon) impleaded with
HARRY JONES, THOMAS McGONIGAL and
THOMAS J. DWYER.

B e f o r e

HON. JOHN F. MCINTYRE, J.,

and a Jury.

-----SX
Indictment filed October 15, 1919.

Indicted for grand larceny in the second degree.

New York, January 7, 1920.

APPEARANCES.

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY WILLIAM A. McQUAID.

FOR THE DEFENDANT: Mr. R. L. CUNNINGHAM.

Peter P. McLoughlin,

Official Stenographer.

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Q At that southeast corner of Park Avenue and 41st Street is a hotel? A Yes, sir; the Murray Hill Hotel.

Q The opposite side corner, the west side of Park Avenue there is another hotel? A Yes, sir.

Q What was the name of that? A The Belmont Hotel.

Q Now where was it standing, this machine when you saw it?
A Partly in front of 56 and partly in front of the delivery entrance of the Murray Hill Hotel.

Q The south side of the street? A Yes, sir.

Q Now you saw the defendant and three others near the machine? A Yes, sir, two others.

Q What did they do? A They picked this wheel up.

Q What do you mean? A A wheel, a wire wheel and a tire on it.

Q At what part of the car was it attached? A To the rear part.

Q Now where were you when you saw this defendant do that?
A I was in the doorway of 23 East 41st Street.

Q Now did this third man follow the two other men had had the wheel, who removed the wheel? A Yes, sir.

Q What did they then do? A They rolled it to a taxicab that was standing in front of 56 East 41st Street.

Q The south side or north side of the street? A The south side of the street.

Q Facing east or west? A Yes, sir, west.

Q Towards you? A Yes, sir.

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Q You were on the north side of the street? A Yes, sir.

Q Was the street lighted? A Yes, sir.

Q Where were the lights? A One street lamp in the block about, it wasn't exactly opposite the taxicab but a little to right angle to the taxicab in front of the rear house.

Q Was the taxicab within the arc of the lights? A Yes, sir.

Q What kind of a light was it? A A regular street lamp, an illuminating arc light.

Q On a pole? A Yes, sir.

Q With a curve? A Yes, sir.

Q Towards the street? A Yes, sir.

Q What did they do with that at the time? A Rolled it up to this cab, placed it inside the rear part of the taxicab.

Q What did you see the defendant do? A He got in the cab which was starting west on East 41st Street. When it got to where I was I stopped it.

Q Now tell the jury what happened? A I stopped the taxicab and I said, "Where are you going with this tire or shoe" I called it, and he said, "what shoe" and I then ordered him out of the cab, looked in there and seen this wheel lying up right on the floor, partly on the seat. I wrapped for assistance. Officer Daley came. I left him with the defendant and I made inquiry in the Murray Hill Hotel and the Belmont Hotel to try and find the owner of the machine; I could not find him at that time. I brought the taxicab and the tire and the four defendants to the Station House. Daley was left there and he brought in the owner

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of the machine in the morning to the Station House.

Q How far had the taxicab moved from the time they placed the wheel in it, how far was it moved until it got in front of you? A About 125 feet or 150.

Q Did they stop at once? A Yes, sir.

Q Did the defendants get out? A Three got out, the driver kept sitting on the box.

Q Was this defendant one of the three? A Yes, sir, the driver sat on the box and made an effort to start up again. After the three defendants were out I had to threaten to shoot him as he did not stop.

Q He did then stop? A Yes, sir.

Q Did you have a talk with these men? A No, sir.

Q At that time? A No, sir.

Q Any further conversation? A No, sir.

Q Or at the Station House? A No, sir.

CROSS EXAMINATION BY MR. CUNNINGHAM:

Q Now, Officer, you have testified that you were standing in the doorway of 23 East 41st Street? A Yes, sir.

Q Is that correct? A Yes, sir.

Q And that the automobile in which this wheel and shoe, that is the shoe mounted on a wheel was stolen from was situated in front of 58 East 41st Street? A Yes, sir.

Q The south side of the street? A Yes, sir.

Q What is the distance from Madison Avenue to Park Avenue on East 41st Street? A I should judge a little over 300 feet.

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Q What is the distance from 23 East 41st Street to 58 East 41st Street? A About 150 feet.

Q There is a difference of 35 numbers, isn't there between 23 East 41st Street? A Yes, sir.

Q And 58 East 41st Street? A About that.

Q 35 numbers? A Yes, sir.

Q Each number has a frontage of 25 feet? A Well on the one side is the Manhattan Storage Warehouse.

Q Answer the question, Officer, a difference of 35 numbers between No. 23 East 41st Street where you were standing and No. 58 East 41st Street in front of which the automobile was standing?

A (No answer.)

Q Each building, or each number has a frontage of 25 feet, isn't that so? A In that neighborhood there is clubs and warehouses.

Q Answer my question yes or no? A No, sir.

Q Isn't it a fact that number 23 East 41st Street is located between Madison and Fifth Avenue? A No, sir.

Q It is not? A No, sir, it is not.

Q What is your answer to that particular question -- isn't it a fact that No. 23 East, the doorway in which you were standing according to your testimony is not located between Madison and Fifth Avenue. Now be fair, Officer, think Officer, what is your best recollection?

THE COURT: Let him answer.

A I made a mistake. It might be 43.

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Q Well then you wish to have that corrected? A Yes, sir, I do.

Q You made a mistake? A If I made a mistake.

Q You acknowledge that? A Yes, sir.

Q Positive you were standing in the doorway of 43? A Yes, sir.

Q East 41st Street? A Yes, sir.

Q 43 is occupied by what kind of business? A Well it has since been -- I don't know -- there was a wine store in there at that time.

Q I mean on this day, July 17th? A A wine store.

Q What name did it bear? A I think it was Chianti Wine Company.

Q How many feet east of Madison Avenue is 43 East 41st Street?

A About 100, between 75 and 100.

Q What is the number of the first entrance on East 41st Street east of Madison Avenue? A It must be 41.

Q 41? A If I was in 43.

Q 43 would be the second building? A Yes, sir.

Q On East 41st Street east of Madison Avenue? A Yes, sir.

Q Generally there the frontage is 35 feet? A Yes, sir.

Q On that portion of East 41st Street? A Yes, sir.

Q So that it was 50 feet? A Yes, sir.

Q From the corner to the house wasn't it? A Yes, sir, well the corner has no building -- it doesn't take in any one building.

Q All right? A It is an office building -- on the ground floor a clothing store occupied by Benjamin.

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Q You claim then that the doorway of 43 East 41st Street was approximately 75 feet east of Madison Avenue? A Yes, sir, between 75 and 100.

Q How far distant were you then from No. 58 East 41st Street in front of which number this automobile was standing? A About 150 feet.

Q From 43 to 58 that makes a difference of 15 numbers? A Yes.

Q Of course making allowance for the alternate numbers on the other side of the street 25 feet frontage for each number it would be approximately eight numbers? A Yes, sir.

