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CASE

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

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THE PEOPLE OF THE STATE OF NEW YORK :BEFORE:

against

THOMAS COURTNEY,
Impleaded with
GEORGE HOWARD, alias THOMAS CARSTON.

HON. JOSEPH F. MULQUEEN,

J.,

and a Jury.

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Tried, New York, July 10, etc., 1912.

INDICTED FOR GRAND LARCENY IN THE SECOND DEGREE and
RECEIVING, AS SECOND OFFENCES.

INDICTMENT FILED MAY 15, 1912.

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

ASSISTANT DISTRICT ATTORNEY EMORY A. BUCKNER,

For the People.

GEORGE R. SIMPSON, ESQ.,

For the Defence.

TRANSCRIPT OF STENOGRAPHER'S MINUTES.

Hon. J. F. Mulqueen.

Frank S. Beard,

Official Stenographer.

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New York, July 10, 1912.

(A jury was empanelled and sworn).

THE COURT: Well, I think we had better take a recess now until tomorrow. And if these jurors will come back at eleven o'clock tomorrow morning it will be time enough.

Gentlemen of the jury, the Court will take a recess now until eleven o'clock tomorrow morning, and meanwhile be very careful not to discuss with any one this case in which you have been empanelled; do not talk about it among yourselves either, and do not come to any conclusion as to the guilt or innocence of the defendant until you hear all that is to be said on both sides, and until the matter is submitted to you by the Court for your decision; that is the time for you to make up your mind and not before that.

Now, you are excused until eleven o'clock tomorrow morning.

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TRIAL RESUMED.

New York, July 11, 1912.

MR. BUCKNER: It is conceded by the defendant that heretofore, to wit, at a Court of General Sessions of the Peace, holden in and for the County of New York, at the Criminal Courts Building, in the Borough of Manhattan, in the City of New York, on the 21st day of April, 1903, before the Honorable Martin T. McMahon, then a Judge of the said Court, said Thomas Courtney, the defendant now on trial, was in due form of law convicted of a felony, to wit, Robbery in the first degree, upon a certain indictment then and there in the said Court pending against him, the said Thomas Courtney. Thereupon, upon the conviction aforesaid, it was considered by the said Court of General Sessions of the Peace, and ordered and adjudged, that the said Thomas Courtney, the defendant now on trial, for the said felony and Robbery in the first degree whereof he was so convicted, as aforesaid, be imprisoned in the state prison for the term of four years and ten months.

MR. BUCKNER: If the Court please, these two women have been here repeatedly, and were here all day yesterday, and I told them to come at eleven. I fear that they are going to be a few minutes late.

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But Mr. Bradley is here, and, if the Court would care to utilize the time, we could select a jury in another case, the Imperato case.

THE COURT: Very well. Select the jury in that case.

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THE PEOPLE'S TESTIMONY.

VERONICA SCHUBERT, of 539 West 163rd Street, a witness called in behalf of The People, being duly sworn, testified as follows:

MR. SIMPSON: Will your Honor direct that all witnesses on both sides be excluded?

THE COURT: Yes, I so direct.

DIRECT EXAMINATION BY MR. BUCKNER:

Q. Now, Mrs. Schubert, you will have to talk a great deal louder than you talked up at my office, and do not get excited, and just take plenty of time, and try to talk so that the man in the last seat can hear you? A. Yes, sir.

Q. Are you a married woman? A. Yes, sir.

Q. And where do you live? A. I live 539 West 163rd Street.

Q. You live with your family? A. Yes, sir.

Q. Have you a husband and children? A. Yes, sir.

Q. What is your husband's business? A. Superintendent of houses, of buildings.

Q. How long have you lived up in that neighborhood? A. Well, I only lived there going on two months in that place.

Q. Did you live in New York before that? A. Yes, sir; always.

Q. You always lived in New York? A. Yes, sir.

Q. Do you remember where you were on the day, this

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spring, which caused all this trouble that we are here, today, for? A. Yes, sir.

Q. Do you know when it was, what day of the month and what month? A. It was the 1st of May, on a Monday.

Q. The 1st of May of this year? A. Yes, sir.

Q. And where did you go on that day? A. I went to a real estate office with my husband and my little boy, to collect --

Q. And where was the real estate office where you went? A. 181st Street West.

Q. And near what street on 181st Street? A. Between Broadway and Wadsworth Avenue.

Q. Was your husband with you? A. Yes, sir, and my little boy, too.

Q. Now, what were you going there for, that day?

MR. SIMPSON: I object to that as immaterial.

THE COURT: Objection sustained.

BY MR. BUCKNER:

Q. And what did you do when you got to this real estate office? A. What did I do?

Q. Yes? A. I was sitting there awhile, until we got my husband's money.

MR. SIMPSON: I object to what she did in the real estate office in the absence of the defendant as immaterial, irrelevant and incompetent.

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THE COURT: Objection overruled.

MR. SIMPSON: Exception.

BY MR. BUCKNER:

Q. What did you do with your husband's money after you got it?

MR. SIMPSON: I object.

THE COURT: Overruled.

MR. SIMPSON: Exception.

A. My husband give it to me in my hand bag.

Q. Did you have a handbag with you there? A. Yes, sir; a big black handbag.

Q. And how much did your husband give you? A. Fifty dollars, four tens and ten singles.

MR. SIMPSON: I object to the answer; and move to strike it out as immaterial, irrelevant and incompetent.

THE COURT: Objection overruled. Of course, the jury understands that this testimony is merely laying a foundation for further testimony. If it is not connected with the defendant, it must be entirely disregarded by them, unless they show that he did something to that money, or some other personal property. I do not know what the evidence will be, of course.

BY MR. BUCKNER:

Q. And what did you do with the fifty dollars after you

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got-it? A. Well, I went first to the delicatessen store.

Q. No, when you first got it in your hands, what did you do with it? A. My husband counted it, and put it in my bag.

MR. SIMPSON: I object to that as immaterial, irrelevant and incompetent, and move to strike out the answer.

THE COURT: Objection sustained. Strike out the answer.

BY MR. BUCKNER:

Q. And where did you go then? A. We walked down St. Nicholas Avenue, my husband and myself, and we went to a delicatessen store.

Q. Yes. When you left the real estate office did you see anybody or anything there which attracted your attention?

A. When I went into the real estate office, I seen a cab, with three men, a black taxicab.

Q. And did you see what the three men were doing? A. Well, I seen only one, who was talking to the others inside.

Q. Talking to the other two men? A. Yes, sir.

BY THE COURT:

Q. There were two men in the cab? A. Yes, sir; one was standing outside and two were inside of the cab.

BY MR. BUCKNER:

Q. And where was the cab standing with reference to the

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sidewalk? A. By the real estate office?

Q. Yes? A. Here was the real estate office and here was the saloon (illustrating).

Q. Oh, a saloon was next to the real estate office? A. Yes.

Q. And was the cab in front of the saloon or the real estate office? A. In front of the saloon.

Q. Did you see those men or any of them that time well enough to recognize them? A. Yes, sir.

Q. And did you ever see any of them after that, after that Monday that you saw them in front of the saloon; did you see any of them again? A. No, sir; not afterwards. I did not recognize them any more then.

Q. You mean at that time? A. Yes, sir; at that time.

Q. And then where did you go with your husband? A. We walked down St. Nicholas Avenue to between 78th and 79th Street, and we went to a delicatessen store, and the Atlantic Tea store, and as I walked across, between 78th and 79th Street, a man stood right in front of me, and give me two good pulls (illustrating).

Q. What kind of pulls? A. Like these (illustrating) and I had only the handle, and the man had the bag, and he pulled it out of my hand, and walked across the avenue on the other side, to the taxicab, and the one that was inside opened the door, and he went inside and shut the door.

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BY THE COURT:

Q. Now, you have gone pretty fast. The door of what?

A. The taxicab.

Q. Then you saw a taxicab there; did you? A. Yes, sir.

Q. Just what street, again, were you at when this bag was taken from you? A. Between 78th -- between 178th and 179th.

Q. Was anybody on the sidewalk? A. Well, lots of travel on the sidewalk, yes.

Q. Where was the man when he took the bag out of your hand? A. Right in front of me. He stood in front of me.

Q. And what did you do when he took the bag out of your hand? A. I screamed and ran.

Q. What time was it? A. Between eleven and twelve.

Q. In the day time? A. Yes, sir.

BY MR. BUCKNER:

Q. Did you have hold of the handle when he pulled it?

A. Yes, sir; I had hold of the handle.

Q. And did you try to hold it? A. Yes, sir; but I had the bag and groceries, and I tried to hold it the best I could, but I could not hold it. He got the bag.

Q. What was in the bag at the time? A. That money that I got.

Q. And what else, if anything? A. Fifty cents and a little pocketbook in which I had some change.

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Q. How much change? A. I could not tell you exactly. And another pocketbook, in which I had a pin and a pair of eye-glasses.

BY THE COURT:

Q. You mean a brooch? A. Yes, sir; a breast pin and a pair of eye-glasses, and keys, a bunch of keys.

BY MR. BUCKNER:

Q. How much was the change which you had in it? A. I could not tell you exactly.

Q. Well, did you have as much as one cent? A. No, it was more than one cent.

Q. This fifty dollars, what kind of bills was it?

MR. SIMPSON: I don't dispute that she had a bag in her possession, with money in it, whatever it was. That is not our defence at all.

BY MR. BUCKNER:

Q. Was this United States money, good money? A. Yes, sir.

Q. Now, what happened to the man after he grabbed the bag away from you; where did he go? A. He walked across to the other side of the avenue.

Q. The other side of St. Nicholas Avenue? A. Yes, sir. And there was one opened the door for him, and he went in.

Q. One opened the door of what? A. Of the taxicab.

Q. And then what did he do when the door was opened for him? A. He went in.

BY THE COURT:

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Q. Went in where? A. In the taxicab.

BY MR. BUCKNER:

Q. And then what did the man do ~~that~~ opened the door?

A. He shut the door, and drove slowly off.

Q. Did he get into the cab too? A. He was in there.

Q. Did you see how many people were then in the cab? A.
No, sir.

Q. And where did ~~the~~ cab then go? A. They turned around
178th Street up Wadsworth Avenue, and I followed it to 179th
Street and Wadsworth Avenue.

Q. Now, did you see the man after that? Did you ever
see that man again after he took the bag away from you? A.
No, sir, not after that any more.

Q. Well, did you ever see him again? A. Oh, I seen him
down in the Detective Bureau.

Q. You picked him out in the Detective Bureau? A. Yes,
sir.

Q. Did you pick him out of any number of men? A.
There were a number of men, a whole line there.

Q. How many in the line, about? A. I cannot tell you.
I think about ten or twelve.

Q. And have you see him since that day in the Detective
Bureau? A. Not since; no more.

Q. Did you see him in the police court? A. Yes, sir;
I seen him in the police court.

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Q. Do you see him now? A. Yes, sir.

