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

-----x
: THE PEOPLE OF THE STATE OF NEW YORK: :
: -against- : Before
: BENJAMIN RAFFE and HARRY ROSENZWEIG: HON. WARREN W. FOSTER, J.,
: : and a Jury.
: :
-----x

New York, October 11th, 1912, etc.

Indicted for Grand Larceny in the Second Degree and Receiving.

Indictment filed August 19th, 1912.

A P P E A R A N C E S.

For the People,

ASSISTANT DISTRICT ATTORNEY CHARLES F. BOSTWICK.

For the Defense,

SILAS B. HARRIS, ESQ.

A jury was duly impaneled and sworn.

James E. Lynch,
Official Stenographer.

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FREDERICK GLITTENBERG, called and duly sworn as a witness on behalf of the People, testified as follows:

(The witness gives his residence as 349 West 52nd St)

DIRECT EXAMINATION BY MR. BOSTWICK:

Q What is your business, Mr. Glittenberg? A Butcher.

Q Where is your place of business? A 349 West 52nd street.

Q On Monday, the 5th day of August, 1912, did you own a horse and wagon? A Yes, sir.

Q Was your name on the wagon? A Yes, sir.

Q And in whose charge did you have that horse and wagon on that morning? A My driver.

Q What is his name? A Conrad Puels.

Q Where is he now? A He is working at my store.

Q Isn't he here? A No, sir, he is not subpoenaed.

Q Have you a telephone in your store? A Yes, sir.

Q What is the number of your telephone? A 3308 Columbus.

Q Now, did Mr. Puels return to your store before ten o'clock? A Yes, sir, he did.

Q Did he have the horse and wagon with him then? A No, sir.

MR. HARRIS: I object to that as not binding on the defendants.

Objection overruled. Exception.

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Q Where is, or on that morning before ten o'clock, where was the last place you saw that horse and wagon? A In front of my store.

Q And that is in front of 413 West 54th street? A My man left the wagon there.

Q The last place you saw it was in front of your store? A Yes, sir.

Q Did you see your driver go away with it? A He went to deliver orders and left the wagon in front of 413. While he was delivering that order, when he came out the wagon was gone.

MR. HARRIS: I move to strike out what the driver did as not binding on the defendants and immaterial and wholly incompetent.

MR. BOSTWICK: I do not think the objection is sound, but I think the evidence is objectionable on other grounds and I will consent to strike it out.

THE COURT: Yes.

Q You do not know as a matter of fact that it was left in front of 413 West 54th street? A No, sir, except as I was told.

Q That is simply hearsay? A Yes, sir.

MR. HARRIS: Then I move to strike it out.

MR. BOSTWICK: I have consented that it be stricken out and I have brought out the reason why I consented to

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it.

Q Now, did you receive any word from Coney Island the next day? A Yes, sir.

MR. HARRIS: I object to that as wholly incompetent, immaterial and irrelevant, and hearsay and not binding on the defendants.

THE COURT: The fact that he received word is not a matter of hearsay, but what it was is hearsay. Now, Mr. District Attorney, that being preliminary, you may go on. Of course, unless you connect it, it will be stricken out.

MR. POSTWICK: I am not asking what he heard.

THE COURT: I understand. Go on.

Q As a result of this notification which you received, what did you do, where did you go, if any place? A Down to Coney Island.

Q What part of Coney Island did you go to? A Sheepshead Bay Road and Fifth street.

Q When you got there what did you find? A Found my horse and wagon.

Q Now, was the horse and wagon, or was the wagon in the same condition that it was when you last saw it? A No, sir, the wagon was painted.

Q And now had it been painted, what color? A Well, sort of a yellow color. It was not exactly yellow, it looked like roof paint to me.

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Q And you received back your horse and wagon? A Yes, sir.

Q When did you buy that horse? A I bought him with the business.

Q What? A I bought the horse with the business.

Q Have you ever bought horses before? A Yes, sir.

Q Do you know the value of horses of that kind? A Yes, sir.

Q What was the reasonable market value of that horse on that day? A \$175.

Q What was the value of the harness? A \$35.

Q What was the value of the wagon? A \$250.

Q Had you ever seen either one of these defendants before that day? A No, sir.

Q Nor did you see them on August 5th? A No, sir.

Q Did you ever give either one of these defendants authority to use that wagon or that horse or that harness? A No, sir.

Q Since the arrest of these defendants, have you had any conversation with either of them? A No, sir.

Q You have not heard them make any statement? A No, sir.

MR. BOSTWICK: Your witness.

CROSS EXAMINATION BY MR. HARRIS:

Q You say that you bought the horse and wagon and harness with the business? A Yes, sir.

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Q Do you remember testifying in the Police Court? A Yes, sir.

Q Do you remember testifying that you did not know the value of horses? A No, sir, no such question was asked.

Q Do you remember the District Attorney in the Police Court asking you "What is the value of horses"? A No, sir, he asked me the value of that horse.

Q What did you say? A \$175.

Q Is that what you said, what you testified in the Police Court? A Yes, sir, I am pretty sure so.

Q Remember, you are under oath? A I am pretty sure so.

Q You are sure of that? A I think you will find that in the affidavit.

Q I am asking you the question, did you so testify in the Police Court? A I testified that I bought the horse and wagon with the business.

Q Yes, and didn't you testify that you did not know the value of the horse and wagon and harness? A No, sir.

Q And don't you remember me objecting to the testimony of the value because you didn't know what the value of the horse and wagon was? A What is that?

Q Do you remember me objecting to the District Attorney's question because you didn't know the value of the horse and wagon? A No, sir, I don't remember.

Q Did you have any conversation with anybody about the

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value of the horse and wagon? A No, sir.

Q Since the trial in the Police Court? A Not before nor after, no, sir.

Q Did you have any conversation with anybody, with a Police officer? A Not to my knowledge, not concerning the case.

Q About the value of the horse and wagon? A No, sir.

Q You are sure of that? A Positive.

Q Did you testify in the Police Court as to the value of the wagon? A No, sir. It is the same as here. I say that I bought the horse and wagon with the business, in the Police Court.

Q And you said that you bought it for about a thousand or two thousand dollars? A \$1,000 for the business.

Q With the business? A Yes.

Q Since when did you buy horses, when is the other time you ever bought horses before this time? A I bought a horse for a friend of mine.

Q You bought a horse for a friend of yours? A Yes, sir.

Q For a friend of yours? A Yes.

Q And that is the only time you ever bought a horse?

A yes, sir.

Q Do you know the market value of a horse at that time?

A I have been out pricing horses. I have been asked as high as \$300 for horses.

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Q Did you know the market value of horses on August 5th?

A No, sir, I don't pretend to be a horse man.

Q Well, why did you testify that you knew the value of the horse in the month of August in answer to the District Attorney's question? A Well, I ought to know the value of my own horse.

Q But you never bought a horse before that, did you?

A What is that?

Q You never bought a horse before that, did you? A Before August 5th?