Q That would be 200 feet? A Yes, sir.

Q You were standing then 200 feet from where the automobile was located? A I couldn't say that.

Q You have acknowledge that my calculation is correct. You told us that you were figuring on a 25-foot frontage? A That doesn't say --

Q Is it more or less? A Well there is a club there on one side, an apartment house next to that and on the north side of 41st Street is a storage warehouse.

Q Each number gets 25 feet frontage? A Well it must be 25 feet.

Q You were approximately 200 feet from this automobile? A I should judge about 150 feet.

Q Now you have testified that you saw three men rolling the wheel? A Yes, sir.

Q It was 3 A. M. in the morning? A Yes, sir.

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Q The only means of illumination was a beam of light thrown out by a n arc light? A Yes, sir.

Q Shut up on the north side of 41st Street? A Yes, sir.

Q Some distance west of where the automobile was standing -- your own testimony is at an angle? A Yes, sir.

Q Isn't that so? A Yes, sir.

Q So that you were in the dark and this automobile was in the dark, wasn't it? A Well, no, sir, in the arc of this street lamp.

Q Now did the arc of this light illuminate the servants' entrance to the Park Avenue Hotel? A No, sir.

Q Didn't you testify that this automobile was standing nearer to the servants' entrance of the Park Avenue Hotel? A I testified it was standing partly in front of No. 58 East 41st Street and the delivery entrance of the Murray Hill Hotel.

Q Now, could you distinguish the features of men at the time they were in the automobile? A On which automobile?

Q The automobile from which you allege the wheel and tire were stolen? A I could not.

Q Could you from where you were standing ascertain whether or not the men were white men or colored men? A I could, yes, sir.

Q You could? A Yes, sir.

Q You could see they were white men? A Yes, sir.

Q But you could not make out their features? A No, sir.

Q Isn't it a fact that your identification of this defendant here is based on the opportunity you had to observe his features at the time you stopped that taxicab? A Yes, sir.

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Q That is so, isn't it? A Yes, sir.

Q And not upon the fact that you could distinguish his features when the wheel was being taken and rolled? A No, sir.

Q As you said? A No, sir.

Q Now, Officer, at the time you state you saw this wheel being taken were there any persons passing along the south walk on East 41st Street? A No, sir.

Q Will you positively swear to that? A Yes, sir.

Q Wasn't your attention concentrated solely upon that automobile? A But if you were looking at a part and something passed it, I guess you could see it if it passed.

Q That is a mere guess? A No, sir, that is no guess.

Q Now are you willing positively to state that no person passed east or west on that south walk? A Yes, sir.

Q Positive as to that? A Yes, sir.

Q Number 56 East 41st Street is adjacent to this building in front of which the building was standing and was occupied by a saloon on the ground floor? A Yes, sir.

Q Isn't it a fact that people were entering and leaving that saloon at that time? A I didn't see any enter or leave, during the time that I was observing these men.

Q Your entire thought was concentrated upon that machine, isn't that so? A Yes, sir.

Q And people could have left? A Yes, sir, I could have seen them if they either entered or left the side door.

Q You were not looking for them? A No, sir.

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Q Any other automobiles drawn up at the south curb? A No, sir.

Q Any automobiles drawn up at the north curb? A No, sir.

Q At that time? A No, sir.

Q Did any automobiles pass through that street? A No, sir; they did not.

Q At that time? A No, sir.

Q Now, Officer, the real reason why you stepped into that doorway was because it was raining, isn't that so? A No, sir.

Q Wasn't it raining? A No, sir.

Q Didn't we have thick weather that morning? A No, sir.

Q Did you wear your rain clothes? A No, sir, I did not.

Q Positive about that? A Positive about it.

Q At the time you saw these men remove the wheel as you state did you make any effort to apprehend them at that precise time? A No, sir.

Q What assurance did you have that these men would roll that wheel in your direction rather than in the other direction? A Well, I had to take that chance.

Q You were taking a chance? A Yes, sir.

Q As a Policeman you are sworn to prevent crime, aren't you?
A Yes, sir.

Q As a Police Officer you are obliged to catch men red-handed in the perpetration of crime, aren't you? A Yes, sir.

Q Now you state that your entire attention was concentrated upon what these men were doing, isn't that so? A Yes, sir.

Q When they rolled the wheel, as you state west on the

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sidewalk to the cab, the taxicab, you were on the north sidewalk--
wasn't there a period of time when that taxicab obstructed them
from your view? A Yes, sir.

Q There was a period of time? A Yes, sir.

Q When your view was obstructed, isn't that so? A Yes, sir.

Q At that time people may have entered and left that
saloon? A I didn't see any.

Q They may have though, may they not? A I could have seen
them if they did.

Q Your attention was concentrated upon these particular
individuals, isn't that so? A Yes, sir.

Q This defendant did not resist you, when you attempted to
arrest him? A No, sir.

Q May I ask you how old you are? A 28 years old.

Q Are you married? A Yes, sir.

Q The father of children? A One.

Q How long have you been married? A Nine years.

Q Nine years? A Yes, sir.

Q You went to the Police Force nineteen months ago? A Yes, sir.

Q At that time we were at war, weren't we?

Objected to.

THE COURT: Excluded as immaterial.

Q Now, Officer, you were 200 feet away from the automobile
on the north side of the street? A No, sir.

MR. McQUAID: I object to that.

Q You testified that you were 175 feet? A 150 feet.

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Q 150 feet? A Yes, sir.

Q You were on the north side of the street in the doorway?

A I was.

Q And there was this arc light? A Yes, sir.

Q Between you and this automobile? A Yes, sir.

Q And this automobile was in the dark also on the south side of the street? A In the arc of this light.

Q Partially in the arc? A Yes, sir.

Q Isn't that so? A Yes, sir.

Q Do you say then, that you, in the dark, you had to look through this barrier of light into another partially dark light and that you could see all these things.

Objected to. Objection sustained.

THE COURT: Leave out the word "barrier."

Q Your testimony then is that while standing in this doorway in the dark that your vision permitted you, through this beam of light shut by the arc light, to see with particular distinctness everything that happened on that automobile? A Yes, sir.

Q Is that so? A Yes, sir.

Q You made no attempt to arrest these men while doing that?

A No, sir.

Q You didn't have any assurance that this taxicab would come in to your direction? A No, sir.

BY MR. McQUAID:

Q Did any passenger get in or out of that taxicab from

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the time you saw the three men get in after they put the wheel in up to the time when the taxicab reached the place opposite where you stood? A Only the defendant got in.

Q After they got in did the taxicab stop to let anybody in or out? A No, sir.

BY THE COURT:

Q This defendant however got in the taxicab? A Yes, sir.

BY MR. McQUAID:

Q You say your view was obstructed by the taxicab? A Yes.