Q. Is he here today? A. Yes, sir.

Q. Where is he? A. Right that man there (indicating the defendant)

Q. This man here (indicating the defendant)? A. Yes, sir.

Q. Pointing to the defendant? A. Yes, sir.

Q. Is this the man that took your bag away, that day?

A. Yes, sir.

Q. And did you get a good look at him? A. Yes, sir.

Q. And that was up here in New York City; was it? A. Yes, sir.

CROSS EXAMINATION BY MR. SIMPSON:

Q. Mrs. Schubert, you were with your husband that day?

A. Yes, sir.

Q. Was your husband with you at the time you had your bag on your arm? A. Yes, sir.

Q. And was he with you at the 178th and 179th Street corner? A. Yes, sir.

Q. Was he there when the man grabbed the bag? A. Yes, sir.

Q. Is your husband here in Court? A. Yes, sir.

Q. Do you know Mr. Pringle? A. Yes, sir.

Q. Was he there? A. Well, I never seen Pringle before.

Q. Well, you have seen him since, haven't you? A. Yes, sir.

Q. and spoken to him since; haven't you? A. No, sir.

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Q. Was he there at that time? You knew that he was there; don't you? A. Well, I didn't see him that time.

BY THE COURT:

Q. You didn't see him that time? A. No, sir.

BY MR. SIMPSON:

Q. Now, you were called to Headquarters; that is the Detective Bureau? What day of the month in May? A. The 7th of May.

Q. That was seven days after this alleged occurrence? A. Yes, sir.

Q. You were taken into Headquarters, and you saw this man on the line; did you not? A. I seen more than six, I think.

Q. Let me see if I can convince you or correct you in that. Who was the man that took you into the room where the men were standing on line? A. I couldn't tell you. I don't know the man.

Q. Do you know the detective? A. I know him when I see him.

Q. Somebody took you into that room? A. Yes, sir.

Q. Now, there was the first man -- you went in alone, did you? A. I went in with some men, detectives.

Q. Now, I want you to tell the jury what you saw when you came into that room the first time; what you saw and what you did? A. I picked out the man who snatched my pocketbook.

Q. Let me refresh your recollection. Didn't you go up

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to a man on the line, and pick out that man, a man other than this defendant? A. No, sir.

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

Q. You can't be mistaken about that? A. No.

Q. What position on the line was this man in, this defendant here; do you know? A. He was in the middle.

Q. He was in the middle? A. Yes, sir.

Q. Didn't you go in and pick out the third man on the line? A. No, sir; I didn't pick out the third man.

Q. Well, I will put the questions to you categorically. Now, when you went into that room weren't there six men on the line? A. More than six, I think.

Q. How many men were there? A. About ten or twelve.

Q. Are you sure about that? A. Yes, sir; I am sure.

There was a whole line.

Q. There was a line? A. Yes, sir.

Q. Will you swear that there were more than six on that line? A. I did not count them.

Q. (Question repeated)? A. I didn't count them.

Q. When you went in what was the first thing you did?

A. I looked around to see if I could see the man that snatched my pocketbook.

Q. And did you see the man that snatched your pocketbook on that line? A. I did.

Q. And did you pick out this defendant on that line?

A. I did.

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Q. Positive of that? A. I did.

Q. What did you do? A. I said, "That's the man snatched my pocketbook".

Q. Did you put your hand on him? A. Yes, sir.

Q. Who was present at that time? A. The detective.

Q. Do you know the detective's name? A. Captain Tunney, I think.

Q. Yes, that is the man, Captain Tunney? A. Yes, sir.

Q. Now, did Captain Tunney tell you to go in and pick out the third man on that line? A. He didn't tell me. I picked one man, and went out of the door.

Q. And that man you are sure was the defendant? A. Yes, sir.

Q. You can't be mistaken? A. Can't be mistaken.

Q. Now, when you first went in there, did Captain Tunney say to you "Look at that man", where the men were standing; didn't he say that to you? A. No, sir. He took me by the arm and he said, "Don't be afraid. Go in and pick out the man that snatched your pocketbook".

Q. That was before you went in? A. No, sir.

Q. In the room? A. Yes, sir.

Q. Where the men were? A. While we were going in.

Q. While you were going in? A. Yes, sir.

Q. Didn't he say to you "Look at them and see whether you can identify the man"? A. No, sir.

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Q. Are you sure about that? A. No, sir.

Q. It is very important? A. No, sir.

Q. Didn't he say to you "Look at those men, and see whether you can identify the man"? A. No, sir.

Q. And did you not after looking at the man go up and put your hand on the man that was third on the line?

MR. BUCKNER: I object to that as repetition.

It has been asked three times, yes or no.

THE COURT: I will allow it.

BY MR. SIMPSON:

Q. (Question repeated)? A. No.

Q. That is the answer. And say that was the man?

Did you use those words? A. (No answer).

BY THE COURT:

Q. How many men did you put your hand on in the line?

A. On one.

Q. On one? A. Yes, sir.

Q. And that was the defendant? A. Yes, sir.

Q. And that was the only man on whom you put your hand?

A. That was the only one.

BY MR. SIMPSON:

Q. Now, there were other men on the line, weren't there?

A. Yes, sir.

Q. Weren't you asked by Captain Tunney whether you could identify any of the others on the line? A. No, sir.

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Q. Did you see any of the others on the line who were with this defendant on that day? A. Yes, sir.

THE COURT: On which day?

MR. SIMPSON: On the first day of May, on which she was robbed.

BY MR. SIMPSON:

Q. Before you identified this defendant were you shown any photographs in the Detective Bureau by any detective or detectives, any pictures or photographs? A. Did I see any photographs or pictures?

Q. Yes, before you identified the defendant? A. No, sir; after that.

Q. After that? A. Yes, sir.

Q. Now, who showed you that picture? A. Captain Tunney.

Q. And he showed you the picture of this defendant, didn't he? A. Yes.

Q. And what did he say to you about this defendant?

A. "Is that the man?" and I said, "Yes, that's the man that snatched my handbag."

Q. That was before you went in? A. No, it was after.

Q. After? A. Yes, sir.

Q. Now, after you had identified this defendant in that room, did you go home? A. I went home.

Q. Now, think a little bit. Didn't you go downstairs in the basement? A. Yes, sir; I went down in the basement.

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Q. And when you came down in the basement how many men did you see down in that basement? A. How many?

Q. Yes, about? A. I only seen that one man.

Q. And wasn't Captain Tunney there? A. Yes, Captain Tunney was there.

Q. Now, let me see. Didn't Captain Tunney say, "There is the man who robbed you," pointing to this defendant, while he was standing under a strong light, surrounded by policemen? Yes or no?

THE COURT: Well, when was that said?

MR. SIMPSON: After this alleged identification, if your Honor please?

BY THE COURT:

Q. Now, did Captain Tunney, after you had identified this man, as you claim, and after you had gone downstairs, did Captain Tunney say to you --

THE COURT: When was this alleged statement made?

MR. SIMPSON: After she came into this room and identified some person.

THE COURT: You mean after she had picked out this defendant, she went downstairs?

MR. SIMPSON: No, sir, after this defendant had gone downstairs.

BY MR. SIMPSON:

Q. You have testified you went downstairs? A. Yes, sir;

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I went downstairs.

Q. Now, when did you go downstairs? A. After I picked the man out.

Q. Why did you go downstairs? A. I was called downstairs.

Q. Who called you downstairs? A. Captain Tunney.

Q. And when you got downstairs how many people besides Captain Tunney and this defendant were down there? A. Only Captain Tunney.

Q. How many other people? A. I don't know.

Q. Weren't there a number of people standing around? A. No, sir.

Q. Where was the defendant standing downstairs? A. He was standing -- I don't know if it was the elevator or what it was. It was in the corner.

Q. Was there a good light there? A. Yes, it was light there.

Q. Now, didn't Captain Tunney say these words to you--

THE COURT: At that time?

MR. SIMPSON: Yes, sir; at that time.

BY MR. SIMPSON:

Q. "There is the man who robbed you" (pointing to this defendant)? A. No, sir.

Q. What did he say, if anything, to you, Captain Tunney at that time? A. When we went downstairs?

Q. Yes? A. He said, "That is the man. Are you sure?" and I said, "Yes, that's the man."

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Q. And when was it that you told him you were sure of the man before that time? A. When I picked him out.

Q. That was upstairs? A. Yes, sir.

Q. Then do you know why it was that you had to go downstairs in the basement where the cells are, to see this man again? A. To ask me for my address.

Q. Tunney wanted your address? A. Yes, sir.

Q. And he took you down in the basement? A. Yes, sir; down there.

Q. Did you see any cells down there when you went down there? A. No, sir.

Q. Did you see any iron doors? A. I think I did.

Q. And how near those iron doors was this defendant standing? A. He wasn't near the iron doors. He was standing like he was standing on the elevator, over in a corner.

Q. Did you notice where the light was? A. There was no light there, where he was standing. It was outside in the hall, like.

Q. You were down in the cellar, weren't you? A. Yes, sir.

Q. There was no hall there; was there? A. Well, some kind of a corner, like a hall, where you go down a steps, and the man was standing in that corner like that (illustrating).

Q. Well, there was a pretty good light there; was there not? A. Yes, sir.

Q. And there was nobody you say, but Captain Tunney

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and yourself there? A. Well, there were some other men standing around. I wasn't looking.

Q. And the other lady went down with you; didn't she?

A. Well, I don't know.

Q. You don't know whether the other lady went down with you? A. Oh, yes; she went down, too.

Q. Both of you went down? A. Yes, sir, to take a good look at that man.

Q. To take a good look at that man? A. Yes, sir.

Q. And that was after you had identified him? A. Yes, sir.

Q. Was she, this other lady -- is she a witness here?

A. Yes, sir.

Q. Was she in the room at the time you first identified this defendant? A. No, sir. Each was taken separate.

Q. Each was taken separate? A. Yes, sir.

Q. But when you went down to the cellar when you were called down by Captain Tunney, you went down together? A. Yes, sir.

Q. And did you come up together? A. We came up together.

Q. And did you go down together? A. Yes, sir.

MR. SIMPSON: That's all.

MR. BUCKNER: That's all.

MR. SIMPSON: And will your Honor let her remain

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inside of the court room?

THE COURT: Yes, she may remain in the court room.

R O S E D O E R N B E R G, of 552 West 174th Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BUCKNER:

Q. Mrs. Doernberg, are you a married woman? A. Yes, sir.

Q. Where do you live? A. 552 West 174th Street.

Q. Do you know this woman, Mrs. Schubert, who just left the stand here? A. Never saw her before the case.

Q. You never saw her before this case? A. No, sir.

Q. What business is your husband in? A. Plumbing.

Q. Plumbing? A. Yes, sir.

Q. Where were you on the day you first saw Mrs. Schubert?
A. On St. Nicholas Avenue, between 179th and 178th Street.

Q. And what were you doing that day? A. I was wheeling the baby carriage.

Q. And what attracted your attention to Mrs. Schubert?
A. Well, I was bending over the baby carriage, and I just happened to raise my head, and I seen this man coming back of this woman; I was walking along, and I just was raising my head, and saw this man coming back of this woman, and snatching her bag.

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Q. And how close to the woman were you when he snatched the bag? A. Well, I should judge about thirty yards.