Q yes? A Yes, sir.

Q For a friend of yours? A Bought the horse for a friend of mine.

Q And what is the name of this friend? A This friend is down in Virginia now at present.

Q What is his name? A Mr. Holmes.

Q Where does he live? A In Virginia. I couldn't give you the exact address.

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

Q And where did you buy this horse? A At an auction sale in 40th street and Seventh avenue.

Q 40th street and Seventh avenue? A Yes.

Q What is that, a horse stable? A No, sir, they were auctioning off horses that day, Fiss, Doerr & Carroll auctioned off the horses.

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Q And did you purchase the horse at that sale? A Yes.

Q Did you get a receipt for it? A Well, I couldn't say that. I don't remember that, no, I don't think I did.

Q You did not get a receipt? A No, sir.

Q What did you do with that horse? A I turned it over to the friend of mine and he gave me the money for it.

Q At that time? A Yes.

Q This Mr. Holmes? A This Mr. Holmes.

Q How many times did you ever buy horses for him?

A That's the only horse I ever bought for that man.

Q As a matter of fact, you don't know the market value of a horse, do you? A No, sir, I wouldn't say that.

Q Do you know the market value of a wagon? A I think I do, yes.

Q How do you know? A Well, I know the value of my wagon.

Q Well, how do you know? A Well, because my boss, the man I worked for, had this wagon built and I know he paid over \$250 for it.

Q And that's the only way you know the value of that wagon? A Yes, sir.

Q How long ago is that? A That's about seven or eight years ago.

Q And that's the only time you ever purchased a wagon?

A Yes, sir, I didn't purchase that wagon, my boss purchased that wagon.

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Q So you don't know the value of that wagon? A No, sir, I said that I know what he paid for it.

Q Except what he paid for it? A Yes, sir.

Q That is all you know? A Yes.

Q Did you ever purchase any harness? A I had one in price, the other day.

Q Did you ever purchase harness? A No, sir.

Q Do you know the market value of harness like what you had on the 5th of August? A I know what that one would cost me yes, sir.

Q At that time? A Yes, sir.

Q How do you know? A Well, I know exactly what it is worth.

Q Well, how do you know? A Well, I can bring you the harness maker.

Q Never mind, I ask you how do you know? A Well, I ought to know what the man asked me for the harness.

Q That's the only way you know? A That's the only way.

Q This harness and wagon were used before? A Yes.

Q They were used for quite some time, weren't they? A Yes.

Q Now this horse, you don't understand anything about horses, do you? A Not enough to give you any argument on it, no.

Q You don't know whether the horse is sound, you don't know whether the horse is wind broken, you don't know the gen-

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eral value of a horse at any rate, do you? A No, sir.

Q Nothing at all about it? Now, can you tell me how you came by these figures as to the value of that horse, as to the value of that wagon and as to the value of the harness?

A Well, I bought that horse and wagon with the business. Now, my boss paid over two hundred and fifty when he bought the wagon. Now,--

Q (Interrupting) Never mind, I am asking you how you come to value that? A Well, that is the lowest I would sell it for.

MR. BOSTWICK: He was making a responsive answer. I ask the Court to permit him to finish that answer.

THE COURT: Yes.

BY MR. BOSTWICK:

Q Go on, you were interrupted. A That's the reason I give what I would call a second hand figure on the horse and wagon.

BY MR. HARRIS:

Q Were you prompted to give these figures by anybody?

A No, sir.

Q Sure of that? A Positive.

Q That's all.

RE-DIRECT EXAMINATION BY MR. BOSTWICK:

Q Wait a moment.

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MR. HARRIS: One moment, if the Court please, the testimony of this witness I move to strike out as to the value of the horse, wagon and harness, as he is not qualified to testify as to the value of the horse, wagon and harness.

THE COURT: What proof of qualification do you claim here, Mr. District Attorney?

MR. BOSTWICK: He has priced horses. He says that he bought and owned this horse and that he has bought another horse.

THE COURT: I will deny the motion.

MR. HARRIS: I take an exception.

BY MR. BOSTWICK:

Q Now, you have priced horses, haven't you?

MR. HARRIS: Excuse me a moment.

BY MR. HARRIS:

Q You did not see these defendants take any horse and wagon away from in front of your door? A No, sir.

Q And the only time you ever saw the defendants was when you saw them in Coney Island or when they were under arrest?

A Yes, sir, that is the first time.

Q When you saw them in Coney Island, that's the only time you ever saw the defendants? A Yes, that's the only time.

BY MR. BOSTWICK:

Q You have priced horses, have you not? A Yes, sir, one

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horse, I couldn't say horses.

Q You have asked the price of horses? A Yes, sir, I have.

MR. HARRIS: I object to that as already answered.

Objection overruled. Exception.

Q And did you take that into consideration in determining what the value of this particular horse was? A Yes, sir.

MR. HARRIS: I object to that as not the proper means of establishing that this complaining witness is an expert on the value of horses, not the proper means of laying a foundation as an expert.

Objection overruled. Exception.

Q And in paying these prices down, did you consider that this harness and wagon were second handed? A Yes, sir, I did.

MR. BOSTWICK: Now, I ask for the original affidavit made by the complainant in this case.

Q I show you a paper and ask you if that is your signature? A Yes, sir.

Q And you signed this complaint on the 9th day of August, 1912? A I did, yes, sir.

MR. BOSTWICK: I offer that in evidence.

MR. HARRIS: I object to it as incompetent, immaterial and irrelevant, and further it is all hearsay.

THE COURT: What is it?

MR. BOSTWICK: I am offering the affidavit made by

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the witness in the Magistrate's Court on the 9th day of August, 1912.

THE COURT: As confirmatory of this proof?

MR. BOSTWICK: Yes, sir, in rehabilitation of the witness. They have attacked the witness's testimony upon that point and I want to show the statement made prior --

THE COURT: Well, you may mark it for identification now.

MR. BOSTWICK: Well, I will mark it for identification.

(Marked People's Exhibit 1 for identification.)

ERNEST GARTNER, called and duly sworn as a witness on behalf of the People, testified as follows:

(The witness gives his residence as West 5th street, Coney Island)

DIRECT EXAMINATION BY MR. BOSTWICK:

Q What is your business, Mr. Gartner? A Hotel keeper.

Q Where do you have your place of business? A West 5th street, Coney Island.

Q Is that near Sheepshead Bay Road? A Corner of Sheepshead Bay Road.

Q On the 5th day of August, that is Monday, did you have any sign up on that building? A Yes, sir.

Q What was on that sign? A "Stable to let".

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Q Now, at any time in the afternoon of that Monday, August 5th, did you see the defendants? A Yes, sir.

Q Where did you see them? A In my yard.

Q Did you have a conversation with the defendants at that time? A Yes, sir.

Q You had a talk with them? A Yes, sir.

Q Now, state what they said to you and what you said to them? A They rented the stable off me, at least one stall.

Q Speak out loud so that the last juror will not have to strain his ears to hear you. What did they say? A They were asking me for a stable.