Q Just explain to the jury what you mean by your view being obstructed? A Probably about five seconds of time it took them to walk from the rear of the cab, pass the cab, to get to the front door of the cab; it was only a short time that that was, just the steps to get to the door.

BY A JUROR.

Q Was your view obstructed by the taxicab -- if you looked through the door you could have seen them? A Yes, sir.

M A D E L I N E M A T H E P, a witness called on behalf of the

People, being duly sworn, testified as follows:

(The witness states she resides in Brookline, Massachusetts.)

DIRECT EXAMINATION BY MR. McQUAID:

Q Do you remember the 16th of July, 1919? A Yes, sir.

Q Did you leave an automobile in 41st Street that night or day? A Yes, sir.

Q What kind of a car was it? A Marmon.

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Q A five passenger touring or what? A Semi-roadster.

Q What part of 41st Street did you leave it in? A Between Madison and Park Avenue, the righthand side going towards Park.

Q What time did you leave it there? A About eight o'clock in the night.

Q When you left it there did you have a spare wheel on it?
A Yes, sir.

Q Was there anything on the spare wheel? A Mounted with a tire and tube.

Q An inner tube and wheel? A Yes, sir.

Q Tell the jury where that was mounted? A On the rear of the car.

Q Was it fastened to the car? A Yes, sir, it goes on with a wrench and hub that screws in, fastened that way.

Q When you left your car there at eight o'clock on the night of July 16th was the spare tire on it? A Yes, sir.

Q Was it on it the next morning? A No, sir.

Q Where did you see it the next morning? A In the Station House.

Q Did you recognize it as the same spare wheel?

MR. CUNNINGHAM: I object to that.

Q You identified it as your property.

Objected to. Objection overruled. Exception.

Q What kind of a tire was it? A Goodyear cord.

Q What kind of a tube was it? A A Goodyear tube.

Q What size was it? A I don't remember, 34/

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Q 34 by 4? A 32 or 34 by 4½.

Q Have you bought similar tubes to the one that was on there?

A yes, sir.

Objected to. Objection overruled. Exception.

Q What did you pay?

Objected to. Objection overruled. Exception.

A I paid \$58 for the shoe.

Q What is that?

MR. CUNNINGHAM: I object to that.

Objection overruled. Exception.

A For the cord shoe.

BY THE COURT:

Q Did you buy these in the open market? A Yes, sir.

Q Did you know the reasonable market value of shoes? A Yes, sir.

Q Such as you had on the night in question? A Yes, sir.

THE COURT: I object to that.

THE COURT: She says she has bought shoes and the price she has paid for them is some evidence of value.

MR. CUNNINGHAM: The Penal Code requires the establishment of the market value.

THE COURT: It does not require that at all. It requires that the market value of an article may be proved or should be proved but the law allows the price paid for an article to go in evidence because it has been held that it is some evidence of value.

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MR. CUNNINGHAM: Some evidence of value but it is not conclusive proof of value.

THE COURT: I will allow it.

MR. CUNNINGHAM: I take an exception to your Honor's ruling.

THE WITNESS: \$58. You asked me what had been paid for the cord tube. I have seen a bill for that particular tube and tire.

Q How long have you had that tire? A About three or four weeks.

Q Had it been used at all? A Not that I know of.

Q A new tire? A Yes, sir.

BY THE COURT:

Q Was the inner tube taken? A Yes, sir.

Q What kind of an inner tube was it? A A Goodyear.

Q Did you know the reasonable market value of such tubes as you had on that occasion, ^{on} the day that you missed it?

Objected to. Objection overruled. Exception.

A Yes, sir, I have seen the bill for that particular tire and tube.

Q Did you know what they cost in the open market? A Yes, sir.

Q What? A About \$9, I think \$7 to \$9.

CROSS EXAMINATION BY MR. CUNNINGHAM:

Q Mrs. Mather, may I ask you the full name of your husband?

A Philip Richard Mather.

Q On July 17th, 1919, where did you reside, please? A We were staying at the Belmont Hotel.

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Q Where was your permanent home? A Our -- you mean our legal address?

Q Term it that if you wish? A Cleveland, Ohio.

Q I understaed you testify just now that you resided in Brookline, Massachusetts? A Yes, sir.

Q Is that so? A Yes, sir.

Q With your husband? A Yes, sir.

Q Your husband did not appear as the complaining witness in this case in the Magistrate's Court, did he? A No, sir.

Q Is he here in this court today? A No, sir.

Q Did he come to New York with you? A Yes, sir. You mean today?

Q May I ask you what his business is? A He is a student at Harvard University.

Q Now you have testified that you left the automobile in question on East 41st Street? A Yes, sir.

Q In what direction did the automobile face at the time you left it there? A East.

Q East? A Yes, sir.

Q Were you driving the car? A I don't remember.

Q Was anyone with you? A My husband.

Q What part of the car were you seated in? A Well, in one of the front seats.

Q In one of the front seats? A Yes, sir.

Q Your intention was at the time you left the machine to go to the Hotel Belmont? A Yes, sir.

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Q Is that so? A Yes, sir.

Q When you alighted from the machine you walked east on Park Avenue, did you not? A yes, sir.

Q The back of the car was away from you towards the west, wasn't that so? A Yes, sir.

Q You have testified that the wheel was on the back of the car at the time you left it? A Yes, sir.

Q How did you know that? A We turned the lights on because we were leaving it in the evening; we had gone around to see if all the lights were lighted; I am sure I would have noticed it if the wheel had been gone.

Q When did you turn on the lights? A As we left the car.

Q Now you left the car at eight o'clock in the evening?

A yes, sir.

Q That was on the 17th day of July? A Yes, sir.

Q Isn't that so? A Yes, sir.

Q It was then rather -- the 16th day of July? A Yes, sir, it was --

Q Broad daylight, wasn't it? A Yes, sir.

Q Now, I understood you to say, Mrs. Mather, that when you alighted from the machine you immediately proceeded east towards Park Avenue? A After looking to see if the lights were lighted.

Q Who bought this automobile? A It was bought by my husband's father.

Q By your husband's father? A Yes, sir.

Q Did he pay for it by check or in cash? A I don't know.

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Q Did he ever sell it to you? A No, sir.

Q Did he ever sell it to your husband? A No, sir.

Q Are you the owner of it? A With my husband.

Q When you say you were the owner with your husband, what do you mean by that? A Mr. Mather gave it to my husband and myself.

Q He gave it to you? A Yes, sir.

Q At the time he gave it to you did he say -- what did he say?

MR. McQUAID: I object to that as immaterial.

THE COURT: Question excluded.

Q Did you pay any money to him for it? A No, sir.

MR. McQUAID: I object to that. She said it was a gift.

THE COURT: She says no. I will let the answer stand.

BY MR. CUNNINGHAM:

Q Now, at the time the machine was given you and your husband resided in the State of Ohio, did you not? A Yes, sir.

Q The license was taken out in the State of Ohio, was it not?
A Yes, sir.