Q. Well, now, judge from this room and tell us about how far away you were when you saw that? A. About over to that man there, with the cane in his hand (indicating the beginning of the cage for prisoners).

BY THE COURT:

Q. And you were pushing your baby carriage? A. Yes, sir.

Q. And in front of you you saw this thing happen? A. Yes, sir.

BY MR. BUCKNER:

Q. Did you get a good look at him? A. Yes, sir; very good.

Q. And what did you see him do? A. I saw him snatch the bag out of her hand, and run across the street with it.

Q. And what did he do after he ran across the street? A. He got into a waiting taxicab.

Q. Were there any other taxicabs around there at the time? A. No, sir.

MR. SIMPSON: I move to strike out the word "waiting taxicab".

THE COURT: Yes. Strike it out.

Q. You mean a standing taxicab, don't you? A. Yes, sir; it was just slowing up.

Q. On the other side of the avenue? A. Yes, sir; it was

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just slowing up when I noticed it.

Q. Was there anybody inside of the cab? A. I didn't see them.

Q. Did you see anybody outside of the taxicab, excepting the man who got in? A. No, sir; I didn't notice that.

BY THE COURT:

Q. Was there a chauffeur on the cab? A. I didn't notice that because I was on the other side of the street.

Q. Did you see the man well enough, the man who snatched the bag, to pick him out? A. Yes, sir; I did.

Q. When did you next see him and where, if anywhere? A. Oh, at Police Headquarters.

Q. Did you pick him out of the line? A. Yes, sir.

Q. How many men were in the line? A. About fourteen or fifteen.

Q. And did you pick him out the first time? A. Yes.

Q. You didn't pick out anybody else first? A. No, sir.

Q. You made no mistake? A. No, sir.

Q. Well, did you see the man again after that day? A. Yes, sir.

Q. Do you see him now? A. Yes, sir.

Q. Where is he? A. That man there (indicating the defendant).

Q. Pointing to the defendant? A. Yes, sir.

CROSS EXAMINATION BY MR. SIMPSON:

Q. Mrs. Doernberg, do you remember May 1st very

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distinctly? A. Yes, sir.

Q. And you also remember that you saw a man with his back to you, some twenty or twenty-five feet in front of you?

MR. SIMPSON: Will you concede it was that distance?

MR. BUCKNER: I suppose so.

Q. In front of you? A. Yes, sir.

Q. And you were wheeling a baby carriage? A. Yes, sir.

Q. And you looked up, and saw this man approaching the woman Schubert, with his back towards you? A. No, sir; I was wheeling the baby carriage, and, as I looked up, I saw him in back of her already, pulling the bag away from her.

Q. You saw a man, who, you say, was twenty-five feet ahead of you, at a time when you looked up and saw his back to you? A. No, the side of his face.

Q. The side of his face? A. Yes, sir.

Q. And you saw him grab the bag from Mrs. Schubert? A. Yes, sir.

Q. From the rear of Mrs. Schubert? A. Yes, sir.

Q. And run to a taxicab, which he entered? A. Yes, sir.

Q. That is right; is it? A. Yes, sir.

Q. Now, at any time did this man here, this defendant, whom you now identify, turn his face to you? A. Well, I saw him from a side view.

Q. You got a side view of the man? A. Yes, sir.

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Q. Now, when was the first time, if at all, you saw this defendant? A. At Police Headquarters.

Q. When was that? A. The following Wednesday, I believe.

Q. The following Wednesday? A. Yes, sir.

Q. Did you go there with Mrs. Schubert? A. No, sir; I went down myself.

Q. Well, who brought you? A. Well, Detective Hyman came in the morning and told me to go down and identify that man.

Q. Detective Hyman came to see you in the morning? A. Yes, sir.

Q. And, in pursuance of his request you went yourself to Headquarters? A. Yes, sir.

Q. And whom did you see there, if any one? A. Well, I saw detectives.

Q. Well, any one in particular? A. No one in particular.

Q. Did you see Captain Tunney? A. Yes, sir.

Q. Did you follow the instructions of Captain Tunney as to going into the room to identify anybody? A. Yes.

Q. Now, before you got into that room to identify, had anybody spoken to you concerning the line; what you were to do when you got into that room? A. Yes, sir; one of the detectives told me what to do.

Q. Now, do you know the name of the detective who told you to do that?

THE COURT: Well, she didn't say anything as to

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what he told her.

MR. SIMPSON: No, not yet.

THE COURT: She simply said that one detective spoke to her, but you didn't ask her what the detective said.

MR. SIMPSON: No, sir; I have not.

BY THE COURT:

Q. Well, what is the name of the detective who spoke to you? A. I believe it is O'Neill. I am not sure.

Q. You believe it is O'Neill? A. Yes, sir.

BY MR. SIMPSON:

Q. And you have met O'Neill day in and day out, down here; haven't you? A. Yes, sir; and I am almost sure it was O'Neill.

Q. And was Captain Tunney in the room when Detective O'Neill was talking to you? A. He was standing about two feet away from me.

Q. Well, did any other detectives speak to you that day? A. Well, they were all speaking a little on the subject.

Q. That was before you went in to identify? A. Yes, sir.

Q. Now, who took you into this room? A. Hyman, I believe.

Q. Hyman took you in? A. Yes, sir.

Q. Was Captain Tunney in the room? A. I didn't look;

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I didn't notice. There were a few men standing in back of me that I didn't notice.

Q. Now, when you got into that room, I want you to tell this jury how many men were on the line? A. Well, about thirteen or fourteen. I don't know exactly.

Q. Well, were they all standing on the line? A. Yes, sir.

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

Q. You are sure that there were not six men standing on the line? A. Well, I tell you I don't know the exact number. I should think about thirteen or fourteen men.

Q. You were excited? A. No, not at all.

Q. You were quite cool, calm and collected? A. Yes, sir.

Q. And you knew what you were doing? A. Yes, sir.

Q. Now, as you came into the room, what, if anything, was said? A. Just to identify the man.

Q. Who said that to you? A. I don't know. Some man said it to me.

Q. Was it Captain Tunney? A. No, sir; I don't think so.

Q. Well, do you know Captain Tunney? A. Well, only once, down at Headquarters, I met him.

Q. Didn't you put your hand on the third man on the line, on that day, first? A. (No answer).

BY THE COURT:

Q. Do you understand that question? A. Yes, I understand

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it.

BY MR. SIMPSON:

Q. Now, remember that you are under oath, and under the obligation to tell the exact truth?

BY THE COURT:

Q. How many men did you pick out on that line? A. Only one.

Q. And do you now remember what number he was on the line? A. Well, he was near the window. I am not positively sure whether he was the third or fourth man.

BY MR. SIMPSON:

Q. Well, when you went and picked out that man, did you pick out this defendant; was the defendant the first man you put your hand on in that line? A. Yes, sir. I saw him downstairs.

Q. Oh, you saw him downstairs? A. Yes, sir, I saw him downstairs again.

Q. The second time? A. Yes, sir.

Q. But I don't mean that. I mean when you came in, and as you went along the line; did you not place your hand on a person other than this defendant? Now, think? A. No, sir; I am almost sure.

Q. And is it not also a fact, after you had -- did you identify any other person on the line there? A. No, sir.

Q. Were you asked to identify anybody else on the line?
A. No, sir.

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Q. Were you asked to look for any of the other men on the line you could recognize? A. No, sir; I only told them I saw one.

Q. Now, is it not a fact that the Captain, or some one else there, made these men walk up and down for you to look at, in that room? A. No, sir.

Q. Is it not a fact, Mrs. Doernberg, that you picked another person, other than this defendant, out, on three separate occasions, and then the man -- and that the man that you picked out was ordered to come out some six feet from the line? A. Yes. I demanded that, because I saw the side view of the man, and that is the reason I asked it.

Q. And was that this defendant? A. Yes. I am not sure.

Q. Now, be sure? A. I am almost positive.

Q. Now, was it not the officer that was called out; the man that you had put your hand on his shoulder, and was called out some six feet from the line, and not this defendant? A. Well, there was a few that ~~did~~ that; it wasn't only one. I asked it. I asked that question, if I could have one or two of them step out, so that I could get a side view of the face.

BY THE COURT:

Q. That is, before you identified anybody, you asked that? A. Yes, sir.

BY MR. SIMPSON:

Q. Now, you had identified the third man on that line.

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Let me see if I can refresh your recollection --, let me see if I can refresh your recollection -- then, as you were about to go out, Captain Tunney said to you, "Wait a moment", and then it was that each one of the men was called to walk? A. Yes, sir.

Q. And isn't that so? A. I pointed with my umbrella, and said, "That is not definite enough. Let him walk out."

Q. And, pursuant to your request, each individual was walked out, weren't they, each one on that line? A. Yes, sir; each one stepped out separately.

Q. And then didn't you identify a person other than this man, at that time? A. I am almost positive.

Q. Now, think. Of course I was not there, and the Judge was not there, and the jury were not there? A. Certainly.

Q. And it is of importance. I have only the statement of what I had learned took place there, and I may be wrong. Now, ~~test~~ your memory? A. I am almost sure.

Q. Now, isn't it a fact, that after you had taken the third man on the line, and this defendant was called out, he being the fourth man, you said, "He looks like the man"? A. Yes, sir.

Q. And then, after you went out of that room, isn't it a fact that Captain Tunney called you and the Schubert woman and requested you to come downstairs? A. Yes, sir.

Q. Before you had gone downstairs, however, this defendant had been taken downstairs; hadn't he? A. Yes, sir.

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Q. Now, when you got downstairs in the cellar; it was a cellar, wasn't it? A. Yes, sir.

Q. There was a pretty sharp light burning; was there not? A. Yes, sir.

Q. What, if anything, did Captain Tunney say to either one of you ladies, if anything at all? A. He said, "Well, this is the man," and we both said, "Yes. This is the man".

Q. Now, didn't he use these words, "There is the man who robbed you"? A. He said, "We have got him". That is all he said.

Q. He said, "We have got him"? A. Yes, sir.

Q. That was after you had made an identification, that is, as you have testified in answer to my questions? A. Yes, sir.

Q. And you said, "He looks like the man," in the other room, that is, he looks like the man that you identified in the other room? A. Yes, sir.

MR. SIMPSON: That is all, Mrs. Doernberg.

REDIRECT EXAMINATION BY MR. BUCKNER:

Q. Just a moment, Mrs. Doernberg. Do you remember whether this defendant was third, fourth, fifth, sixth or seventh man in the line? A. Well, he was either third or fourth man, I am not certain.

Q. Now, Mr. Simpson is asking you questions very much involved, in which he says that you picked out first number 3,

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and then number 4. Did you mean to testify that way? A. No, sir. And I pointed out with my umbrella, and I said, "You must be more definite, and you must have them step out of the line," and I pointed my umbrella to the defendant, but I am not sure whether he was the third or the fourth man.