Q Yes? A And I let them a stable or one stall for \$5 a month. They told me they were just starting in the horse dealing business. They paid me \$2 deposit.

Q \$5 a month was to be the price? A Yes, sir.

Q And for the first month they paid you \$2 deposit?

A Yes, sir.

Q And they still owed you \$3? A Yes, sir.

Q When did they say they would pay the balance? A They told me when they came around later.

Q How soon after that did you see them for the second time? A About a quarter of an hour after.

Q When they came the second time did they have anything with them? A They had a horse and wagon.

Q Now, what conversation did you have with them, if any

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conversation, in regard to the horse and wagon? A They offered me the horse and wagon for sale.

Q What did you tell them? A I asked them how much they asked for the wagon.

Q What did they say? A \$50.

Q Now, the next day was Tuesday? A Yes, sir.

Q Did you go to New York the next day? A No, sir.

Q When did you go to New York? Well, did you leave the place the next day? A No, sir.

Q Now, when did you see the wagon in its changed condition, if you did see it in a changed condition? A The next day, on Tuesday.

Q And what had been done to the wagon, if anything, in the meantime? A It was painted over.

Q When you found that the wagon had been painted over, what did you do? A That looked suspicious to me and I took some kerosene and rubbed off some part of the paint.

Q You rubbed off some part of the paint with kerosene?
A Yes.

Q And what did you find when you rubbed off the paint?
A I found out the name and I called up that butcher in New York, Mr. Glittenberg.

Q Did you have any communication with the police? A I asked him whether he sold that rig and he told me it was stolen.

Q Now, did you ever see that wagon when Mr. Glittenberg

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was there? Did Mr. Glittenberg come to Coney Island at any time? A Yes, sir.

Q Did he see that wagon? A He seen it when he took it away.

Q Well, did he see it? A Yes.

Q He saw it, didn't he? A Yes.

Q Now, is the wagon he took away and the wagon that he saw the same wagon that these two men brought there and painted? A That's the same wagon.

Q Now, did any policeman come to the place? A I called one.

Q You called a policeman? A Yes.

Q And after that did the defendants come back? A Yes.

Q And what did he do? A The policeman arrested them.

Q And that was about what time? A About five o'clock in the afternoon, I guess.

Q That's all.

CROSS EXAMINATION BY MR. HARRIS:

Q Did you testify in the Police Court about rubbing off that paint with kerosene? A Yes, sir.

Q Are you sure of that? A Yes, sir.

Q You want to swear that you testified that paint was rubbed off by you with kerosene? A Well, I was there, me and my wife.

Q I mean did you so testify in the police court, I ask

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you? A There was me and my wife rubbed it off, yes, together.

Q Did you testify that you and your wife rubbed it off in the Police Court? A I don't know what I testified there.

Q Now, when the police came these defendants did not attempt to run away, did they, when the police came, the defendants did not attempt to run away, did they? A One of them did, I guess. I was not there at the time.

Q Oh, you were not there at the time? A No.

Q You don't know anything at all about that? A No, I was not there at the present.

Q When did you call the police then? A About ten minutes before they came in.

Q Ten minutes before they came? A Or fifteen minutes.

Q Where did you go? A To the barbershop.

Q To the barbershop? A Yes.

Q What for? A To get a shave.

Q To get a shave? A Yes.

Q Where did you telephone from? A I didn't need to telephone. He was around there.

Q Did you call the policeman from the beat? A The policeman was on beat, yes.

Q Is that what you testified to in the Police Court? A I didn't testify anything about a policeman there.

Q You did not testify about calling the police there, did you? A I did call a policeman, yes.

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Q Did you testify that you called the police when you were in the Police Court? A Yes.

Q Is that what you testified to, or did you testify that the policeman came in and locked these men up? A The policeman was there.

Q That's all.

R A L P H M I C H E L L I, called and duly sworn as a witness on behalf of the People, testified as follows:

(The witness states he is attached to the Detective Bureau, Central Office).

DIRECT EXAMINATION BY MR. BOSTWICK:

Q In August you were and you still are connected with the Police Department of the City of New York? A Yes, sir.

Q In what precinct? A Now attached to the Second Precinct, part of the branch of the Detective Bureau.

Q And on August 5th where were you attached? A I was attached to the Coney Island Precinct, part of the Detective Bureau.

Q Did you make the arrest in this case? A Yes.

Q Any other officer with you at the time you made the arrest? A There was.

Q Who was that? A There was Detective Wyman and two uniform^{ed} policemen.

Q Where did you find the defendants, where did you make

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the arrest? A I found them at 5th street and Sheephead Bay Road, in a hotel kept by the last witness on the stand.

Q What day was that? A That was on the 8th day of August, I believe.

Q On what day? A I believe the 5th day of August, I don't remember the day of the week.

Q Have you any memorandum of the date of the making of the arrest? A I have.

Q Will that refresh your memory? A It will.

Q I ask you to look at that memorandum and refresh your memory, if you can from that memorandum and then state when you made the arrest? A It was on August 6th, 1912, at 5:30 p.m., or about 5:30 p.m.

Q And that was on Tuesday? A On Tuesday.

MR. HARRIS: I object to the District Attorney leading.

MR. BOSTWICK: Well, I did lead him, that August 6th was Tuesday. I led him in that. I now ask you to concede on the record the 6th was Tuesday.

Q Did you have any conversation with either of the defendants? A I did.

Q Will you state what that conversation was? A When I took him into the station house, I had watched them on the way in the patrol wagon. The two of them were whispering to each other and after I had reached the station house I brought them

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into the back room, in the detective's office, and there I asked them if they were making up some excuse for having this wagon in their possession. They both stated that they did not, that they were not making up any excuse. I then separated them and sent one with Detective Wyman outside of the room and asked the one remaining to tell me how he came in possession of the wagon.

Q Now, which one remained with you and which one went with Detective Wyman? A The prisoner here (indicating).

MR. BOSTWICK: That prisoner's name is what?

MR. HARRIS: Rosenzweig.

Q So you questioned Rosenzweig? A Yes, sir.

Q And Wyman questioned Raffé, the other defendant?

A Oh no, I questioned both of them eventually.

Q Now, just a moment, officer. I understood you to say that you separated these two men? A Yes.

Q I understood that you questioned one of them apart from the other one? A Yes.

Q Which one did you question? A The first one?

Q Yes? A The first one was Raffé.

Q So that after you separated them, the first one that you questioned was not the one sitting next to counsel, but the one sitting farthest away? A Benjamin Raffé.

Q Benjamin Raffé? A Yes, sir.

Q And do you remember that conversation in detail? Did

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you make any notes at the time? A Yes, sir.

MR. HARRIS: I object to this witness reading any notes or memorandum.

THE COURT: There is no question to which the objection is applicable.

Q Can you state without referring to that paper the details of that conversation? A No, sir, I can't.

Q By referring to that memorandum, could you give the details of that conversation? A I can.