Q Who procured that license? A I think it was procured by the Senior Mr. Mather's chauffeur in my husband's name.

Q In your husband's name? A Yes, sir.

Q Isn't the owner required to take out the license? A I do not know.

MR. CUNNINGHAM:

THE COURT: What is the object of this examination? To show that she is not the owner?

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THE COURT: Suppose she was not. If she had the custody of it that is sufficient -- if the car was in her care and custody.

MR. CUNNINGHAM: But the indictment alleges, if your Honor please, that the property was owned by her, by this lady.

THE COURT: She had a special property in that car if it was in her custody on the day in question; she had a special property in it.

MR. CUNNINGHAM: But her testimony is --

THE COURT: Taking any property from that car was stealing from her.

MR. CUNNINGHAM: But the testimony discloses that her husband was present with her in the car and if he is the owner necessarily the indictment falls.

THE COURT: No, it does not fall. I would not so rule.

MR. CUNNINGHAM: The persons to be here and testify would be the husband.

THE COURT: She said the car was given to her and to her husband and in addition to that she said it was put in 41st Street by her. She was there at that time in custody of the car and she had a special property in that car.

Exception.

BY MR. CUNNINGHAM:

Q Now, Mrs. Mather, could you lawfully sell that automobile to a stranger?

MR. McQUAID: I object to that.

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THE COURT: That is a question of law. I am not going to ask her to determine that.

Exception.

MR. CUNNINGHAM: It is a question of the ownership and I think it is proper.

THE COURT: Question excluded.

Exception.

Q This wheel and shoe and tube in question, did you ever identify it as your property? A Yes, sir.

Q When? A When I saw it at the Station House at 30th Street that morning.

Q How did you identify it, by what name? A It was mounted on a Marmon wheel, it was the same make as the one which we had.

Q It was the same make? A Yes, sir.

Q Didn't your wheel have a serial number? A The wheel?

Q The tire, didn't a number appear upon some portion of the shoe or the tube or the tire or the wheel? A Yes, sir.

Q Did you identify it by that number? A No, sir.

Q Could you identify it by the number? A No, sir.

Q What was shown to you was a wheel that you thought looked like your wheel, isn't that a fact? A Yes, sir.

Q You did not positively say it was your wheel, did you? A Well, I don't remember.

Q Can you now positively say that it was your wheel -- the wheel isn't here -- that you say is yours? A No, sir.

Q You cannot positively say that the wheel you saw was the

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wheel that was on the automobile, can you? A No, sir.

Q Do you know where the wheel is now? A Yes, sir: Which wheel?

Q The wheel that is alleged to have been stolen from the automobile? A I don't know.

Q You do not? A No, sir.

Q The wheel that was exhibited to you and shown to you, you could not positively swear that that was the wheel that was on your automobile, can you? A Not by verifying it by the number.

Q You would have to verify it by the number? A I couldn't do that.

Q You could not do that? A No, sir.

Q Now, Mrs. Mather, you have stated that you are familiar with the market price of such articles, are you? A Yes, sir.

Q You are familiar? A Yes, sir.

Q Are you in that business? A No.

Q You are not in that business? A No, sir.

Q What is your business? A I haven't any.

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

Q You are a married lady? And you have your household duties, isn't that so? A Yes, sir.

Q You never engaged in the capacity of purchasing automobiles, accessories and so forth? A Yes, sir; I have purchased them.

Q But you never engaged in that capacity for compensation?

A No, sir.

Q You are not familiar with the market prices of such

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articles? A To some extent, not definitely.

Q Well some extent, what extent? A Well, I know that a small tire, a fabric tire could not cost as much as a cord tire.

Q You mean to say the prices you have paid for such things, that has been your experience? A Yes, sir.

Q But the prices that you have paid for these articles -- you were not positive that that was the reasonable market values, were you? A I trusted --

Q You could have been defrauded at the time you made these purchases? A I could have been.

Q Surely those things happen? A Yes, sir.

Q The most that you say therefor is that the price is a fair and reasonable market price? A I have seen the bill for this particular tire and tube and I know how much it cost.

Q But you didn't have any assurance that the price that ^{an} you were charged was not/exorbitant one, were you? A The price everybody pays for tires.

Q Can you speak for everybody? A No, sir.

Q You really don't mean that. My question is you didn't have any means of knowing whether the price you were charged was exorbitant or not, isn't that so? A It is the price that other people pay for tires generally.

Q Other people pay for them generally, how can you speak for other people? A Well because I have been with other people when they bought them.

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Q You have been? A Yes, sir, I have seen the stock prices listed.

Q This wheel in question alleged to have been stolen, who purchased that wheel? A It came with ^{the} car.

Q It came with the car? A Yes, sir.

Q So that you did not buy it, did you? A No, sir.

Q You did not know how much was paid for it? A No, sir.

Q You don't know now? A No, sir.

Q How much was paid for it, isn't that a fact? A Well, the separate items of the car are not listed in this bill.

Q You cannot state then how much was paid for that wheel and tire, can you? A I can for the tire, not for the wheel.

Q You are aware, Mrs. Mather, that on July 16th, 1919, when you and your husband left that automobile remain in the public street for several hours unattended, that you violated the law?

Objected to. Question excluded.

BY MR. McQUAID:

Q The next morning you found somebody in charge of your car? A Yes, sir.

Q The Police Officer? A Yes, sir, an Officer.

Q You were taken on to the Police Station? A Yes, sir.

Q There you saw this wheel, tire and tube? A Yes, sir.

Q It was a Mammon wheel I understood you to say? A Yes, sir.

Q And a Goodyear cord tire? A Yes, sir.

Q Did you look at the inner tube? A No, sir.

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MR. McQUAID: The People rest.

MR. CUNNINGHAM: I move to dismiss the indictment on the ground that there has not been any identification of the alleged stolen property.

THE COURT: I want the Officer back here who testified.

WILLIAM H. MILBURY, recalled:

BY THE COURT:

Q Officer, when you saw the defendant with others take the wheel from the car which you saw in 41st Street where did they take it to? A They rolled it to the taxicab.

Q Now did you afterwards see that wheel in the taxicab?

A Yes, sir.

Q Was that wheel afterwards identified by Mrs. Mather?

A Yes, sir.

MR. CUNNINGHAM: I object to that. I calls for the witness's conclusion.

THE COURT: I am asking the questions. You may take your objection and exception.

Q Now what did she do when she went to the Station House?

A I was not at the Station House at the time. Patrolman Daley took her to the Station House.

Q Was it the same wheel which was taken from the automobile in 41st Street that afterwards was taken to the Station House?

A Yes, sir.

MR. CUNNINGHAM: Now, if your Honor please, I move to

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ADMITTED

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dismiss the indictment upon the ground that there has been no competent legal identification of the alleged stolen property and on the further ground that the evidence produced by the People is insufficient to warrant a conviction. I move for the direction of a verdict of acquittal and I further move to dismiss the indictment upon the ground that there is a variance between the allegations in the indictment as to ownership and the proof.