BY THE COURT:

Q. . And you never pointed out any other man in that line; is that so? A. Yes, sir.

Q. You pointed to no one else in that line? A. Yes, sir.

Q. You are positive of that? A. Yes, sir.

RE CROSS EXAMINATION BY MR. SIMPSON:

Q. Did you at any time, Mrs. Doernberg, put your hand on the defendant, or any other person in that line? A. Yes, sir; on the defendant.

Q. When was it that you put your hand on the defendant? A. Down in Headquarters.

Q. Where was it? A. Well, it was in a big room. I don't know exactly what room it was.

Q. Is that the room you went into where the men were on the line? A. Yes, sir.

Q. Did you put your hand on any other person in that room? A. No, sir.

Q. When was it that you put your hand on the defendant in that room? A. Well when I was told to identify him.

Q. After you had requested that they should come out of the line, so that you could get a side view of the faces? A. Yes, sir.

Q. And up to that time you had pointed to no one else in that line? A. No, sir; I only pointed my umbrella at this gentleman here (indicating the defendant).

Q. Didn't you point it at number 3? A. I am not sure whether it was or four.

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BY THE COURT:

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Q. Now, did you point your umbrella, he asks you, at any other man on that line but this defendant? A. No, sir; I didn't.

MR. SIMPSON: That's all, Mrs. Doernberg.

F R E D E R I C K F. S C H U B E R T, of 541 West 163rd Street, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BUCKNER:

Q. Mr. Schubert, will you try to talk very loud, just as loud as I am talking? A. Yes, sir.

Q. What do you do for a living? A. I am superintendent of buildings.

Q. Now, take your hand down, and use your mouth more, so that the last gentleman can hear you. Is that your wife over here (indicating Mrs. Schubert)? A. Yes, sir.

Q. Have you got a family? A. Yes, sir.

Q. Were you with your wife on the 1st of May, when this trouble occurred? A. Yes, sir.

Q. Did you see any pocket-book snatched from her hand yourself? A. I did see it.

Q. I mean with your own eyes? A. With my own eyes.

Q. And where were you standing? A. I was standing on the other side of the street.

Q. Oh, you were across the street? A. Yes, sir.

BY THE COURT:

Q. You mean across the avenue; don't you? A. Yes, sir;

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the avenue.

Q. You were on one side of St. Nicholas Avenue? A. Yes, sir; and the wife went to meet me.

Q. Now, get the thing straight. Was it the street or the avenue? A. St. Nicholas Avenue.

Q. And you saw some one snatch your wife's bag? A. Yes, sir.

BY MR. BUCKNER:

Q. Did you see what the man did, after he got the bag? A. I saw him walk in the taxicab.

Q. And how far was it from you, the taxicab? A. Well, I should judge about the length of this room; not quite.

Q. Did you see anybody else there at the taxicab? A. I didn't see anybody inside, but saw a hand on the door of the taxicab.

Q. I see. Did you see anybody outside of the taxicab? A. Yes, there was somebody outside.

Q. Well, did you get a good look at the man? A. Yes; I identified a man by the name of Kirk.

Q. Did you get a good enough look at the man who took the pocketbook to identify him? A. Well, I only saw the man from the side view.

Q. And you have not picked him out? A. No, sir.

Q. And don't pretend to pick him out? A. No, sir.

Q. But you saw another man there? A. Yes, sir.

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Q. And you picked him out? A. Yes, sir.

Q. Now, what did the taxicab do, after the man got in it, the man that had taken the bag? A. Well, the cab was on the wrong side of the street, where he ~~shall~~ come up, and the steam was up, and the hand rested on the door, and everything was ready to jump in, and off she went.

MR. SIMPSON: I object to the latter part of the answer.

THE COURT: Objection sustained. Strike it out.

BY MR. BUCKNER:

Q. Do you know how many people were in the taxicab? A. No, sir. I was behind the taxicab, and I could not see that.

BY THE COURT:

Q. What was the color of the taxicab? A. Black.

BY MR. BUCKNER:

Q. Was there any other taxicab there? A. No, sir.

CROSS EXAMINATION BY MR. SIMPSON:

Q. You were there that day? A. Yes, sir.

Q. Perfectly sober? A. Yes, sir.

Q. You saw a man grab your wife's pocketbook? A. Yes, sir.

Q. And you got a side view of him? A. Yes, sir.

Q. Was that man this defendant? A. By the side view, yes. But I won't say that is the man. I had only a side view. It looks almost like him.

Q. You had only a side view of him? A. Yes, sir.

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Q. Will you swear that this defendant is the man that took your wife's pocketbook? A. I will not.

REDIRECT EXAMINATION BY MR. BUCKNER:

Q. You don't know? Is that right? A. No, sir; I couldn't say that. I don't know.

MR. BUCKNER: The People rest.

MR. SIMPSON: In order to preserve the rights of the defendant, I ask your Honor to take away from the consideration of the jury the charge of Grand Larceny in the second degree, as a second offence, upon the ground that the People have failed to prove facts sufficient to constitute the crime.

THE COURT: Denied.

MR. SIMPSON: Exception. And your Honor's denial of my motion is no expression of your Honor's opinion as to the guilt or innocence of the defendant.

THE COURT: Certainly not. And the jury will so understand.

MR. BUCKNER: There is the receiving count in the indictment. I don't care about that.

THE COURT: Then as I understand it, the District Attorney wants the case to be put to the jury solely on the larceny charge?

MR. BUCKNER: Yes, sir.

MR. SIMPSON: Yes, sir.

THE COURT: Then it is so ordered.

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THE DEFENCE.

T H O M A S C O U R T N E Y, the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SIMPSON:

Q. Thomas, where did you live at the time of your arrest?

A. 554 West 51st Street.

Q. With whom did you live there? A. A woman by the name of Mrs. Caddell.

Q. How long had you roomed there? A. From about the 3rd day of April, and was living there at the time of my arrest.

Q. Where had you been employed at that time? A. 477 Third Avenue, for Martin Flanagan.

Q. As what? A. Tending pool tables, and waiting on drinks, and I went to work about three o'clock in the afternoon and closed up when there was no more business, any time from one to three o'clock in the morning, when business got slow, I closed up the place and turned in the keys.

Q. And you worked there from what period of time? A. From Monday, January 8th, I went to work there.

Q. You have been convicted of crime, Tom? A. Yes, sir.

Q. And how many times? A. I have been convicted of one felony.

Q. One felony? A. Yes, sir.

Q. And how many misdemeanors? A. Two.

Q. And how many times have you been arrested by the police?
A. About twenty.

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Q. Did you ever have any difficulty with the police?

A. I was arrested, four years ago, for assault upon a policeman.

Q. What was his name? A. I think it was McKenna -- no, McManus.

Q. Was that after you had finished your time? A. Yes, sir; two weeks after I came home.

Q. Do you know the officers in this case? A. Yes, sir.

Q. Had they locked you up before this time? A. No, sir.

Q. At any time? A. No, sir.

Q. Now, where were you on the 1st of May, 1912, if you know? A. I was in my home, where I was stopping at the time, 554 West 51st Street.

Q. What time of day did you get there? A. I got there in the morning, around four or five o'clock.

Q. And went to bed? A. Yes, sir.

Q. What time did you leave the house that day? A. Between one and two.

Q. Were you in the vicinity of 178th and 179th Street, on the 1st day of May, between eleven and twelve in the morning of that day, and did you at that time grab a bag from the arm of the complaining witness, Mrs. Schubert? A. No, sir.

Q. And jump into a taxicab? A. No, sir.

Q. You are positive about that, Tom? A. Positive. I will take my oath, and, as God is my judge, I was not in the neighborhood.

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Q. And when were you arrested? A. On the 7th day of May, on Tuesday morning, about three o'clock, eating in a restaurant, between 40th and 41st Street, on Eighth Avenue, in Mahoney's lunch room.

Q. And where were you taken when you were arrested? A. There were four of us eating together. We were standing at 42nd Street first when the officers came along, and they went to the opposite side of the street and stood in the doorway and watched us until we went in and got a drink, at 43rd Street, and then followed us into that restaurant, and came in with several officers, and I had a beef stew in front of me, when the four officers came in, and grabbed us and searched us, and said "Where is your guns", and searched us all around, and took us to the 37th Street station house.

Q. Did you ask the officers what you were arrested for? A. They said, "We are back on our old tricks, picking up people on spec."

Q. What do you mean by the word "spec", or don't it mean anything to you? A. Why, on suspicion, I suppose. And we were taken to Police Headquarters, at eight o'clock in the morning, and kept there until eleven o'clock in the morning.

Q. Did you have any talk with any person or persons while at Police Headquarters that morning; that is, before you were stood up in line? A. Why, I was taken downstairs and put in the room, in the Bertillon system room. The four of us

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sat there until about eleven o'clock, and then they fetched us upstairs into this room.

Q. Now, who was in that room when you got there? A. There were about five police officers, five or six police officers.

Q. And how many others? A. That was all. They had another --

Q. Now, what was done with you there in that room, before these women came in? A. As we was fetched upstairs we was fetched out of the basement into this big, large room, and over in the other room, opposite, there were four complainants, two women and two men, which I had never seen until that moment when they were fetched out into this room.

And we were lined up in this room, and there were four or five policemen, two or three of them connected with this case, they came down with us, Officer O'Neill and Kerr, and another officer that I don't know, and they fetched us over and they lined us on this side of the table against the wall (illustrating).

And there was an officer, about six feet, with a black mustache, on the end, and with him another officer, built like me, on the other side of me, and I between.

And one of the officers walked towards this other room and said "Are you ready"? And I said, "What is this", and one of them said, "You know what it is. We will show you

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what it is . It is an identification."

Then I turned to this fellow that was fourth and I said, "You had better step up here, if it is an identification, and get between these two young fellows"-- that was Howard -- and he got up between the two officers.

And they went into this other room, and fetched out this young woman first.

She walked out, and she walked over to number three, which was one of the officers, or whatever position he held -- I don't know what he was -- I never seen him before or since -- and she put her hand on this officer, and Captain Tunney said, "Are you positive", and she said, "Yes, I am positive".

And then he said, "Look along the line and walk along the line, and see if you can recognize anybody else," and she said, "No".

And he said to the first officer, "Step out, is this one of them?" and she said, "No".

And he said to the next fellow, "You step out", and she said, "No".

And the third man that stepped out she said, "Yes", that is one of them", and he said, "Are you positive?" and she said, "Yes".

And then he said to me, "Step out". And he said, "Look at this man, is he one of them", and she said, "I am not sure, he looks like one."

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And so she picked out number three, the only one of the four of us that was clean shaved, and she walked over and did not identify me.

And, after a long consideration, she said that I looked like one of the men, but she was not positive.

And then they fetched out a big stout man, and he said he couldn't identify anybody in the line. No, first he went to number three, the same as the other two did, and then he picked out this Howard, and he couldn't identify the rest of us.

And then they fetched out the other gentleman, the husband of the lady, and he said he couldn't identify any one; he looked along the six of us.

And, on this side of the room, was seven or eight officers, across the table, but they were not in line with us; and he said he could not identify any one, but after saying no twice, they persisted on him looking over thoroughly, and he said that he thought Kirk looked like one of them.

