

I N D E X.

	Direct	Cross	Re-direct	Re-cross
Francis S. Perilli	2	6		
Peter Cusick	10	14		
George A. Miller	20	22		
Dominick Galgane	27	30		
Frank Vetrano	36	38		
Sire Galgane	41	43		
Peter Cusick	44			

CASE # 1516

I N D E X.

	Direct	Cross
Francis S. Perilli	47	48
John Galante	49	49

CASE # 1516

#1675

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

-----X
THE PEOPLE
against
DOMINICK GALGANE.
-----X

Indictment filed October 19, 1911.

Indicted for Burglary in the third degree, and Petit Larceny.

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

For the People, ASSISTANT DISTRICT ATTORNEY COLLIGAN

For the Defendant, SAMUEL STARK, ESQ.

Tried before HON. JOSEPH F. MULQUEEN, Judge, and a
Jury, on the 28th day of March, 1912.

Thomas W. Osborne,
Official Stenographer.

CASE 1516

FRANCIS S. PERILLI, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

(Residence 38 McDougal Street).

DIRECT EXAMINATION BY MR. COLLIGAN:

Q You are a druggist, having your place of business at 65 Sullivan Street, in the City and County of New York? A Yes.

Q What time did you leave your place of business October 7, 1911? A Must have been between ten and half past ten.

Q I understand you have there a drug store? A Yes, sir.

Q The door opens from Sullivan Street, the front door?

A Yes.

Q And then there is an entrance, -- and by the way, the rest of the building is a four story tenement building? A Yes.

Q And then there is a side entrance which runs the whole length of your store? A Yes, sir.

Q At the further end of your store there is a back door, and a door into a room through there? A Yes, sir.

Q And at the eastern end of the back of the store is a window? A Yes, sir.

Q What sort of a window is that? A There are two windows in that.

Q Large panes or small panes? A There are small panes to each sash.

Q And is there a porch behind there at the end? A There

CASE 1516

is a little porch there.

Q Now, when you left your place of business on that evening, did you securely lock the doors, or see the windows were closed? A I usually do that every evening.

BY THE COURT:

Q The question is, did you do that this night? A Yes, sir.

BY MR. COLLIGAN:

Q What did you have in the store, the ordinary drug commodities? A In the front of the store is the drug store proper, and then is the prescription department after the store to the rear, and three rooms.

Q Were the entrances open from one room to another? A Yes.

Q You mean there are partitions? A There are regular doors -- no partitions.

Q Did you have a safe in the room? A The safe was placed that night in the back of the prescription counter, right where I compound my prescriptions.

Q Now, what kind of a catch did you have on the back door, the one along the side entrance? A I don't understand you.

Q How did you have that secured? A The safe?

Q How did you have the door locked or secured? A I had three sliding chains and an iron bar and two bolts.

Q When did you next return to your place of business, after you left it that night? A It was between 3 and 4 o'clock in the morning.

CASE 15116

Q You were called there? A I was called there.

Q You were told the place had been broken into? A Yes.

Q What condition did you find the place when you arrived?

A I found the safe over-turned, bottom up, and the bottom of the safe, the sheet iron, had been removed about three-quarters of its length -- over-turned, and the concrete had been broken to a certain extent.

Q As I understand you, the material on the very bottom of the safe was ripped up, turned over? A Turned up.

Q So that the cement under had been reached? A Yes, sir, and the side of the safe was about six inches torn.

Q Now, what condition did you find the back window?

A The back window, one of the panes was broken, and open. The screen in the front of the window, leading into the yard, was taken off and thrown to the yard, in the yard.

Q Do you recall the condition of the weather that night?

A It was a rainy night.

Q Now, did you miss any property that night there? A I missed about twenty-five or thirty bottles of perfumery from the closet.

Objected to as not responsive to the question.

THE COURT: He asked him if he missed any property -- perhaps it is a conclusion -- perhaps it is a conclusion.

BY THE COURT:

Q Did you leave any property in that place when you went

CASE # 1516

home that night? A Yes.