THE COURT: Let us see what the proof is. The lady here testifies that on the night of the day in question an automobile was left in East 41st Street and at that time there was a wheel on the rear of the automobile. The Officer testified that at 3 A. M. he saw this defendant with others go to that car and take off from a car ^{always} in which there was a tube; that he saw this defendant take the tire to a taxicab; that he went over there and saw the tire in the taxicab; that the tire that was in the taxicab was the tire that was taken from the car which stood in East 41st Street. Why isn't there a case here?

MR. CUNNINGHAM: Where is the tire alleged to have been stolen? It is not produced in this Court.

THE COURT: I will deny your motion.

MR. CUNNINGHAM: Identification is one of the ingredients of the crime of larceny.

Motion denied. Exception.

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Q1

D E F E N S E.

THOMAS J. REILLY, (the defendant gives his name as Thomas J. Reardon), the defendant being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. CUNNINGHAM:

Q You have been indicted here as Reilly?

MR. CUNNINGHAM: I informed the Court yesterday at the time the case was called that the name Reilly was fictitious and I requested that the record be changed.

Q Reilly is a fictitious name? A Yes, sir.

(The witness states he lives at 348 East 137th street)

DIRECT EXAMINATION BY MR. CUNNINGHAM:

Q Now, Mr. Reardon, speak up so that this twelfth juror may hear you? A Yes, sir.

Q At the time you were arrested, why did you give the name of Reilly? A Well, I didn't want to disgrace my wife and family, children and also my elderly mother.

Q You are a married man? A Yes, sir, four children.

Q What is your business? A Pipe fitter.

Q Do you recall the 16th day of July, 1919? A Yes, sir.

Q Do you recall the evening of that day? A Yes, sir.

Q Do you also recall the early morning of July 17th?

A Yes, sir.

Q 1919? A Yes, sir.

Q Tell the Court and jury in your own way where you were why you were there, what you were doing at the place in ques-

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tion that day? A I was out to Brooklyn that evening.

Q Where? A Brooklyn, at 525 56th street, Brooklyn, I left out there around one o'clock, and came in on the subway, got off at the Brooklyn Bridge and then took the L, the Third Avenue L to go home. I live right next to the Third Avenue L-between 34th and 42nd street I met a man who had worked with me in Camp Raritan in Jersey, at the Arsenal out there; he asked me to go and have a drink and a cigar to renew acquaintance, and so we decided to get off at 42nd street and Third Avenue and to go over to this place that is open after hours. We went over there.

Q Where is this place, I don't know the number. There was a taxicab standing outside.

Q You recognize that as the place? A Yes. We had a few drinks and a few cigars and then came out and we decided to have a bite to eat. I saw a taxicab out there, on the outside and a man walking up the street. I asked him if it was his car, and he said yes. I asked him if he was busy and he said no. I said, drive me to 42nd street and 3th Avenue, and I jumped in the machine and they went a few paces and they were stopped by the officer and placed under arrest.

Q That is all you knew about it? A Yes, sir.

Q This wheel and tire was in the machine? A Yes, sir, was in the machine when I got in there.

Q Did you consider that an unusual thing? A I thought

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it was belonging to the car or perhaps it fell off and they put it inside.

CROSS EXAMINATION BY MR. McQUAID:

Q What is your right name? A Reardon.

Q Were you ever known as Reidy? A No, sir.

Q Ever known before as Reillya? A No, sir.

Q Answer the questions. Don't shake your head? A No.

Q Where did you live on the 16th of July? A 348 East 137th street.

Q Let me see the original papers. Did you sign an affidavit when in the registrars' Court? A Yes, sir.

Q I ask you if that is your signature? A Yes, sir, that is my signature.

Q This is T. J. Reilly, isn't it? A Yes, sir.

Q What address did you give there?

MR. CUNNINGHAM: I object to that as immaterial.

MR. McQUAID: It is quite material on the question of credibility.

A The address I think I gave my mother's address East Tremont avenue.

Q What number, 3810? A Yes, sir.

Q That was not your true address? A No, sir, my mother's address.

Q That was not your right name? A No, sir.

Q Why should you have given a fictitious name and address if you were an innocent man?

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A I thought it would be in the newspapers and the³¹ neighbors around where I live, little children going to school, didn't want to have public attention by having me arrested, for something that I was not concerned in.

Q Where did you say you lived? A At that time 348 East 137th street.

Q 348 East 137th street? A Yes, sir.

Q Will you tell the Court and jury why you were driving over to 8th avenue and 42nd street? A To get a bite to eat before I went home.

Q It was three o'clock then? A Around that.

Q Three o'clock when you left the saloon? A Yes, sir, around that time, I ain't positive about the time.

Q What is the name of the man in the saloon? A Jones.

Q Harold Jones? A Yes, sir.

Q A friend of yours? A I met him at work for Snare & Triest, out in the Arsenal Camp Raritan, New Jersey.

Q How long have you known him? A This is the first time I met him -- around two years ago.

Q You worked with him out there? A Yes, sir.

Q How long did you work with him? A Well, the job didn't last very long, about three or four weeks.

Q Did you know he was a convict? A No, sir.

MR. CUMMINGHAM: I object to that.

THE COURT: He said he did not.

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

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Q Never been convicted of a crime? A No, sir.

Q Sure about that? A Positive.

Q Where were you in Brooklyn that night? A 525 56th street.

Q You came-- what time was it when you got over here? A I left over there around one o'clock.

Q You left there at one o'clock? A Yes, sir. 59th street.

Q You were over there on business, I understood you to say? A I was over there visiting a friend of mine, the family.

Q Did you go alone? A Yes, sir.

Q You left there at one o'clock? A Yes, sir; around one o'clock.

Q Came to the Brooklyn bridge by what? A By the subway, the 4th avenue subway.

Q Got out there and got on the 3rd avenue L. A Yes, sir, 3rd avenue L.

Q And got off at 42nd street? A Yes, sir.

Q Where was it you met this Harold Jones? A On the train.

Q He is one of the men indicted in this indictment, isn't he? A I don't know.

Q Is he not a co-defendant of yours? A Harold Hones, that is what I know him by.

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Q He has been indicted with you in this indictment, hasn't he? A I believe he is.

Q What? A Yes, sir.

Q Now, you came out of there -- how long were you in this saloon there? A Well, three-quarters of an hour.

Q Got there at what time? A I got there around three o'clock, must have been that because it takes that length of time it takes to come over from Brooklyn.

Q Got there at 2 o'clock? A Yes, sir.

Q Stayed there three-quarters of an hour? A Yes, sir.

Q Jones and you were there? A Yes, sir.

Q Who else was there? A We were together, sitting down talking to him about work; we were in there having a drink and a cigar and having a chat about work over in New Jersey and worked with him.

Q Did you meet McGonigal in there? A No, sir.