And they took me downstairs, and when I was down there, about five minutes, four or five officers came down, and Captain Tunney took me out and put me in a corner with the four or five officers, under a big electric light, and called me all the vile names he could think of; that I was an ex-convict, and cop fighter, and he would attend to me, and he would send me back to state prison where I belonged.

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And he said it was well that it was not him that I had the trouble with, or I would be over in the graveyard instead of down here on this charge, and he would make it his business to see I was convicted.

And he fetched in the two women. As they got to the bottom of the stairs -- he saw them coming and he called them, and he said, "There is the man that robbed you, and nobody else."

And I was talking to Captain Tunney at the time, and I turned around, and I said, "No, madam, I never done such a thing in my life, I never robbed a woman, and I never seen you before, and I never done anything like that in my life. I never robbed a woman in my life," and he said, "You are a liar," and the women went away, and he grabbed me, and he threw me in the cell.

And we were taken to the Harlem Police Court -- they wouldn't take us direct to the police court -- but they put us in the 126th Street station house, and held us to about half-past one, and fetched us into a room in the police court, where they had about eleven men, all clean shaved, some taller and some smaller than me, and fetched in four or five different witnesses.

And they identified two or three people in the crowd, but there was no identification for me. They were eye witnesses, they said, and they swore that these were the men that

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done it, and they said I wasn't there, they didn't know me at all.

There were five of them there in the Harlem Police Court, and there was no identification.

Q. And those five people identified other people on the line? A. Yes, sir.

Q. Picked them out as being the persons? A. Yes, sir.

Q. But didn't identify you? A. No, sir.

Q. And you were on that line? A. Yes, sir.

Q. And they said they were eye witnesses of the occurrence on that day? A. Yes, sir.

Q. Did anybody identify Williams? A. No, sir.

Q. Now, is there anything else Courtney that comes to your mind regarding this matter? A. No, sir; nothing more than they tried to make this Williams -- after he wasn't identified, they took him out into a private room, and told him to say that he heard me say, "Well, if I am convicted of this, I am going away for something that I done," and he said I never made any remark of that kind, so he told me.

And so he was taken up and held until the next day, and they tried to make him tell this, and then he was discharged, when he wouldn't tell it.

Q. Now, let us get back to the 1st day of May. You say you were in the house where you lived -- from between four and five o'clock that morning until about 1:30 that afternoon?

A. Yes, sir.

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Q. How do you know it was the 1st of May? A. Because I give the landlady some money that day on account of it being her rent day. I owed the landlady some money and she asked me for it.

Q. How much did you owe her? A. Five dollars.

Q. How much did you pay a week? A. Five dollars.

Q. And you gave her the five dollars? A. Yes, sir.

Q. On that day? A. Yes, sir.

CROSS EXAMINATION BY MR. BUCKNER:

Q. What was the felony you were convicted of? A. Charged with two other men with robbery, stealing a man's watch.

Q. And you were convicted? A. Yes, sir; I stood trial with the other two prisoners.

Q. Robbery? A. Yes, sir.

Q. Highway robbery? A. Robbery.

MR. SIMPSON: I object to the characterization of the charge as "Highway robbery".

BY MR. BUCKNER:

Q. What did you do; at least what were you charged with? A. Taking a watch from a man's pocket.

MR. SIMPSON: Now, if your Honor please, the fact that he was convicted of robbery is sufficient. I object to it.

THE COURT: Well, robbery in what degree, you

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may ask him.

BY MR. BUCKNER:

Q. Well, was it robbery in the first degree? A. Yes, sir.

Q. That is the only time you have ever been convicted of a felony? A. Yes, sir.

Q. Either been in New York or anywhere else? A. Yes, sir.

Q. That was in 1903? A. Yes, sir.

Q. Did you testify in that case? A. Yes, sir.

Q. Did you say anything about the police in that case?
A. No, sir.

Q. Hadn't you been arrested before that? A. No, sir; only once.

Q. Weren't you arrested in 1896? A. Yes, sir, that was the once.

Q. And weren't you arrested in 1898? A. No, sir.

MR. SIMPSON: One moment. I am going to get upon this record that the district attorney has on the table before him a police court record of this defendant, in the presence of this jury, and I object to it, from which he is reading.

THE COURT: Well, you may state your objection and I will sustain the objection, as to any interrogation concerning an arrest. Convictions only may be inquired into.

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MR. BUCKNER: But the Court has forgotten that Mr. Simpson asked him, how many times he had been arrested by the police, and he said twenty times, and now the door is open, I submit.

THE COURT: No. I will sustain the objection as to arrests. You have a right to inquire about convictions, and he has the right to explain them. You may call his attention to any criminal or disgraceful act in his life, but the Courts have specifically ruled that arrests are neither.

BY MR. BUCKNER:

Q. You have testified, have you not, that you were arrested twenty times? You said that, haven't you? A. Yes.

Q. Now, tell us the times?

MR. SIMPSON: I object.

THE COURT: I will sustain the objection. You may inquire within what period, or covering what time, if you wish.

BY MR. BUCKNER:

Q. Covering what time were those arrests?

BY THE COURT:

Q. From what year to what year?

THE COURT: I will allow the question only because you asked the question, Mr. Simpson.

MR. SIMPSON: I except.

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BY THE COURT:

Q. When was your first arrest, and when was your last arrest?

MR. SIMPSON: I object to it.

THE COURT: It is allowed solely because you asked the question yourself.

MR. SIMPSON: Exception.

A. I had been arrested twice before my conviction and about ten times afterwards.

BY MR. BUCKNER:

Q. And when was your first arrest and when was your last arrest? A. About fifteen or sixteen years ago.

BY THE COURT:

Q. That was your first arrest? A. Yes, sir.

Q. When was the last arrest? A. The last arrest was this one, ^{and} previous to this one was the officer.

BY MR. BUCKNER:

Q. Now, tell me of any other conviction that you have had. You say you have been convicted several times?

MR. SIMPSON: I object.

THE COURT: Well, as I understand the testimony, he said that he had been convicted of a felony and two misdemeanors. You may ask him whether there was any other conviction, if you wish.

BY MR. BUCKNER:

Q. Were you ever convicted of anything else? A. Yes, a

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misdemeanor.

Q. What kind of a misdemeanor? A. Petit larceny.

Q. Petit larceny? A. Yes, sir.

Q. That is one? What year? A. 1910.

Q. Were you ever convicted of anything else? A. No, sir.

Q. Of any other misdemeanor; only the twice?

BY THE COURT:

Q. You said there were two misdemeanors. What were they?

A. Both were what is called short changing.

BY MR. BUCKNER:

Q. Weren't you convicted in Newark, New Jersey, of petit larceny and fined? A. Well, I said that, two misdemeanors and one felony.

BY THE COURT:

Q. Is that one of the misdemeanors that you had in mind?

A. Yes, sir.

BY MR. BUCKNER:

Q. Then we have robbery, petit larceny and short-changing?

A. It was always short-changing.

Q. And haven't you been convicted more than those three times? A. Yes, I believe once more, disorderly conduct.

Q. And when was that?

MR. SIMPSON: I object to that and move to strike out both the question and answer as not within the indictment, or not proper cross examination.

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THE COURT: Denied. The People have the right, and you have the same right. Any witness may be interrogated about any disgraceful, or criminal, or vicious act in his life, solely for the purpose of affecting his credibility.

MR. SIMPSON: But he has confessed to sufficient, already, I think.

THE COURT: Well, that is for the jury to determine.

MR. BUCKNER: Not sufficient yet, no, sir.

BY MR. BUCKNER:

Q. And where was the disorderly conduct? A. Staten Island.

Q. And that is four? A. Yes; that makes four.

Q. And that is all; is it? A. Yes.

Q. There has never been anything else? A. No, sir.

Q. What about Lawrence, Massachusetts? A. Yes, that is one of them. Lawrence, Newark, Staten Island and here.

Q. Now we have got all confused. Robbery one? A. Yes, sir.

Q. Petit larceny? Two? A. Yes, sir.

Q. Short-changing in Newark, three? A. Yes, sir.

Q. Disorderly conduct, Staten Island, four? A. Yes, sir.

Q. Now, larceny in Lawrence, five? A. Yes, sir.

Q. Was that short-changing? A. Please repeat that

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again. Please repeat the four.

Q. Robbery, one, 1903? A. Yes, sir.

BY THE COURT:

Q. That was in New York; was it? A. Yes, sir.

BY MR. BUCKNER:

Q. Petit larceny, in New York, 1910? A. No, not petit larceny. Short-changing.

Q. Well, I thought you said petit larceny? A. No, that was short-changing. I was never convicted of petit larceny.

MR. SIMPSON: I object to his reading from a paper, in the presence of the jury.

THE COURT: The jury will understand that it is merely a memorandum that the District Attorney is using, the same as any other memorandum.

MR. SIMPSON: And I desire to place on the record that the memorandum is a police official report upon the various offences with which this defendant has been charged.

THE COURT: Well, will you take the stand and swear to it?

MR. SIMPSON: Yes, sir; I will.

THE COURT: It is not necessary. You are the only person who has called attention to it.

MR. SIMPSON: Why, it is getting to be as old

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as the hills in these courts, this practice.

THE COURT: The District Attorney has the right to read from any paper, book or document that he has. Now, the fact that he has a paper in his hand does not add any weight to the question.

MR. SIMPSON: May I get it upon the record? It will go to the Court of Appeals some day, if not in this case. May it be noted that he is reading from the yellow sheet, that is used by the Detective Bureau of the City of New York, and on it is typewritten the history of this defendant's case.

BY MR. BUCKNER:

Q. Now, will you tell me any statement that is wrong, so that I may get it right.

THE COURT: Now, the jury will disregard the statements of both counsel. The district Attorney has the right, and the defendant's counsel has the same right to interrogate witnesses on cross examination as to any criminal or disgraceful or vicious act in the career of that witness, for the purpose of being considered by the jury, on the question of the credibility of the witness; and in this case, in which the defendant is indicted as a second offender, the District Attorney has a right to prove as a fact in the case the crime set forth in the indict-

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ment, in addition.

MR. SIMPSON: And that has been conceded by the defendant.

THE COURT: Now, the District Attorney will go on. I don't know what he wishes to ask. But I know what he has the right to ask, and your rights are fully protected by that statement, and please don't interrupt unnecessarily. Now go on.

BY MR. BUCKNER:

Q. Then there was a short-changing conviction in Newark, New Jersey? A. Yes, sir.

Q. And another in Lawrence, Massachusetts? A. Yes, sir.

Q. And was there anything else? A. Disorderly conduct, in Staten Island.

Q. And was there ever anything else? A. No, sir.

Q. And what about Salem, Massachusetts? A. That is the only short-changing affair. That is the same thing. It is Massachusetts.

Q. Well, wasn't Lawrence one and Salem another? A. No, sir.

Q. Weren't you sent to the House of Correction in Massachusetts for six months? A. Yes, sir.

Q. Because of a short-changing conviction in Lawrence?
A. Yes.

Q. Just at the end of that time weren't you taken to Salem, Massachusetts and sent to the House of Correction by the

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Superior Court for three months? A. Not for Salem. That was for Lowell.