Q Did you make that memorandum at the time that you had this conversation with Raffe? A Yes, sir.

Q And in his presence? A As each of them spoke I wrote it down.

Q I ask you now, to refer to that memorandum and state, refreshing your memory therefrom, the conversation that you then and there had with Raffe? A This is what I wrote down.

Q No, Mr. Witness, I want you to give me now your best recollection of the conversation, after you refresh your memory as you go along by that paper. A Benjamin Raffe stated--

MR. HARRIS: I object to him reading from any memorandum.

THE WITNESS: There is too much to memorize from this.

BY THE COURT:

Q Well, read it. Have you read it just now? A I read part of it.

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Q Now, answer the question as you go along.

BY MR. BOSTWICK:

Q Read as you go along and testify as to the conversation.

MR. HARRIS: I object to him reading from any memorandum.

THE COURT: The memorandum is not to be read. It is to be used by the witness for the purpose of refreshing his memory.

BY MR. BOSTWICK:

Q Now, proceed, officer. A Benjamin Raffé said that on the corner of Delancey street, he met a man who told him that there was a man with a horse and wagon at 9th street and Second avenue who wanted to sell it, and he went there, he and Harry, that's the other defendant Rosenzweig, went to 9th street and Second avenue and met this man who had this wagon, and they bought it from him for \$100. He did not get a receipt at the time that he bought the wagon. Then he -- this was on August 5th he bought it. Then he and Harry took the wagon, they were to be partners in this transaction. Harry Rosenzweig was to give Raffé \$50 when he had it as his part of the bargain. Rosenzweig did not give any money towards the buying of this wagon. Raffé had all the money. They then took the wagon and took it down to Coney Island where it was found, where they were arrested, and immediately painted the

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wagon so that they could take it back to the city to sell it.

That is the statement of Raffe.

Q Now, is that all you remember? A That's all.

Q Did they say whether they knew the name of this man?

A Raffe -- no, he did not, he gave a description.

Q Now, what description did he give of that man?

A He said he was 21 years old.

Q Did he say whether he had a mustache? A No mustache.

Q Did he say whether he had a coat? A No coat.

Q Did he say whether he had a hat? A A derby hat.

Q Now, did he state why they had taken the horse and wagon down to Coney Island? A He said that stahling was cheap there. That was his reason.

MR. BOSTWICK: Your witness.

THE WITNESS: There is another conversation with the second defendant.

BY MR. BOSTWICK:

Q Oh, yes, I beg your pardon, after the conversation that you had with Raffe, did you examine Rosenzweig? A I did.

Q Now, can you remember the details of that conversation, without referring to the memorandum? A I cannot.

Q Have you a memorandum made at that time concerning the conversation with Rosenzweig? A I have.

Q I ask you now to refresh your memory by that memorandum as you go along, and testify from your best recollection, after

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your memory has been refreshed by that paper, as to the conversation that you then and there had with Harry Rosenzweig?

A At about -- while walking on Second avenue near Ninth street he met a man who approached him and asked him if he wanted to buy a horse and wagon. At that time Raffé was with him. This is while they were walking downtown from uptown on the right hand side of the street. The man approached and asked us, meaning the two defendants, if we wanted to make a few dollars. We asked him how we could make these few dollars and he said by buying this horse and wagon cheap, and you can sell it. I then left and went to my home -- that is, Rosenzweig left and went to his home, and left Benny there, that is, Benjamin Raffé, standing with the man. Then I got \$50 from a drawer at my home, went back to where Raffé was standing, gave him the fifty and he paid \$100 to the man. We took the horse and wagon, went around to a couple of delivery stables and could not get any place to store the horse and wagon. So we took it to Coney Island. About three or four hours after we painted the wagon so that we could get a customer to buy it.

BY MR. BOSTWICK:

Q Now, after that did you bring the two defendants together? A I then brought the two defendants together in the room, sat them down side by side and told them that I would now read to them both of their statements to me in writing.

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Q And did you read those statements to the defendants at that time? A I did. I then read the statements that they had given me and when I came to the part of the statement that contradicted the other statement, the defendant Rosenzweig said "You are not going to keep those, are you, you are going to tear them up, ain't you?" I said "Well, are these true or not true?" Well, he says "You got them".

Q And did they give any expression other than by word of mouth to their -- after you told them that? A I can't recollect anything else.

Q You don't recollect whether they cried or laughed?

A Oh no, they were laughing. They did not cry, they laughed.

THE COURT: We will stop here.

(The Court thereupon admonished the jury in accordance with Section 415 of the Code of Criminal procedure, and adjourned the further trial of the case until Monday, October 14th, 1912, at 10:30 o'clock a.m.)

New York, October 14th, 1912.

Trial resumed.

R A I P H M I C E L L I, a witness for the People, resumes the witness stand:

DIRECT EXAMINATION CONTINUED BY MR. BOSTWICK:

Q You were on the stand when court closed on Friday last,

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were you not? A Yes, sir.

MR. BOSTWICK: Your witness.

CROSS EXAMINATION BY MR. HARRIS:

Q Have you got those memoranda with you? A Yes, sir.

Q Will you let me see them? A (Handing)

Q In whose handwriting is that? A Mine.

Q What did you do after you arrested these men?

A I brought them to the station house.

Q Who sent for you? A Nobody sent for me.

Q How did you come to make the arrest? A I went there with the wagon.

Q With who? A I will tell you. I went there at the request of the Lieutenant in charge of the station house. He said that there was a patrolman at 5th street and Sheepshead Bay Road, in a place there who had reported that there was a wagon supposed to be stolen, in a stable. I went there and when I reached there I met the patrolman and he told me, and showed me the wagon in the stable, that had been recently painted over red. After I had had a talk with this patrolman I, being busy at that time, requested him to stay there and wait for the return of the men who brought that wagon there.

I then left the patrolman with his hat and coat off in the place waiting, and I returned to the station house. I had hardly reached the station house when a call came for a wagon

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to go up to this place I had just left, that the men had returned. That is how I returned with the wagon and brought these two men back.

Q Now, when you brought them back what did you do?

A I brought them into the back room in the detectives' room and I there questioned both of them.

Q You yourself? A No, there was also Detective Reiff and Detective Wyman.

Q And whom did you question? A I questioned both of them.

Q Both of them? A Yes, sir.

Q Separately? A Yes, sir.

Q Not in the presence of each other? A Yes, sir, separately and together, both.

Q Separately and together, and did you write out all this memorandum right in front of them? A Yes, sir.

Q Right in front of them? A Yes, sir.

Q Sure of that? A Why, certainly.

Q Didn't you testify the other day that Detective Wyman questioned Rosenzweig and you questioned Raffe? A No, sir.

Q You did not so testify? A No, sir.

Q Sure of that? A Yes, sir.

Q You want this jury to believe that these defendants made these statements and you sat there and wrote out their statements, is that right? A Yes, sir.

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Q Did you ask them to sign it? A I don't think I did.