Q You didn't see him in that saloon at all? A No, sir.

Q Did you see Dwyer in the saloon? A No, sir.

Q You didn't see him in there at all? A No, sir.

Q Didn't see him before? A No, sir.

Q Did you see McGonigal that night at all? A No, sir.

Q Wasn't he one of the men in the taxicab when you got in? A No, sir, he was not in the taxicab when I got in; i was only -- Jones and I got in the taxicab and the chauffeur.

Q The only two men and the chauffeur -- only two men in

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the taxicab? A Two men inside Jones and I.

Q When the officer came up and opened the door there there were not three men that got out? A There was two, and one man standing on the running board and one at the wheel.

Jones and I inside.

Q There was a man on the running board? A With the chauffeur.

Q The chauffeur was not on the running board, was he?

A He was with the chauffeur.

Q But the chauffeur was not on the running board? A No, sir.

Q He was with him on his seat? A Yes, sir.

Q A man on the running board and you two inside? A Yes.

Q With this wheel? A Yes, sir.

Q And the tire? A Yes, sir.

Q Did it have a shoe on on it? A I didn't notice; it was dark.

Q When did you first see this man on the running board when you got in? A No, sir.

Q He wasn't there then? A No, sir; he was not there.

Q Where did he come from? A I couldn't tell you where he came from.

Q But you are sure he was not in that taxicab with you and Jones? A No, sir; not inside.

Q Not inside? A No, sir, But on the running board?

A Yes, sir.

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8 Q You felt a little suspicious at three o'clock that 35
morning? A He wasn't there when I got in the machine.

Q Why didn't you get out, stop the machine and get
out? A It was stopped when I seen him.

Q You did not see him until the officer stopped you?
A That is the time I seen him.

Q What side of the taxicab was Mr. Dwyer seated on, the
chauffeur? A I believe it was the right hand side.

Q That would be the side that was north? A Yes, sir.

Q This man was on the running board next to him? A Yes.

Q So when the officer says that it was on the sidewalk
side that the three got out he is not testifying according to
your recollection, is that it? A He ordered four to get out
when he stopped the cab.

Q Four got out of the cab? A Two from the inside
and the chauffeur and the other fellow.

Q You got out on the sidewalk didn't you? A No, sir;
I got out in the gutter.

Q Towards the sidewalk? A The north side.

Q You got out the north side of the cab? A Yes, sir,
walked to where the officer was, and asked what was the mat-
ter.

Q Where was the officer? A Standing there.

Q How near the door? A He was standing on the south
side of 41st street.

Q You got out on the north side of the cab and went around

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over to where the officer was? A Yes, sir.

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Q Where did you friend Jones go? A He came out the same way.

Q The north side of the cab? A Yes, sir.

Q Walked around away from you? A Yes, sir to where the officer was standing.

Q Did the automobile then start up after you walked around there? A No, sir.

Q It did not start up? A No, sir, not until we were driven to the West 38th street station.

Q Dwyer did not start up the car after the three of you had gotten out, did you hear the officer tell Dwyer to stop or he would shoot? A He had a pistol out; I didn't hear what he said.

Q Didn't he say something like that? A If he had said it to the chauffeur--

Q Did you hear him say it to Dwyer-- of course he didn't say it to you, you got out? A He had the revolver out I don't know what conversation it was, what he said; I did not hear it.

Q How far were you from him? A I was in the cab but the windows was closed.

Q But he was standing by the side of the cab, the south side of the cab? A I couldn't hear what he said.

Q But then could you see what he had in his hand? A No, sir; I could see across the cab--

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20 Q Why didn't you get out of the side of the cab next to the officer? A Because I could not open the door.

Q Which side was the wheel on? A It was resting up against the back opposite the two seats in the back, up against the partition between where the chauffeur sat and where I was sitting.

Q Did you sit in the back seat, were you facing forward or rear? A Facing forward.

Q Was Jones sitting there facing forward? A Yes, s r.

Q You say the wheel and the car was leaned up against the partition? A Yes, sir facing the chauffeur.

Q So that you had the chauffeur in his seat there on the right hand side of the taxicab? A Yes, sir.

Q And you had McGonigal on the running board? A Yes.

Q The same side with the chauffeur? A The left hand side

Q You said a moment ago the same side with the chauffeur, standing on the running board the same side as the chauffeur? A No, sir, I didn't say that. I said he was next to the chauffeur to the left of the chauffeur, the chauffeur was sitting on the right.

Q He was sitting on the left, sitting down or standing up? A On the right side sitting down.

Q Then he could not have been next to the chauffeur then, could he, if he was on the running board, the south running board? A The machine was facing west, going west.

Q Answer my question -- if he was on the south running board he could not have been next to the chauffeur? A He was

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next to the north running board -- I couldn't understand -- I mean if the chauffeur was standing on the running board at the south side of the street--

Q If the chauffeur was standing on the running board at the south side of the street? A McGonigal.

Q Standing on the running board? A On the south side.

Q What is the chauffeur's name? A I believe it is Dwyer and Dwyer was sitting to the right, that is the north side of the car going west.

Q Well, then McGonigal was standing on the running board and wasn't next to the chauffeur, was he? A No, sir, he was standing up with the chauffeur on the running board.

Q If the chauffeur was on the right hand side he was on the north side of the car, wasn't he, if he was on the right hand side? A Yes, sir, the chauffeur was.

Q Then you had your man McGonigal standing on the running board, on the south side? A Yes, sir.

Q How can you say he was standing next to the chauffeur when they were on opposite sides?

Objected to.

THE COURT: He may answer.

A What I mean is that the running board on the south side is the side of the automobile he was standing on and directly opposite where the chauffeur was sitting on the north side; that is what I had reference to.

Q You say you were going over to 8th avenue to get something

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to eat? A Yes, sir.

Q 3 o'clock in the morning? A yes, sir.

Q A wife and four children home? A I knew I would be late in Brooklyn; they didn't expect me home until later.

Q Have you got your wife accustomed to letting you stay out until three or four o'clock in the morning? A No, sir, the first time I have been down there from where I was working in some time-- I went around visiting friends, old friends.

Q Around with friends? A Out to Brooklyn.

Q Aren't there places nearer than 8th avenue and 42nd street to get a bite to eat at three o'clock in the morning?

A I believe there was.

Q Why didn't you go there? A I like to go here to this place.

Q What place? A This restaurant, they put up good chicken potpie.

Q Did you know of Childs Restaurant in 42nd street near Park avenue? A I believe there is.

BY THE COURT:

Q And isn't there a restaurant called the Greek Restaurant or the Athens Restaurant right near Park avenue and 42nd street? (No answer.)

BY MR. McQUAID:

Q As a fact you mean to say you went over to get chicken potpie about three o'clock in the morning? A yes, sir before I go home.

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Q. Wife and four children waiting for you? A. They know I would be out. I sent word I wouldn't be home until late.