Q. Then that is another one? A. No, sir; that is the same one.

Q. Well, you were sent on another conviction for three months, weren't you? A. Yes, sir.

Q. Then don't you call that two convictions in Massachusetts? A. Well, it was acted upon the same as one.

Q. Well, but there were two convictions? A. Yes, sir.
BY THE COURT:

Q. But you only count them as one? A. Yes, sir.

Q. But you were before two judges and two sentences were imposed? A. Yes, sir.

Q. In different towns? A. Yes, sir.

BY MR. BUCKNER:

Q. But you call it one, because you served continuously?
A. Yes, sir.

Q. And didn't get away between? A. No, sir.

Q. And, therefore, it is one? A. Yes, sir.

Q. You call it one? A. Yes, sir.

MR. BUCKNER: Will you call in Captain Tunney?

BY MR. BUCKNER: —

Q. Is that the man that you say called you a liar? A.
Yes, sir.

MR. SIMPSON: Now, wait a minute. I object to the form of the question. And he got ample time to put

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the question properly.

THE COURT: Objection overruled. But I have made a rule excluding witnesses, and you will just ask him whether that is the man that he calls Captain Tunney.

BY MR. BUCKNER:

Q. Is that the man that you call Captain Tunney? A. Yes, sir.

MR. SIMPSON: Now, I object to the statement of the District Attorney in the presence of the jury, enlightening this officer as to what was said in this court room by this witness.

THE COURT: You have it on the record. Objection overruled. Go on, Mr. Buckner.

MR. SIMPSON: Exception.

BY MR. BUCKNER:

Q. And that is the man that you say jobbed you in this case? A. I didn't say that he jobbed me.

Q. Didn't you say that he told you that he was going to get you for it? A. Yes, sir.

Q. And that, if you had had any trouble with him, you would be in the grave yard? A. Yes, sir.

Q. And, when you were in that line, you jumped out of the line and took a different place? A. No, sir.

Q. Oh, you took another man, and put him where you were; is that it? A. Yes, sir.

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Q. Now, Mr. Pringle, never pretended, did he, to pick out the man. You have testified, in answer to your counsel's question, that four or five different people were asked to come in there and pick out the man -- A. Four.

Q. Who grabbed the pocketbook? A. Yes.

Q. Now, I am asking you if Mr. Schubert only pretended to pick out the man who was at the door of the taxicab and did not pretend to pick out the man who took the bag; isn't that so?

A. I don't quite get you.

MR. SIMPSON: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

MR. SIMPSON: Exception.

A. No.

Q. You think that he pretended to pick out the man who took the bag?

MR. SIMPSON: I object.

BY MR. BUCKNER:

Q. Don't you understand that Mr. Pringle only pretended to pick out one of the men in the taxicab, or at the taxicab?

MR. SIMPSON: Objected to.

THE COURT: Overruled.

MR. SIMPSON: Exception.

BY MR. BUCKNER:

Q. Don't you understand it that way? A. I understand

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what you say, but I don't know what the connection was.

Q. Then you don't know that two men pretended to pick out the man that stole the bag, but did not pick you out?

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

THE COURT: Overruled.

MR. SIMPSON: Exception.

A. I did not catch the question.

BY MR. BUCKNER:

Q. What basis have you in your testimony that two witnesses pretended to pick out the man who took the bag, and did not pick you out?

MR. SIMPSON: Objected to.

THE COURT: Overruled.

MR. SIMPSON: Exception.

A. Three of them did not pick me out.

BY MR. BUCKNER:

Q. What basis have you to say that Mr. Pringle and this woman and her husband pretended to pick out the man who took the bag, and did not pick you out? A. I didn't say that.

Q. Well, I don't think you did, but your counsel said it?

MR. SIMPSON: I object to the statement of the District Attorney.

THE COURT: The jury will decide the case on the facts as found by them from the testimony of

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witnesses, and they will ignore the statements of counsel on either side, unless they are a proper inference from the testimony.

BY THE COURT:

Q. Now, did Mr. Pringle pick you out as the man who took the bag? A. No, sir.

Q. Did Mrs. Schubert and her husband pick you out on that line? A. No, sir.

Q. The other man came in, as the two ladies went out? A. Yes, sir.

Q. There was only one line up? A. Yes, sir.

Q. And there were two people that came in, and didn't pick you out? A. Yes, sir.

MR. BUCKNER: And that is the point that I wanted to get, your Honor.

BY MR. BUCKNER:

Q. And don't you know that the men that they picked out, they picked out as other people that were in the taxicab? A. I don't know whether they did or not.

Q. Now, you did know this man Howard, alias Carston; did you not? A. I met him at a social club at Eugene Daffy's.

Q. And you did know him? A. Yes.

Q. And he was with you when you were arrested? A. Yes, sir.

Q. And he was one of the men who was picked out? A. Yes, sir.

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BY THE COURT:

Q. As being one of the men in the taxicab, or as the man who took the bag? A. I don't know, sir.

BY MR. BUCKNER:

Q. And you knew Kirk? A. Yes, sir.

Q. And he was with you when you were arrested? A. Yes, sir.

Q. And Kirk was picked out by one of these four people? A. Yes, sir.

Q. And so that you and Howard and Kirk were all picked out by some of the people who were brought into the line up? A. Yes, sir.

Q. But it was all false, so far as you are concerned? A. Yes, sir.

Q. You were arrested in a saloon, weren't you? A. No, sir, in the restaurant, lunch room.

Q. Is there a bar in that place? A. No, sir. We was eating beef stew, at least I was eating beef stew.

Q. Had you had any trouble with any of the officers in this case? A. I had had some dealings with one of them, nothing to speak of; some talk with one of them about a case.

Q. Did I understand you to say on the direct examination that you had had no trouble with these officers at all? A. No, sir; I seen them before they arrested me.

THE COURT: You don't mean at the time of the

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arrest only, but at any time in his life?

MR. BUCKNER: Yes, sir.

BY MR. BUCKNER:

Q. This particular number of central office men, you had never had any trouble with? A. No, sir.

Q. But they came in and said, "We are up to our old tricks of taking men in on 'spec'"? A. Yes, sir.

Q. And they put you in the jail? A. Yes, sir.

Q. And you are entirely innocent of this crime? A. Yes, sir.

Q. And are a good, hard working, honest poolroom man?

MR. SIMPSON: I object to that question?

THE COURT: Objection sustained. And the jury will disregard the question.

REDIRECT EXAMINATION BY MR. SIMPSON:

Q. Nevertheless you swear before your God, and the Court, and these jurymen, that between the hours of five o'clock in the morning and 1:30 in the afternoon, on the 1st of May, you were at home? A. Yes, sir.

Q. And you were not at 178th Street? A. Yes, sir.

Q. And you weren't in any taxicab? A. Positive.

Q. And you still stick to that story? A. As God is my judge.

RECROSS EXAMINATION BY MR. BUCKNER:

Q. And you swore before your God, your Maker, in your

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robbery case, didn't you? A. I admitted the part I took in it.
BY MR. SIMPSON:

Q. Now, tell this jury all about it. You admitted what part you took in it? A. Yes, sir.

Q. Now, tell the jury? A. Well, at the time of the robbery, I was in the livery business, and one of these men worked for me, and he was under the influence of liquor, and took this man's watch, and I stepped over to find out what the argument was about, and I was arrested in the company of him and the other fellow, who also worked for me, and we was all three arrested for the crime of one man, and we all stood trial together, and was convicted.

BY THE COURT:

Q. Then you did not commit any robbery? A. No, sir; but I was an accessory by being there.

Q. I merely wanted to get the meaning of your words? A. Yes, your Honor, that's it.

BY MR. SIMPSON:

Q. And you were convicted as an accessory, or one of three persons, although you did not commit any robbery? A. No, sir, and that was admitted on the stand.

Q. It was admitted on the stand? A. Yes, sir.

Q. And you had not committed that robbery? A. No, sir; the man worked for me that did it.

BY MR. BUCKNER:

Q. Then you were not guilty? A. Well, I was guilty to

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extent of being in his company.

Q. But you did not help in the robbery in any way? A. No, sir.

Q. And then it was really unjust that you should have been convicted? A. Well, if you want to put it that way.

Q. Well, but have you ever been guilty of any of these short-changing charges? A. Yes, I have.

BY MR. SIMPSON:

Q. And that used to be your old business; wasn't it? A. Yes, used to be.

Q. And you are known as the chief short-changing man in the United States; aren't you? A. No, sir; only in New York and Massachusetts and New Jersey.

Q. You are known as that, aren't you, throughout the United States? A. No, sir; only in these three states that I mentioned.

A L L E N G. P R I N G L E, of 1361 St. Nicholas Avenue, a witness called on behalf of the Defence, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SIMPSON:

Q. Where do you reside, Mr. Pringle? A. 598 West 178th.

Q. You are a juror serving in this particular part as a trial juror? A. Yes, sir.

Q. And when was it, for the first time, that you ever met me, the attorney of this defendant? A. Why, I seen you here

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in this room.

Q. You saw me in this court room? A. Yes, sir.

Q. Within the last few days, while you were doing jury duty? A. Yes, sir.

Q. You are a witness against one of the defendant's in this case, are you not, Mr. Pringle? A. Yes, sir.

Q. Where were you on the 1st day of May, 1912? A. At my store, at 178th Street and St. Nicholas Avenue.

Q. Were you there in the morning of that day? A. Yes, sir.

Q. Did anything occur that attracted your attention on that day? Yes or no? A. Yes.

Q. Did you on that day see Mrs. Schubert, this lady sitting over here (indicating), the complainant in this case? A. Yes, sir.

Q. And where, if anywhere, did you see her? A. At Wadsworth Avenue -- first, at St. Nicholas Avenue and 181st Street. Then I saw her running behind the automobile.

Q. Did you see any act of robbery committed that day? A. No, sir.

Q. Did you see the persons, any persons, around that automobile? A. I seen that there was three people in the automobile.

Q. And one of those three people you have recognized? A. well, at least I thought I did.

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Q. Did you see the defendant in that automobile on that day? A. I can't say, sir. I don't recognize him.

Q. You don't recognize him at all? A. No, sir.

Q. And could you see the people in the automobile? A. Yes, just passing me.

BY THE COURT:

Q. Well, how was it passing you? A. Coming around the curve slowly.

Q. And this woman was running after the automobile? A. Yes, sir.

BY MR. SIMPSON:

Q. And it was moving slowly? A. Yes, sir.

BY THE COURT:

Q. Well, will you swear that that man was not in the automobile (indicating the defendant)? A. No, sir; I wouldn't.

BY MR. SIMPSON:

Q. And will you swear that he was? A. No, sir; I will not.

CROSS EXAMINATION BY MR. BUCKNER:

Q. You don't pretend to identify two of the three men; do you? A. No, sir.

Q. And one of the men you picked out afterwards; didn't you? A. Yes, sir.

Q. And that was this man Howard? A. Yes, sir.

Q. The man that the defendant says was his friend? A. Yes,

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sir. I picked him out as one of the men in the automobile, at least that I believe was there.