Q Why didn't you ask them to sign it if they so readily confessed? A I can't answer that. I didn't ask them, that's all.

Q How long have you been on the police force? A 13 years.

Q You have seen many men, defendants that you arrested?

A Yes, sir.

THE COURT: What is the use of that? If he has been on the police force of course he has arrested men and seen them. Hold yourself down to essentials and those things of which the Court takes cognizance need not be proved.

Q When you questioned the defendants did they give you this statement very readily? A Yes.

Q No difficulty about that, was there? A None at all.

Q In your career as a policeman have you sought to obtain confessions from defendants? A Yes, many times.

Q Now, these defendants having given you this statement so readily, why was it that you did not get them to sign this statement? A I can't tell you. I didn't ask them, that's all.

Q Wyman had charge of one of the defendants, is that right? A Yes, sir.

Q Why did not Wyman sign this statement with you?

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MR. BOSTWICK: I object to this.

THE COURT: Objection sustained.

Q This statement was not produced in the Police Court, was it? A I was not in the Police Court and don't know.

Q Well, you knew that the defendants were arraigned before the Magistrate, didn't you? A I suppose they were. I don't know, I was not there.

Q These defendants -- or you were the man that took the statements from the defendants? A Yes, sir.

Q Didn't you find it necessary for you to appear in the Police Court? A No.

Q You did not think it at all necessary? A I say I didn't find it necessary. If I was wanted they would have sent for me.

Q And why didn't you give this statement to the other officer that appeared in the Police Court? A I believe I did.

Q Did you? A I believe I did.

Q Well, don't you know whether you did or not? A Yes, sir, I did.

Q You did? A Yes.

Q Well, do you know whether this statement was produced in the Police Court? A No, that I don't know.

Q You don't know? A No.

Q And you are also sure that you wrote out this statement right in front of the defendants, at the time they made the

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statements to you, is that right? A Yes, as they each talked to me; I asked the first, Raffé, to let me know how he came by the wagon, and he told me how he came by the wagon.

Q And as he told you you sat down and you wrote it?

A I wrote it down, yes.

Q And was Rosenzweig sitting alongside? A No, Rosenzweig was outside in another room with Detective Wyman, where he couldn't hear what was going on. After Raffé got through -- after he got through with his story as to how he came by the wagon I sent him outside, and told Detective Reiff to bring in Rosenzweig. Rosenzweig then came into the room and sat in the seat just vacated by Raffé, and I asked him the same question, that is, to explain to me how they came by that wagon and he made the statement to me, and that's the statement I took down in writing, and you have it there.

Q Did you get them to sign any other paper? A Not that I can recollect, no.

Q Did you get them to sign a paper? A No, sir.

Q Now, think? A I did not.

Q Sure? A I am not sure about that, because I don't recollect whether I took any finger prints of them two.

Q That's all.

RE-DIRECT EXAMINATION BY MR. POSTWICK:

Q Officer Micelli, when you were taking the statement of

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Raffe, was Officer Reiff present or not present? A Reiff was present during the entire statement.

Q That's all.

C O N R A D P U E L S, called and duly sworn as a witness on behalf of the People, testified as follows:

(The witness gives his residence as 725 Tenth avenue)

DIRECT EXAMINATION BY MR. BOSTWICK:

Q What is your business, Mr. Puels? A Butcher, and driver.

Q What was your business on August 5th, 1912? A The same thing.

Q By whom were you employed? A Just now?

A No, on August 5th, 1912? A Frederick Glittenberg.

Q And that morning did you do any driving? A Yes, sir.

Q What time in the morning was it? A Between nine and ten.

Q Where did you leave, where did you start from?

A Where I started from?

Q Yes? A From the shop.

Q And then where did you go? A Over to the east side, 49th street and Third avenue.

Q And then where did you go? A From there I turned back to 53rd street, 100 53rd.

Q Were you at any time that morning in front of 413 West

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54th street? A I was there between nine and ten. I started from the east side over for delivering orders.

Q In front of 413, the street in front of 413 West 54th street, is in the County of New York, isn't it? A Yes, sir.

Q Tell us just what happened at that time, please?

A What happened? I stopped at 413, I delivered an order, went up two flights of stairs. As I come down the horse and wagon was gone.

Q After you found the horse and wagon were gone, where did you go? A I ran up and down the block and looked towards Tenth avenue, looked towards Eighth avenue, looked up Ninth and down Ninth there, and there I could not see which direction they went, so I turned right back to the shop.

Q And when you got back to the shop did you have a talk with Mr. Glittenberg, with your boss? A Yes, sir, I went and told him that the horse and wagon --

MR. HARRIS: Objected to.

Q Never mind, you told him something. You are not permitted to tell what you said to him. That's all.

MR. HARRIS: No questions.

H E N R Y J. R E I F, called and duly sworn as a witness on behalf of the People, testified as follows:

(The witness states he is connected with the 159th

Precinct, Detective Bureau)

DIRECT EXAMINATION BY MR. BOSTWICK:

Q On August 5th, 1912, you were and still are connected

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with the Municipal Police Force of the City of New York?

A Yes, sir.

Q Assigned to what precinct? A 159th at present, but I was at the 169th on the 5th of August.

Q On what date was the arrest made? A August 6th.

Q Were you present at the time the defendants were examined by Officer Micelli and at the statement? A Yes, sir.

Q That's all.

CROSS EXAMINATION BY MR. HARRIS:

Q You were present in the Police Court, weren't you?

A Yes, sir.

Q And you testified, didn't you? A I did.

Q Did you have these papers with you? A I did.

Q Did you have them with you? A I did.

Q Did you produce them in court? A It was not necessary.

Q Did you, will you answer my question, did you or did you not? A Do what?

Q Produce these papers in court in evidence? A I did not.

Q You did not? That is all.

RE-DIRECT EXAMINATION BY MR. BOSTWICK:

Q These were not in your handwriting? A No, sir.

Q You could not have offered them in evidence so far as

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you know? A No, sir.

Objected to. Objection sustained.

MR. BOSTWICK: That is all. The People rest.

MR. HARRIS: I move to dismiss, on the ground that the People have failed to establish a cause of action, they have failed to prove larceny. The mere possession of the horse and wagon -- and they have not proven that the horse and wagon were in the possession of the defendants; on the further ground they have failed to prove any conspiracy for receiving stolen goods; they have failed to prove value of the articles stolen.

Motion denied. Exception.

THE DEFENSE.

BENJAMIN RAFFE, one of the defendants, being called and duly sworn as a witness on behalf of the defense testified as follows:

(The witness gives his residence as 284 Henry Street)

DIRECT EXAMINATION BY MR. HARRIS:

Q Mr. Raffe, how old are you? A About 20 years.

Q How old? A About 20 years.

Q What has been your business ever since you started in to work? A Nothing at all. That was the only job I had.

Q Where were you working? A Fine & Davis, 50 Bond street, I was driving for them.

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Q Do you remember the 5th day of August? A Yes, sir.