Q. Well, three o'clock is pretty late in the morning isn't it, to be going around for a married man? A. Yes, sir.

Q. With Harold Jones? A. Yes, sir, if I hadn't met him I wouldn't be out so late, just renewed an old acquaintance at work.

Q. Now where was the taxicab when you got into it? A. It was opposite right opposite the door of the saloon, a little bit more west, more to the west of the side door of this saloon.

Q. How many feet west? A. Two or three.

Q. Where was the chauffeur when you came out and asked him for a ride? A. Walking up the street.

Q. What do you mean, from east walking from east? A. Yes.

Q. Up the street? A. Yes, sir.

Q. He was walking west along the street? A. Yes, sir.

Q. His automobile was west of the saloon, is that it?
A. Yes, sir.

Q. What made you think he was connected with the automobile?
A. I called him and I said, "Is this your machine."

Q. He was coming from the east towards this automobile?

A. He was only fifteen or twenty feet away. I said "Is this your machine".

Q. Is this your machine? A. Yes, sir.

Q. And he said yes? A. Yes, sir. I asked him if he was engaged in and he said no.

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Q When you got in the automobile there was nobody in there

A No, sir; nobody in there at all.

Q Nobody on the running board? A No, sir.

Q Nobody seated in the chauffeur's seat? A No, sir.

Q There were only two men in there? A Yes, sir.

BY THE COURT:

Q Did you pay a taxicab driver to take you to 8th avenue? A Yes, sir.

Q What is your business? A A pipe, a Marine pipe fitter.

Q Did you have any reason for not taking one of the cross town cars that go through 42nd street in the direction of 8th avenue? A I could have done that by walking around to 42nd street but I was out late enough and I thought that by taking a taxicab it would hurry me home.

is
Q 41st street, where this trouble occurred-- all you had to do was to walk one block to the north and you would be in 42nd street? A Yes, sir.

Q You knew there were crosstown cars? A Yes, sir.

Q You preferred to take a taxicab? A Yes, sir.

BY MR. McQUAID:

Q Do you travel in taxicabs very often? A No, sir.

BY MR. CUNNINGHAM:

Q Now, Mr. Beardon, this man whom you met was a man with whom you had walked some two years prior, isn't that so?

A Yes, sir.

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Q There was a sort of a reunion, isn't that it, a little celebration? A He was glad to see me and I was glad to meet him.

Q And while ordinarily you do not travel in taxicabs still on this occasion you did not think it untoward to engage a taxicab, did you? A No, sir.

Q As far as the lateness of the hour was concerned why this man prevailed upon you to have one more drink?

Objected to; objection sustained.

BY THE COURT:

Q When was this, the 14th of July-- A In 41st street between Park and Madison avenue.

Q Wide open was it? A The side door open.

Q Do you know that is during the time of prohibition was prevailing? A Yes, sir.

Q This place was wide open was it? A Yes, sir.

BY MR. CUNNINGHAM:

Q Now, Mr. Reardon, wasn't it dark on that sidewalk when you engaged that automobile? A Yes, sir, it was rather dark.

Q Was there any light illuminating the place at all?

A The cafe.

Q That you recall from the cafe? A No, sir; very dim.

Q Were there many people passing by on that sidewalk at the time? A I only seen one.

Q You only seen one person? A Yes.

Q As you were leaving that cafe did you meet anybody coming

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in? A No, sir.

Q You did not? A No, sir.

Q Now the District Attorney has asked you about this address you gave at the time you were arrested, that was your mother's address, wasn't it? A Yes, sir.

Q In giving the wrong name you felt that you didn't want to bring any disgrace or any humiliation upon your family?

MR. McQUAID: I object to that as immaterial.

THE COURT: I will let him state.

A Yes, sir.

Q Answer the question. A I didn't want to disgrace my wife and family and my elderly mother.

BY THE COURT:

Q Now I ask you this: If you had given a wrong name and a correct address did you feel they would know you were the person under the name of Reardon? A Reilly was the name I gave.

Q But suppose you had given-- assuming now that you gave the name of Reilly and gave your correct address don't you know that would locate you as being connected or charged with the commission of this crime? A Why I didn't give the right address --

Q Suppose you had given your right address, but different name, a wrong name, wouldn't that have concealed your identity? A Well, I do not know.

BY MR. CUNNINGHAM:

Q Now, Mr. Reardon let me ask you this question. At the

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time of your arrest you were laboring under a distress of mind, weren't you? (No answer.)

Q You were distracted? A Yes, sir.

Q You felt you were innocent? A I didn't know what it was.

Q Of course you were bewildered, weren't you? A Yes, sir

Q That you were arrested? A Yes, sir, I didn't know what it was for.

Q With reference to going to 42nd street and 8th avenue to secure something to eat. Is it your custom to dine in the Hotel Belmont? A No, sir.

Q Or the Park avenue Hotel? A No, sir.

Q Or any one of these other splendidly appointed hosteries in the vicinity of 42nd street and 5th avenue? A No.

Q 8th avenue is about your place isn't it? A Yes, sir; any place where it is a reasonable price.

MR. McQUAID: And where they have good chicken pie?

A Yes, sir.

BY MR. CUMMINGS:

Q His Honor has asked you why didn't you go and take a crosstown car. Now one minute isn't it a fact that the cars run infrequently at that hour of the morning or don't you know? A They do sometimes; I don't know about that line.

Q You wanted to go along in this sort of reunion? A I wanted to get away more quicker; it was getting so late.

Q To walk from 4th to 8th avenue would have been a

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walk at three o'clock? A That would be 4 o'clock. 45

Q Those bloke are about 850 feet from curb line to curb line? A I al couldn,t tell.

Q That would be less than a mile, and the amount you would have to pay for a taxicab ride would be -- (No answer)

BY MR. MCQUAID:

Q Now one minute. You live up in 137th street? A Yes.

Q How was it you are so familiar with restaurants around 8th avenue and 42nd street? A Well, I have worked around there at different buildings.

Q What is the name of the restaurant that you had the chicken pie in? A Hornecks.

Q Where is it? A 41st and 42nd streets on 8th avenue.

Q Do you know any restaurants in the neighborhood of 3rd avenue? A No, sir.

Q And 42nd street? A No, sir.

Q None over on 3rd avenue that you know of, all night restaurants? A No, sir.

Q None on 4nd street between the Grand Central Station and Third avenue on the south side? A Well there may be some but I just thought of this one; I had got this food over here and it was good and I thought I would try it again.

Q You said you didn't want to disgrace your mother, didn't you, didn't you say that was the reason why you gave a fictitious name? A Yes, sir.

Q Why did you give your mother's address? A Well, that

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living in a whole house there, nobody by that name of Reilly there.

PATRICK F. HALLORAN, a witness called on behalf of the defendant being duly sworn, testified as follows:

(The witness states he lives at 336 East 24th street.)