BY THE COURT:

Q. That you were sure of? A. Well, yes.

BY MR. BUCKNER:

Q. Now describe the situation when the automobile came around the corner? A. I was coming out of the tailor store around the corner, and coming towards my store, and the automobile was just turning the corner, and Mrs. Schubert was running behind it.

Q. And were there any wagons in the street at the time?

A. Yes there was.

Q. Did you notice how close this machine came to the curb?

A. It went that close to the far curb. (Indicating).

Q. Did it attract your attention? A. Yes, sir.

BY THE COURT:

Q. Well, what do you mean by the far curb? A. The opposite side of the street from me.

Q. You weren't on the same side of the street as the automobile? A. Well, the sidewalk was here, and I was here. (illustrating).

Q. And you were on this side of the street? A. Yes, sir; on the uptown side of the street?

Q. What street? A. 178th Street.

BY MR. BUCKNER:

Q. And when the machine finally got clear of the wagons

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and rounded the corner, what did they do? A. They speeded away a little more lively.

REDIRECT EXAMINATION BY MR. SIMPSON:

Q. Pardon me, Mr. Pringle. How close was this woman behind the automobile? A. I should say about twenty or thirty feet.

Q. And it was moving slowly? A. Yes, sir.

Q. Did she make an outcry, or yell, or anything? A. Yes, she was shouting.

Q. Did you run after the automobile? A. Yes, sir.

Q. Did you look into the automobile? A. Well, I couldn't, when it passed me, but I saw the number on the back of it.

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

Q. Did you give it to the police? A. No, sir.

Q. Didn't they ever ask you for the number of the automobile? A. No, sir.

Q. They never asked you for the number? A. No, sir. I gave it to another party who telephoned it to Police Headquarters.

Q. Now, what is that number? A. I don't remember.

Q. But it is of importance?

MR. BUCKNER: We will give it to you.

BY MR. SIMPSON:

Q. Who did you give it to? A. Mr. Cashman.

Q. And where does he live? A. Why, a couple of doors away from my store. He has an undertaker's establishment.

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Q. He is the undertaker? A. Yes, sir.

M A R Y C A D D E L L, of 554 West 51st Street, a witness, called on behalf of the Defence, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SIMPSON:

Q. Mrs. Caddell, where do you live? A. 554 West 51st Street.

Q. Are you a married lady? A. Yes, sir.

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

Q. How long have you lived at that address which you have just given? A. Going on four years.

Q. Did I ask you whether you were a married woman? A. Yes, sir.

Q. What does your husband do for a living? A. He is a truck driver.

Q. Was this defendant a roomer at your house? A. Yes, sir.

Q. Did you see him on the 1st day of May, 1912? A. Yes, sir.

Q. Now, tell the jury, what, if anything, you saw him do on that day, if you remember? A. Well, in the morning, at ten o'clock, between ten and half past ten, he came out to go to the toilet, and he went in, and about eleven o'clock, or about ten minutes to eleven, he came out and asked me for a

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pen and ink; that he wanted to write a letter, and I gave it to him, and he went inside again.

And I owed a bill, and the collector came and collected the bill.

Mr. Courtney was after giving me a five dollar bill, and I gave three dollars to the woman, the collector, and I paid three dollars out of that five to the woman.

And, around twelve o'clock, we have lunch, and he came out and had lunch with me, and my husband and my little boy and my daughter.

And then, a little after one, he went out, and I did not see him again until the next day, up until the 6th day on Monday, and from that day to this I never laid eyes on him until I see him just now.

That following Monday after he went out at one o'clock and this is the first time I ever see him since.

Q. And you are sure that ~~he~~ was in your house on that day, at the hours you have named? A. Positive.

Q. You can't be mistaken about that? A. No, sir; because I didn't leave the house.

Q. And you are sure it was the 1st of May? A. Yes, sir; because this woman always comes to me on the 1st of May.

Q. What is this woman? A. She sells dress goods, ladies' apparel, anything you want to buy. So much a month I give her; by the month I pay her on time.

Q. What is the name of the lady? A. Mrs. Mendelsohn.

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CROSS EXAMINATION BY MR. BUCKNER:

Q. What time did the defendant go out of your house on the 30th of April? A. At one o'clock, the usual hour he went out every day.

Q. I know. He usually went out at one o'clock, but this particular day, the 30th of April, I want you to try to recall?

A. Always at one o'clock. And he went out at one o'clock on that day.

Q. He always went out at one o'clock? A. Yes, sir.

Q. And that is why you are sure he went out at one o'clock?

A. Yes, sir.

Q. And on the 14th of April, what time did he go out?

A. Around one o'clock, because I always wake him up at twelve o'clock, and he has his lunch before one o'clock.

Q. And the 7th of April? A. The same time.

Q. And he never varied a minute, from one day to the other?

A. No, sir; never.

Q. Did you know what his business was? A. Well, he said he worked in the poolroom.

Q. What day of the week did you get your money from him?

A. On Wednesdays. He came to me on the 3rd day of April, and that was on a Wednesday, and every Wednesday he paid me his money.

MR. BUCKNER: That is all.

MR. SIMPSON: That is all.

The defendant rests.

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R E B U T T A L.

THOMAS J. TUNNEY, a witness, called on behalf of the People, being duly sworn, testified as follows:
DIRECT EXAMINATION BY MR. BUCKNER:

Q. Captain Tunney, this is the jury (indicating). Will you look at them? A. I will.

Q. How long have you been in the service? A. Fifteen years.

Q. How long have you been a captain? A. I am not a captain. I am an acting captain in charge of the Sixth Detective District.

Q. Did you say to this man Courtney that he was a liar? A. I did not.

Q. Did you tell him that if you had ever had any trouble with him that he would be in the graveyard? A. No, sir.

Q. Did you tell him that you were going to get him? A. I did not.

Q. Were you present at the time of his arrest? A. I was not.

Q. Did you job him on the identification? A. I did not.

Q. Did you tell these women -- point him out, so that you could pick him out? A. No, sir.

Q. Did you rig up this line, with this man among a certain number, so that they could pick him out?

MR. SIMPSON: I object to this as leading. It

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is not proper rebuttal, and I object to it.

THE COURT: Overruled.

MR. SIMPSON: Exception.

A. I had nothing to do with the formation of the line.

Q. Did you throw him into a cell with the statement that you were going to fix him? A. No, sir; I didn't take him to the cell at all. I had nothing to do with the defendant, except to have a brief conversation with him.

CROSS EXAMINATION BY MR. SIMPSON:

Q. And you did have a brief conversation with him? A. Yes; after he was identified.

Q. And you were very friendly disposed towards him on that day; you had a very friendly feeling towards him? A. No, sir; I hadn't.

Q. Now you and I have met before, and I have cross-examined you many times? A. No, sir; not many times.

Q. And you understand my English, don't you, perfectly well? A. Yes.

Q. Didn't you tell the officers to give this defendant a second offence, when they were taking him out? A. Yes, sir; I did. I said to see that he was indicted as a second offender.

Q. And you had no feeling in the matter at all? A. No feeling whatever.

REDIRECT EXAMINATION BY MR. BUCKNER:

Q. Are you the grand jury? A. No, sir.

Q. Or the District Attorney? A. No, sir.

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MR. BUCKNER: That is all.

THE COURT: Any other witnesses, Mr. District Attorney.

MR. BUCKNER: No, sir; that is all.

MR. SIMPSON: No other witnesses.

THE COURT: Now, Gentlemen of the Jury, I will excuse you until two o'clock.

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

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AFTER RECESS.

MR. SIMPSON: May I now make my motion on the whole case, that your Honor advise the jury to acquit, on the ground that the People have not established sufficient facts to support the indictment, have not established facts sufficient to constitute a crime?

THE COURT: Motion denied.

MR. SIMPSON: Exception. I ask your Honor to charge the jury that the denial of the motion is not an indication on your Honor's part of any opinion as to the guilt or innocence of the defendant.

THE COURT: I so instruct the jury.

(Mr. Simpson then summed up for the defence, and Mr. Buckner closed the case for the People).

MR. SIMPSON: May I have on the record this one exception to the statement of the District Attorney that this jury are to consider his previous convictions?

MR. BUCKNER: On the question of credibility, I said.

MR. SIMPSON: And I except to it.

THE COURT: I do not recall the remark.

MR. SIMPSON: I do, and I have a note of it here.

THE COURT: The jury has a right, as I have already said repeatedly during the trial, to consider any crim-

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inal, vicious or immoral act of any witness in determining the credibility of that witness.

You are not to consider, gentlemen of the jury, or to find that, because a man has committed other crimes, he is, therefore, guilty of this crime.

And that is the way I understood the District Attorney's remarks, and that is the way that you are to understand them, if you draw any inference whatever from them.

MR. SIMPSON: And may I except to your Honor's statement wherein your Honor says that that is the way you understood the District Attorney?

THE COURT: Yes.

MR. SIMPSON: To which I respectfully except.

THE COURT: I merely wish to protect the District Attorney from the imputation of saying something which is unfair and illegal, and I do not think he did. Of course the jury understand.

MR. SIMPSON: I except to your Honor's statement.

THE COURT: And, of course, the jury know what the District Attorney said, and what the Court said. The Court speaks very plainly. It is the duty of the Court, gentlemen, to instruct you as to the law, as I will instruct you more fully, and you will disregard

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the statements of any one as to the evidence, or as to what has happened here, unless it accords with your own recollection, and, if you will pay attention to the Court, I will instruct you as to the law, and you are bound to take the law from me, and you are absolutely free and independent in your decision of the facts, and in the application of the law to the case as you find the facts.

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The People
vs.
THOMAS COURTNEY.

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THE COURT'S CHARGE.

MULQUEEN, J..

Gentlemen of the Jury:

This defendant has been indicted by the Grand Jury of this County of the crime of Grand Larceny in the second degree, as a second offence.

The indictment charges that, heretofore, this defendant was convicted of a felony, the said felony being robbery in the first degree, and was imprisoned, by order of Judge McMahon, of the Court of General Sessions, for a term of four years and ten months, on the 8th day of February, 1903; and that thereafter, after that conviction and sentence, to wit, on the first day of May, 1912, in this County, in the day time of the said day, with force and arms, this defendant and two other persons, one bag, of the value of one dollar, and the sum of fifty dollars in money, lawful money of the United States of America, and of the value of fifty dollars, one purse of the value of twenty-five cents, one other purse of the value of fifty cents, four keys of the value of ten cents each, and one pair of eyeglasses of the value of fifty cents of the goods, chattels and personal property of one Veronica Schubert, on the person of the said Veronica Schubert then and there being found, from the person of the said Veronica Schubert then and there feloniously did steal, take and carry away, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

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Now, you understand, gentlemen, that the indictment is merely a charge, and that it is put in writing so that it may be clear and definite, and so that the defendant may know exactly what the charge is that is made against him, and so that you may keep in mind the elements of the charge.

Now, what are the facts charged against this defendant in the indictment?