Q That is the day that you bought the horse and wagon?

A Yes, sir.

Q What happened? A I met a man on Delancey street and he asked me if I wanted to make a couple of dollars and buy a cheap horse and wagon he had just bought. So he took me down 9th street and Second avenue and he sold me the horse. He asked me \$200 for it. I bargained him down to \$100. I asked him what was the matter that he is selling so cheap. He told me the horse was wind broken, that's why he sold it so cheap. So I bought the horse off him for \$100. Then I got this horse and I passed by Harry Rosenzweig's house.

Q Where is that? A 63 Chrystie street, and he was sitting in the front of his house, and I asked him if he is doing anything. So he says no. I told him to come along with me and if he will help me try and sell this horse and wagon I will give him a couple of dollars out of it. So I took him on the wagon and we went down to Coney Island and we hired that stable there.

Q Then what happened? A Then I had this horse and wagon in there for one day and next day they arrested us.

Q Did you attempt to run away? A No, sir, he asked me who was the owner of this horse and wagon and I told him me.

Q Did you ever see this man before, the man whom you bought the horse and wagon from? A Yes, sir.

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Q Where did you see him? A I seen him at Fiss, Doerr & Carroll's, 24th street sale.

Q Where? A On a sale at 24th street, Fiss, Doerr & Carroll's.

Q Did you buy occasionally from there? A Yes, sir, I bought a horse there.

Q Did you know this man's name? A I only know his first name, Jack, that's how they call him in the sale.

Q Have you had opportunity to try and locate this man?
A Yes, sir.

Q Did you get a chance to try and find this man? A No, sir, I couldn't get no bail.

Q And you have been in jail how long? A I have been in jail about 11 weeks.

Q From the day that you bought that up to the present time you have been unable to get out of jail and find this man?
A Yes, sir.

Q Does Mr. Rosenzweig know who he is? A No, sir.

Q You are the only one that knows him, is that right?

MR. BOSTWICK: Wait a minute. I move to strike all that out. "Does Mr. Rosenzweig know this man".

THE COURT: Strike it out.

MR. HARRIS: I take an exception.

Q Now, let us go back to Coney Island, from the time that you were arrested, after you were arrested where were you taken?

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A Over to the station house.

Q What happened in the station house? A He took my finger prints and he made me sign them finger prints.

Q Did Officer Micelli write any papers in front of you?

A I don't remember.

Q Did you see him write in front of you? A No, sir. I only seen finger prints there. That is all he took, is my finger prints.

Q Did he ask you what took place, did you ask him what took place? A I didn't tell him nothing at all. He didn't ask me nothing.

Q Did you tell him about the horse and wagon, how you got it? A No, sir.

Q Now, were you two separated during all the time you were in the police station? A The two of us was together. The only time we were separated was when they put us in the cells.

Q Did you know that this horse, wagon and harness were stolen? A No, sir.

Q Did you take the horse and wagon and harness from in front of 54th street? A No, sir, I have never been there.

Q Did you ever see the complaining witness? A No.

Q Wait a minute. When was the first time you saw this complaining witness, the owner of the horse and wagon? A I saw him over in Coney Island station house about seven o'clock.

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That's when they sent for him, when I was arrested.

Q That's the only time you ever saw him? A Yes.

CROSS EXAMINATION BY MR. BOSTWICK:

Q Your name is Raffe? A Yes, sir.

Q And you live at 284 Henry street? A Yes, sir.

Q And you have lived in Henry street for how long?

A A year and a half.

Q And you were living in Henry street on August 6th and 7th, 1912? A Yes.

Q And whom did you say you worked for? A Fine & Davis.
He is a truckman.

Q How long have you worked for them? A Seven years.

Q What other business? A He is carting stuff for the clothing houses, over to tailors.

Q Your counsel asked you, "Didn't you tell him how you got the horse and wagon? A No, sir." Is that correct? Now, do you understand me? A What is it?

Q Your lawyer asked you this question "Didn't you tell him", meaning the detective, Micelli -- "how you got the horse and wagon", and you said to the lawyer, "No, sir." Is that correct? A I told my counsel how I got this horse and wagon.

Q I didn't ask you that. A I don't understand your meaning.

Q Your lawyer asked you a few minutes ago whether you

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told in the Coney Island Police station where you got the horse and wagon, whether you told Micelli, and a minute ago you told him "No, sir". Now, is that correct? A Yes, that's correct. I only told him that I bought it.

Q So you did not tell Micelli where you got the horse and wagon? A No.

Q You did not tell Micelli all about meeting this man in Delancey street and going to second avenue, did you? A No, sir, I don't remember telling him anything.

Q You don't remember that? A He didn't question me at all.

Q I show you a paper and ask you whether that is your signature? A Yes, sir.

Q Now you signed that paper on the 9th of August, didn't you, in the Magistrate's Court? A Yes.

Q Why did you give your address there as 52nd street?
A As what?

Q 52nd street? A 52nd street? No, sir, I didn't give no address at 52nd street. I gave an address at 56 East 2nd street. I had been there a couple of days.

Q 56 East 2nd street? A Yes.

Q Well, if you had been living for a year and a half at 284 Henry street, why did you give your address as 56 East 2nd street? A I had been there for a couple of days with a friend of mine, and I didn't want people in the house to know

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I was arrested because it was not nice to be arrested.

Q You did not live at 56 East 2nd street? A No, sir.

Q You lied about it? A Well, I did live there for a couple of days.

Q Oh, you did live there? A I did live there for a couple of days.

Q Why did you sign this paper saying you were a fruit dealer? A I was a fruit dealer after I left my job.

Q You said you didn't have but one job. A I was in business for myself when I was a fruit dealer. I left my job seven months ago, then I started the fruit business, when I left my job.

Q You got down to Coney Island and hired a stable, didn't you? A What is it?

Q When you got to Coney Island you hired a stable, didn't you? A Yes, sir.

Q How much did you pay? A I paid two or three dollars on it. I don't remember what I gave deposit. I was supposed to pay the rest the next day. That is the time I got arrested, next day.

Q After you met this man in Delancey street you didn't go to any bank to get any money, did you? A No, sir.

Q Just had the money in your pocket? A Yes, sir.

Q Were you in the habit of carrying as much as \$50 or \$100 around in your pocket every day? A What is it?

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Q (Question repeated by the stenographer) A Yes, sir, I have been always carrying money around in my pocket while I was working and while I was out of work.

Q When you were taken to the station house, weren't you separated and weren't you examined by the officers and then the other one examined? A Two of us was together.

Q Together all the time? A Yes, sir.

Q You were not separated at all? A I don't remember being separated. We were together all the time.

Q Well, you would remember whether you were separated or not? A No, we were together all the time.

Q You are positive you were together all the time?

A Yes, sir.

Q And you are positive that the police officer did not make any writing in your presence? A He did not make any writing?

Q Yes, he didn't make any writing? A He didn't make any writing at all. The only thing I signed is my finger prints. They were taken there. That's all I have seen him take.