DIRECT EXAMINATION BY MR. CUNNINGHAM:

Q What is your business? A Deputy sheriff, New York County. Previous to that I was a roundsman in the department of Docks for about 16 years.

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

Q Very intimately? A I know Thomas Reardon 16 years. I knew his wife before he married her.

Q Do you know the general reputation that this defendant bears? A Excellent.

Q You say you have known the defendant how many years?
A Sixteen.

Q Do you know people with whom he is intimately connected? A Yes, sir.

Q Who knows this defendant? A Yes, sir.

Q Do you know the general reputation that this defendant bears for honesty in the community in which he resided?
A Yes, sir.

Q What is that general reputation? A Honest and good, a hard working man.

Q From your knowledge of his general reputation for honesty would you trust him? A Yes, sir.

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CROSS EXAMINATION BY BY MR. McQUAID:

Q Related to the defendant by marriage or otherwise?

A No, sir.

Q You live in East 24th street? A Yes, sir.

Q Where does he live? A East 137th stret.

Q Who do you know up there that knows him? A I know his family and wife.

Q Is it her talk that has given him a good reputation in your mind? A No, sir, I know the gentleman himself.

Q And the gentleman himself? A Yes, sir.

Q What people do you know up there where he lives that know him? A I know him from downtown-- my way people that know him down my way.

Q But the people up there where he lives have they talked to you about him, said anything about him? (No answer.)

Q Give the names and addresses? A I will give you the names and addresses of pepple down my way.

Q I asked you for names and addresses of people up there?

A I don't live up there.

Q You don't know anybody up there? A I know people down my way, John J. McClain, I know a truckman by the name of McLain, 67th street, a gentleman where he originally came from, down my way; he has been down there I believe, to my knowledge two or three times a week in the evening, outside of the two years when he was working up the State somewhere with his brother-in-law.

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Q Do you know Harry Jones? A No, sir.

J O H N J. M E G L Y N N, a witness called on behalf of the defendant, being duly sworn, testified as follows:

(The witness states he lives at 346 East 18th street.)

DIRECT EXAMINATION BY MR. CUNNINGHAM:

Q Mr. McGlynn do you know the defendant, Reardon? A Yes.

Q Will you tell us how long you have known him? A 25 years.

Q Do you know people who know him intimately? A Yes.

Q Do you know what reputation he bears for honesty in the community? A Yes, sir, very good.

Q You say his general reputation for honesty is very good? A Yes, sir.

CROSS EXAMINATION BY MR. McQUAID:

Q Do you know where he lives? A East 137th street.

Q Do you know any people who know him? A Yes, sir.

Q Who? A A married daughter and five nephews and six nieces.

Q Then you know people where he lives, I don't mean relatives? A Business men.

Q Business men? A No, sir, I don't deal with business men up there.

Q Outside of his own family? A His family and my family are in the Bronx.

Q You don't know anybody else, any business men up there? A No, sir, in the Bronx, but in Manhattan.

Q Who is the business man in Manhattan that knows this

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defendant? A Yes, sir, I could have a lot of them come here today if I ever thought of it.

Q So much interested in the defendant that you went after character witnesses? - A Yes, sir, I was his bondsman.

Q In this case? A yes, sir.

MR. CUNNINGHAM: The defense rests.

A D E L I N E M A T H E R, a witness for the people, recalled:

BY MR. McQUAID:

Q Now, Madam the car which you have referred to in your testimony what was that mounted on? A On a wire Marmon wheel.

Q What is the name of the wheel? A Marmon wheel.

Q So that was a wire wheel? A Yes, sir.

Q With an iron rim set up on wire spokes? A Yes, sir.

Q Do you know the market value of those wire wheels?

MR. CUNNINGHAM: I object to that. No qualification shown.

Q Do you know? A I called up--

Exception.

Q Do you know the market value of such a wheel as was on the rear of your machine on the night in question? A I called up the agency.

Q Of your own knowledge? A No, sir.

Q Was it a new wheel? A Yes, sir.

MR. CUNNINGHAM: I move to strike it out.

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THE COURT: I will allow it to stand.

MR. CUNNINGHAM: I renew the motion to dismiss the indictment first on the ground there is not any competent legal identification of the alleged stolen property. The alleged stolen property is not before this Court. This woman from her testimony never identified the alleged stolen wheel and tube and tire as her property. It has not been produced here for the purpose of establishing identification. I further move to dismiss the indictment and for the direction of a verdict of acquittal on the ground that the evidence produced by the People is insufficient to warrant a conviction.

THE COURT: Motion denied.

MR. CUNNINGHAM: If your Honor please I further move to dismiss the indictment on the ground of variance between the allegation of ownership and the proof produced by the people, it being established here that the ownership is not in Madeline Mather as alleged and if in any one the ownership is in the husband who is not before this Court.

THE COURT: What is the variance?

MR. CUNNINGHAM: The variance I propose to point out is that the ownership is alleged to be in Mrs. Mather and the proof fails to establish legal ownership.

THE COURT: She said among other things that she and her husband were the owners of the automobile; that it was

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given to them by her father-in-law. She had an undivided interest in the car and to steal from her would be stealing from her husband and to steal from her husband would be stealing from her. They both had an interest in the car.

MR. CUNNINGHAM: I contend that her testimony does not establish her as the joint owner of that automobile. There was no proof of any gift of that automobile to this lady.

THE COURT: She said that her father-in-law gave the automobile to her husband and herself; that would be a gift and that would carry with it title.

MR. CUNNINGHAM: There are certain matters of law in order to properly transfer legal title.

THE COURT: He led her to suppose that the automobile was given to her and her husband by her father-in-law.

MR. CUNNINGHAM: My objection is that the title has not been sufficiently proved. There is one other element in the crime of larceny which is indispensable assuming that ownership has been proved-- where is the identification of the stolen property.

THE COURT: Let us see the circumstances that are proved here. You have a car in that street. I don't care when it was left there-- there was a wire wheel upon which was mounted a rubber tire in which rubber

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tire was an inner tube. That at three o'clock in the morning an officer saw this defendant go to that car and take the wheel therefrom; that he carried it to a taxicab and placed it inside the taxicab, the officer accosted him and stopped him and found the rubber tire, the inner tube and the wire wheel.

MR. CUNNINGHAM: The identification of which has never been established as is required under the law.

THE COURT: The officer identified it as the property that was taken from that car.

MR. CUNNINGHAM: But if your Honor please I did not hear him testify on this stand or point to any object in this court as that property. There is nothing before this Court -- the wheel is not here. I did not hear the policeman testify that it is the wheel that he saw in that taxicab.

THE COURT: He said it was the wheel that had been removed from the automobile by the defendant and taken to the taxicab and that when he looked in the taxicab he saw that identical wheel there, a tire upon it and a tube in the tire.

Motion denied. Exception.

(At this point the Court adjourned the further trial of the case until January 8, 1920.)

New York, January 8, 1920.

WILLIAM H. MILBURY, recalled.

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