It is charged, first, that Mrs. Veronica Schubert was in the County of New York, in the day time of May 1st, 1912; and that she had a bag of the value of one dollar, and the sum of fifty dollars in money, and the other articles of personal property mentioned, on her person; and that this defendant and others, with force and arms, took that personal property from her person, and feloniously did steal, take and carry it away, against the form of the statute in such case made and provided. The indictment charges him with the taking of personal property from the person of Mrs. Schubert, with felonious intent, in the day time, on the 1st of May, 1912.

Then a preliminary statement in the indictment is that, prior to that time, he had been convicted of the crime of robbery in the first degree, and had been sentenced to a term of imprisonment by one of the judges of this court, and, therefore, he is indicted as a second offender.

So you see there is nothing complicated about the charge, that it is a very simple charge, and the indictment

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says that the crime with which he is charged is against the statute made and provided.

You understand that this is not an action between Veronica Schubert and this defendant. It is entitled The People of the State of New York against Thomas Courtney and others; and by that term "The People of the State of New York", is meant organized society, the union of society, embracing and made up of every human being who lives within the borders of this State, whatever their situation or condition of life may be. And that great society has the right to make laws, and has exercised the right to make laws, which are binding upon every one who wishes to live within this State. They are enacted to protect every one within the State, and they must be observed by every one, and the violation of one of the penal laws of the State is a crime.

The particular statute that is referred to in the indictment is known as Section 1290 of the Penal Law, entitled, "Larceny defined", which provides as follows:

"A person who, with the intent to deprive the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person, takes from the possession of the true owner, or of any other person, or appropriates to his own use, or that of any person other than the true owner, any money, personal property, steals such property, and is guilty of larceny."

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Now, there could not be a plainer statement than that. What does that section, Section 1290, forbid? The taking of personal property, with felonious intent, and the crime charged against this defendant is the taking of personal property from the true owner, Mrs. Schubert, with felonious intent, with the intent of depriving her of it, and of appropriating it to his use, or the use of any one other than Mrs. Schubert.

So that you have to decide here, first: Was there any personal property taken? Second: What was the intent of the taker? And, third: Is this the person who took the property; if you find that any was taken?

Now, larceny is divided into degrees, and Section 1296 defines grand larceny in the second degree as follows:

"A person is guilty of grand larceny in the second degree who, under circumstances not amounting to grand larceny in the first degree, in any manner specified in this article, steals or unlawfully obtains, or appropriates property of any value, by taking the same from the person of another."

That is, if any property was taken in this case, any personal property, from the person of Mrs. Schubert, if she had a bag on her arm, containing even one penny, and this defendant took it from her, with felonious intent, with the intent of depriving her of the use and benefit of it, and of appropriating it to his own use, he would be guilty of grand

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larceny in the second degree.

The law authorizes an indictment, as I have said, as a second offence, when a person charged with a crime in the indictment has been previously convicted of a felony, or the misdemeanor of petit larceny.

In this case it is charged that the defendant was previously convicted of the felony of robbery.

Now, you understand that there is a sharp line of division between the power and duty of the Court and your powers and your duties. The Court has its own work to do, and does not wish to impose upon you its views in any way. It is the duty of the Court to see that the defendant is tried according to law, that he receives a fair trial, and a great judge in this State has said that a fair trial is a legal trial, that a man whose legal rights are respected in a trial has a fair trial. That is what that means. And it is the duty of the Court to see that he gets such a trial.

Now, then, it is the duty of the Court to instruct the jury, in a case where the Court deems it necessary to submit the case to the jury, on the law, and it is your duty to take the law from the Court without question. For instance, when I tell you what larceny is, that it is the felonious taking of personal property, or the taking of personal property with felonious intent, you must not question that statement; or when I tell you what grand larceny in the second degree is, you

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must not question that statement. But then you have the great power of deciding the facts in the case. You must say what has been proved in the case, and facts are proved by witnesses; and, incidental to your great power of passing on the facts, is your power of determining the credibility of witnesses. That word "credibility" means worthiness of belief. What witnesses here were worthy of belief? That is your burden. What witnesses here will you believe?

You must use your best judgment and good sense in deciding that question, and you must do it honestly and faithfully and fearlessly.

It is not your duty to speculate about the result of your verdict. What you must determine for yourselves is how to reach an honest verdict, and there your responsibility ends. You are not responsible for what may be the result of your verdict. You have no right to consider the penalty of the crime, or what may happen to the defendant, if he is convicted, or to society, if the defendant is acquitted. That is not your burden. Keep the law in mind, keep the charge in mind, and then weigh the evidence in the light of the law as given to you by the Court, and pronounce your verdict.

The law is that the defendant is presumed to be innocent, and, in the absence of credible testimony sufficient to convince you of his guilt beyond a reasonable doubt, he is entitled to go free. The burden of producing that evidence is

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upon the People, and, as I have said, if the People call witnesses, or the defendant calls witnesses, or takes the stand himself, you must weigh all the testimony in the case, and decide what facts have been proved; and if, after you weigh the testimony honestly, and faithfully and carefully, you are firmly convinced to a moral certainty that the defendant is guilty, you must say so; and, if your minds are left in a state of doubt, if you find yourselves unable to say that you are firmly convinced that he is guilty, then your minds are in a state of reasonable doubt, and the defendant is entitled to an acquittal.

A reasonable doubt has been defined as one that rests on reason, connected with or flowing from the evidence or lack of evidence in a case. It is not a doubt that is based on sympathy for a defendant, or prejudice against a witness, or any class of witnesses, but it is an honest doubt, based on reason connected with the evidence in the case.

Now, as I said at times during the trial, when there was some discussion, when a witness takes the witness stand, he subjects himself to cross examination, and the defendant's counsel has the same right as the District Attorney to question him as to any criminal or vicious act he may have committed, and, if the witness has been convicted of crime, you have a right to consider that in determining his credibility. That is the law, that you may consider that.

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There are no rules which control you in determining what facts are established by the testimony, if any are established. In that regard you are left entirely free, and there are no rules that bind you. You must use your best judgment, you must be honest, you must consider the manner and the intelligence of a witness in giving testimony, the interest of a witness in the controversy, if any. You saw these women, and you know whether they are intelligent or not, whether they know what they are talking about. Are they honest women? Did they tell the truth?

If any witness wilfully makes a false statement on a material matter in the case, that witness is guilty of perjury, and you may disregard the entire testimony of that witness.

It is for you, therefore, to say, whether on the whole case you are satisfied that these witnesses told the truth, and whether their evidence satisfies you beyond a reasonable doubt of the defendant's guilt, or whether the defendant has told the truth, or whether he is animated by a desire to gain his freedom, and is, therefore, telling you what is not true. You have to decide that on the whole case.

You have to decide whether or not there was any crime or larceny committed at that time and place; and, secondly, did this defendant commit it; and, if he did, and he was previously convicted of a felony, as set forth in the indictment, and he has conceded that, you may find him guilty of the crime

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charged, grand larceny in the second degree, as a second offense, or not guilty.

Now, Mr. District Attorney, have you any requests to charge?

MR. BUCKNER: I think not.

THE COURT: Mr. Simpson, have you any requests to make?

MR. SIMPSON: Yes, sir. I ask your Honor to charge the jury that they are not to be influenced, under any consideration, by the statements of the District Attorney as to the poor janitor's wife, who had the earnings of her husband, the poor janitor, in her pocket, and are not to allow that statement to weigh against the defendant.

THE COURT: I so charge.

MR. SIMPSON: And I ask your Honor to charge the jury -- I withdraw that. I take exception to that part of your Honor's definition of the second offence as to the question of misdemeanor.

THE COURT: Well, I will withdraw that. That is immaterial in this case, because you have conceded that this defendant was previously convicted of robbery.

MR. SIMPSON: Yes.

THE COURT: Then I will withdraw that remark.

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I have not the exact section before me now, Mr. Simpson; I will read it to you afterwards, if you desire, after the jury has retired.

MR. SIMPSON: No, sir; not at all.

THE COURT: I withdraw that statement.
You may retire, gentlemen.

(The jury retired at 2:50 P. M.)

(The jury returned to the court room, at 5:20 P. M.)

THE COURT: Now, gentlemen of the jury, I received this communication from the jury: "We should like to have the testimony of Mrs. Caddell, Mrs. Schubert and Mrs. Doernberg." I take it to mean that the jurors want that testimony read, is that so?

THE FOREMAN: Yes, sir; that is what we mean.

THE COURT: You have no objection, Mr. Simpson?

MR. SIMPSON: No, sir; none at all.

(The stenographer then read to the jury the testimony of Mrs. Caddell, Mrs. Schubert and Mrs. Doernberg.)

THE COURT: Are you now ready to pass out, gentlemen?

THE FOREMAN: Yes, sir.

(The jury again retired at six o'clock P. M.)

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(The jury returned to the court-room at 11 P. M.
The jury found the defendant guilty of grand larceny in
the second degree, as a second offence).

MR. SIMPSON: I ask that the jury be polled.

(The jury is polled by the clerk).

THE COURT: I will remand him for a week, and
you may reserve the right to make your motions at that
time.

MR. SIMPSON: Yes, sir. I will reserve my
motions until then.

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THE SENTENCE.

New York, July 18th, 1912.

The defendant being arraigned for sentence:

MR. SIMPSON: I ask a week's adjournment of sentence, to procure some evidence that I have heard of since the trial.

THE COURT: In view of the fact that the crime charged against the defendant was committed on the 1st of May, 1912; that the defendant was arrested on the 7th of May, 1912; indicted on the 15th of May, 1912, and had two months in which to prepare his case, because he was not tried until the 16th of July, of 1912, and in view of the nature of the defense, and in view of all the information gained by the Court during the trial, the motion is denied. It is a clear case, and it only remains for the Court to impose the maximum sentence.

MR. SIMPSON: Will your Honor give me an opportunity to make my motions before sentence?

THE COURT: Oh, certainly.

MR. SIMPSON: In behalf of the defendant, I move for a new trial herein, on the following grounds:

- 1- Because the verdict is contrary to law.
- 2- Because the verdict is clearly against the evidence.
- 3- Because the verdict is against the weight of evidence.

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4- Because the Court erred in denying the defendant's motion to advise the jury to acquit.

5- Because the Court, at the trial, admitted illegal and improper evidence against the defendant's objections, and excluded legal evidence offered by him, and the defendant, at the trial, excepted to such admissions and exclusions.

6- Because the Court, at the trial, misdirected the jury in matters of law.

7- Upon the ground that the jury who tried this defendant retired at 2:50 P. M., after being charged, and remained in this courthouse until 11 P. M. That is all upon that point.

THE COURT: Motion denied.

MR. SIMPSON: Exception. And the defendant moves in arrest of judgment for legal and prejudicial errors apparent on the face of the record.

THE COURT: Denied.

MR. SIMPSON: Exception. And I ask your Honor to grant me a stay of a few days in this case.

THE COURT: The sentence of the Court is that he be confined in State Prison for nine years and six months. And the motion for a stay is denied.

*I hereby certify that the foregoing is an accurate transcript of the stenographer's minutes of the case of The People vs. Thomas Courtney.
New York, Sept. 21st, 1911. Frank L. Deane*

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