Q And you didn't see him make these two papers, did you (indicating)? A No, sir, I was sitting about eight feet away from him.

Q Now, tell this jury why you painted this wagon as soon as you got to Coney Island? A Because I bought it and it was my own, so I wanted to take the letters off it. There was some

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advertisement on it. So I went to paint it up and then try and sell it again.

Q Where did you get the paint? A I bought it.

Q Where did you buy the paint? A I don't remember what street it was. I bought it in Coney Island, around the corner.

Q You didn't know the last name of the man from whom you bought this wagon, did you? A No, sir.

Q You didn't know whether he was a butcher or not? A No, sir.

Q You didn't send any word to the man whose name was on the wagon that you had bought this wagon, did you? A No, sir.

Q You didn't know whether this man from whom you bought the wagon had any store or place of business? A He had been always buying horses and wagons --

Q No, answer my question. A No, sir.

Q You had never seen him before, had you? A Yes, sir.

Q How often? A Every day pretty near. I was out of work for about three or four weeks and I was up to the sale, every time the sale was on.

MR. BOSTWICK: I ask that that be stricken out as not responsive.

MR. HARRIS: I object to striking it out.

MR. BOSTWICK: Well, never mind, we will let it stand.

Q You were alone when you met this man in Delancey street?

A Yes, sir.

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Q And his first name is what? A Whose name, the man's name I bought it from?

Q Yes? A Jack.

Q Tell us what Jack said to you about this horse and wagon? A Jack told me he bought it cheap and he would sell it to me cheap because the horse was a little wind broken and he is an old horse.

Q He didn't say where he bought it? A He told me that he bought it off a man around a sale. He was going to take it in that sale, so he bought it off him before he took it into the sale.

Q Was there anything on the wagon at the time you bought it? A Was there anything on? There was only a basket on there for meat.

Q And did you get up on the wagon with Jack? A No, sir. When? What did you say?

Q (Question repeated by stenographer) A I did not meet Jack up there. I met Jack on Second avenue and 9th street.

Q Oh, you didn't go up there? Well, didn't you get up there with Jack on 9th street? A No, sir. I got up on the wagon myself. I paid him the money there and there's where I got up on the wagon and I drove over to Harry Rosenzweig's.

Q How long did it take you to pay him the money and get up on the wagon? A Just about five or ten minutes.

Q I want you to tell me how long you think this is, he-

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ginning now (indicating -- after a pause) how long is that?

A About two or three minutes.

MR. HARRIS: I object to that as calling for the operation of the witness's mind.

Objection overruled. Exception.

Q Now, that was ten seconds by this clock, so that when you say it was two or three minutes you gauged it in the same way as you gauged that time, didn't you? A No, I don't remember exactly how long it took me, two minutes more or two minutes less. It might have taken me ten minutes, for all I know. I didn't look at a clock.

Q Well, rack said he would sell you this horse and wagon and you paid him how much money right there? A I paid him \$100.

Q So that you didn't get \$50 from Rosenzweig, did you?

MR. HARRIS: I object to that. There is no such testimony.

THE COURT: The question is allowed. Objection overruled.

MR. HARRIS: I take an exception.

Q (Question repeated by the stenographer) A No, sir.

Q Now, if Rosenzweig stated that he went away and left Benny Raffe standing there with the man, that he got \$50 from the drawer and came back and gave it to Benny, no such thing happened, did it?

MR. HARRIS: I object to that. There is no such tes-

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timony before the Court.

Objection overruled. Exception.

THE COURT: This is cross examination, Counsellor.

MR. HARRIS: But there is no such testimony.

THE COURT: I understand perfectly the pith of your objection, but even if true, the District Attorney has a right to ask it on cross examination, therefore I overrule the objection.

MR. HARRIS: I take an exception.

Q (Question repeated by the stenographer) A No.

Q How long after you got to Coney Island did you paint the wagon, how soon after you got to Coney Island did you paint the wagon? A Just about one hour later.

Q You offered to sell this wagon to Mr. Gartner, didn't you? A He says to me, "It's a nice wagon and I would like to buy it", and he asked me how much I wanted for it. I told him I wanted \$50 for it. He gave me an offer of something like \$30 for it and I refused to sell it.

Q Wasn't this horse in pretty good condition? A The horse in pretty good condition? Well, I didn't examine him yet.

Q What did you think the horse was worth?

MR. HARRIS: I object to it on the ground that he is not an expert and has no idea of value.

Objection overruled. Exception.

Q (Question repeated by the stenographer) A What, after

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I bought him?

Q At the time you bought him, at the time you say that you bought him? A Well, about \$150 or \$125 or so.

Q Well, didn't the man tell you that he was wind broken?

A Even if he was wind broken.

Q And didn't he tell you he was no good? A No, sir, he didn't tell me he was no good.

Q Well, what did he tell you about the horse at the time?

A The only thing he told me that the horse is wind broken and he is an old horse.

Q And you think a wind broken old horse is worth \$150?

A Yes, sir.

Q And you thought he was worth \$150? A Yes, sir. Perhaps I got fooled, I don't know, I thought he was worth it.

Q Now, you painted this wagon with roof paint, didn't you?

A With what, with roof paint?

Q Yes? A No, sir.

Q What kind of paint did you paint it with? A That was red paint, I painted it with.

Q Did you make any effort to stable this horse in New York before you went down to Coney Island? A No, sir.

Q Went straight from where you bought this horse in Second avenue to Coney Island? A No, sir. I went to Harry Rosenzweig's house first and then from there I went straight down to Coney Island.

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Q Right to Gartner's place? A Yes, sir.

Q That's all.

H A R R Y R O S E N Z W E I G, one of the defendants, called and duly sworn as a witness on behalf of the defense, testified as follows:

(The witness gives his residence as 63 Chrystie St)

DIRECT EXAMINATION BY MR. HARRIS:

Q How old are you, Mr. Rosenzweig? A 19 years of age.

Q Were you ever convicted of any crime? A Yes, sir.

Q You were convicted? A I was sent away from the Children's Court, to the House of Refuge.

Q But you never were convicted of crime? A No, sir.

Q How old were you at that time? A 14 years of age.

Q Since that time have you ever been convicted of any crime? A No, sir.

Q You have received a letter of recommendation from Randall's Island, where you were for the past five years? A Yes, sir.

Q This is the letter of recommendation (indicating)?

A Yes, sir.

MR. HARRIS: Will the District Attorney allow me to read that?

MR. BOSTWICK: I do not think it is material.

Q What have you been doing since you got out of Randall's

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Island? A I have been working straight along.

Q With whom, and what have you been working at? A I have been working in a cleaning store when I first came out. That is, when you come out from Randall's Island you must have a man to employ you, and this man from the cleaning store, Mr. Schwartz employed me. I worked for him for two years, and after that I was driving for Alfred Meyer, 28 Rivington street. I got recommended from Alfred Meyer to the National Sponging Company. That was my last position.

Q Do you remember the 5th day of August, this year?

A Yes, sir.

Q Do you remember what happened on that day? A After going out looking for a little work and coming home a little tired I sat down in front of the door, when Benjamin Raffé passed by, and stopped with a horse and wagon and asked me to jump on the wagon and take a little ride with him. I asked him where he got the horse and wagon. He told me he bought it off a man, he wants him in a sale, and he told me if he should sell it and make a little profit that he would give me a few dollars.

Q Then what happened? A Then we drove over to Coney Island and stayed there a little while and fed the horse and we turned home.

Q Then what happened next? A Next day Mr. Benjamin Raffé came to my house again and we went down to the stable and fed the horse again, when we got arrested.

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Q Did you attempt to run away? A No, sir, made no such attempts.

Q What happened after you were arrested? A We were taken over to the station house and put in cells.

Q Put in cells? A Yes, sir.

Q Did you ever sign—during the time you were in the station house did the officer place you in one room? A No, sir.

Q (Continuing) Have Mr. Raffe in another room? A No, sir.

Q Did you see officer Micelli writing any statement?

A No, sir.

Q Of the kind that you heard him testify about? A No, sir.

Q Did you tell him what happened? A I told him the story I am telling the Court.

Q That is what you told him? A Yes, sir.

Q Did you ever steal this horse and wagon from in front of 54th street? A No, sir, I was not anywhere in the neighborhood.

Q Did you ever buy this horse and wagon from anybody?

A No, sir.

Q And the possession of this horse and wagon, or how you came with this horse and wagon is what you told the Court and jury? A Yes, sir.

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CROSS EXAMINATION BY MR. BOSTWICK:

Q Officer Micelli arrested you, didn't he? A No, sir.

Q Who did? A An officer in uniform.

Q You saw Officer Micelli at the station house, didn't you? A Yes, sir.

Q Did you tell him how you got this horse and wagon?

A I did.

Q Well, did your friend hear you tell him where you got it? A He did.

Q And where did you tell him that you got it? A I told him just as I told the Court.

Q You told him all the circumstances, how you got this horse and wagon? A No, not how I got it.

Q Well, what did you tell him? A I told him I was sitting in front of my house and Benjamin Raffé passed my house with a horse and wagon and asked me to jump on. I asked him where he got it and he told me he bought it. He also told me if he should sell it, and if he made a little profit he would give me a couple of dollars profit out of it.

Q And you also told the officer how you got this from this man? A No, sir. You asked me did I tell Officer Micelli how I come to the wagon. That's what I told him.

Q Well, did you tell him all about this man? A Which man?

Q Meeting this man in Delancey street? A No, sir, I

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didn't know anything about it.

Q Did you tell him anything about the \$50, getting \$50 for Benny? A No, sir.

Q Well, did you hear Raffe tell Micelli that there was a man with a wagon and horse at 9th street and Second avenue?

A I did.

Q Did you hear Raffe a moment ago on the stand say "I did not tell him how I got the horse and wagon"? A No, sir, I was not listening to Benny Raffe.

Q Now, if he testified to that a few moments ago, which is true?

MR. HARRIS: I object to that. He cannot characterize the testimony of another witness.

Objection overruled. Exception.

Q Now, answer that last question. (Last question repeated by the stenographer) A Well, I suppose what he says is true.

MR. HARRIS: Now, your Honor, I still set forth my objection, that this witness cannot characterize the testimony of another witness.

Same ruling and exception.

Q And not what you say? A Well, what I say, I know what I say, that's what --

Q I ask you again, did he tell Micelli how he got that horse and wagon or didn't he? A I didn't hear him tell any-

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thing because we were sitting --

Q You were together all the time? A All the time.

Q And what were you sent to the House of Refuge for?

A From school.

Q For what? A For truant.

Q How long were you in the House of Refuge? A About 17 months, 16 or 17 months.

Q Where did you stop to get this paint? A I didn't get it.

Q Who did get it? A Benny Raffe.

Q Where did he get it? A I don't know.

Q Didn't you see him get it? A No, sir.

Q You said you did not see him get the paint? A I was standing by the stable, by the horse and wagon.

Q And he went away from the stable to get the paint?

A Yes, sir.

Q So that you were at Gartner's place and he left you in care of the horse and wagon to go and get the paint?

A He didn't tell me anything. He just walked out while I was standing by the horse, feeding the horse and went out and got the paint.

Q You didn't know he went for the paint, did you? A No, sir.

Q When he came back with the paint did you help him paint the wagon? A I did.

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Q Did you see the name of the owner on the wagon and his place of business on it? A I didn't take notice.

Q You didn't notice that at all? A No, sir.

Q Well, do you know whether there was some name there?

A I don't remember.

Q You don't remember even seeing a name there? A No, sir.

Q That's all.

MR. HARRIS: The defense rests.

Mr. Harris closed the case on behalf of the defense.

Mr. Bostwick closed the case on behalf of the People.

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THE COURT'S CHARGE.

HON. WARREN W. FOSTER, J.

THE COURT: Gentlemen, the defendants are charged with grand larceny in its second degree. So far as this case is concerned, it is grand larceny because it is claimed that the property is worth more than \$50.

If more than \$50 in value is stolen, the crime is grand larceny, grand larceny in its second degree, so far as this case is concerned.

It is claimed that the defendants stole a horse, harness and wagon, altogether worth more than \$50. Now, it does not matter whether it was worth \$100 or \$125. If it is worth a penny more than \$50, it was the subject of grand larceny in the second degree.

Did these defendants steal it? If they stole it, they are guilty of larceny. They stole it if they took it from the possession of the owner, with the intention of depriving the owner of it, with the intention of appropriating it to their, the defendants' own use and benefit.

You have heard their story as to how they came in possession of it. Do you believe it, do you believe their story? That is all there is in the case. As reasonable men, weigh this evidence fairly; give the defendants the square deal that you have heard talked of so

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much -- at least you do before a political campaign starts and other issues take its place. But remember, there are two sides to every controversy -- in this case, the People of the State of New York against the defendants -- and that you are bound to give, if you are going to give a square deal, justice, justice to the People as well as justice to the defendants; justice to the defendants as well as justice to the People.

You will do your duty if you weigh this evidence fairly and squarely, and then render such verdict as your consciences dictate you should render, acquitting the defendants unless their guilt is proved beyond reasonable doubt; but when it is so proved, it is as much your duty to find them guilty as it is when it is not so proved your duty to acquit them.

The only question, then, in the case, I take it, is that of grand larceny in its second degree, and if you believe the defendants stole this property, and it is worth more than \$50, convict them; if they did not, acquit them.

You may retire, gentlemen, and determine upon your verdict.

The jury found the defendants guilty of grand larceny in the second degree.

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MR. HARRIS: If your Honor please, I move to set aside the verdict, as against the weight of evidence, against the law, and upon all the exceptions taken during the trial.

THE COURT: I will deny your motion.

MR. HARRIS: I take an exception.

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