Q What did you leave there, tell the jury what was in the store?

MR. COLLIGAN: He said when he left there it was filled with druggists' commodities.

THE WITNESS: Naturally I left my drug store there with all the stock.

BY THE COURT:

Q Were all those things there when you came in the morning, yes or no, were they all there when you came back? A Not all.

Q What articles were not there, that you had left there the night before? A Twenty-five to thirty bottles of perfumery, missing from the perfumery case, and the case was pried open.

Q Do you know the value of those bottles? A Between twenty-five and fifty, some twenty-five and some fifty cents.

Q That is your business? A Yes.

Q You are familiar with it? A Yes.

The objection is overruled. Exception.

THE COURT: There is a larceny count in the indictment.

BY MR. COLLIGAN:

Q You have described the condition of the store as you found it when you arrived? A The safe was over-turned -- there is a sofa or lounge placed against the door --

Q That is the back door? A The back door, the last room,

CASE # 1516

and this lounge was taken away from the door, and I found it in the center of the room, and the door, which is lined with tin, according to fire regulations, was open and every chain was open and the iron bar was taken away from its place, and the door was open; the window was open; the glass broken and the screen on the window outside was thrown to the ground in the yard.

Q When you went out that night, you went from the front door? A Yes.

CROSS EXAMINATION BY MR. STARK:

Q When you came at about 3 o'clock, which door did you enter -- when you came back to your store about 3 o'clock?

A The front door.

Q Was that open or closed? A Closed.

Q Where was all this muss, in the front or back of the store? A What?

Q Where was this muss, in the front or back of the store?

A What is it?

Q The condition of your store as you described it, where was it? A The first irregularity I found in the back of the prescription counter.

Q How far back is that from the entrance to the street?

A From the entrance, it is about twenty or thirty feet from the entrance.

CASE 1516

Q You say you have two windows in the back? A Yes.

BY THE COURT:

Q In the back? A In the back.

BY MR. STARK:

Q How far apart are they? A About three feet.

Q How large is each window? A A little wider than those, something like these (indicating).

Q Each window was the width of the one you have just pointed to? A Yes.

Q Which one of the two windows was broken? A The one nearer to the stoop.

Q What is the position of the stoop? A The position of the stoop is just as you come out from the rear door.

Q The stoop, right next to that is the window that was broken? A Yes, sir, on the side, about a foot away.

Q Now, did you have always the safe in the place where you found it that night? A Yes, but in winter I move it away from there to place a stove.

Q How thick was this concrete that you speak about? A I did not measure the concrete, how thick it is. I believe it is just the thickness used in any safe, according to size.

Q Could you observe the concrete? A Yes, sir, surely, you can, when you remove the sheet iron, you observe the concrete, naturally.

Q Please state how thick the concrete was? A I said al-

9151
CASE # 1516

ready I did not know. I did not measure the concrete.

BY THE COURT:

Q The concrete was the bottom of the safe, it was on the safe? A Yes.

Q The lining of the safe? A Yes, sir.

BY MR. STARK:

Q Was it one inch thick?

THE COURT: He said he did not know.

BY MR. STARK:

Q How thick was the outside covering?

THE COURT: Of the safe.

THE WITNESS: You mean this sheet iron?

BY MR. STARK:

Q Yes. A About may be a quarter of an inch.

Q A quarter of what? A A quarter of an inch.

Q Is that the same thickness all around? A I think that the iron of the bottom is of different quality than it is on the outside.

Q Do you know whether it is the same thickness all around?

A I don't know. I am not an expert safe man.

Q What is the name of the safe? A Of the safe?

Q Yes. A I don't remember.

Q How long did you have it? A Since the time I bought it.

Q How many years or months? A I don't remember.

Q How many? A I don't remember.

CASE 1516

Q Don't know how long you are in business? A I am in business about fifteen years, since I graduated from the College of Pharmacy.

Q How many bottles did you leave in your perfumery case when you left at 10 o'clock? A As many as were taken out.

Q How long are you in that particular neighborhood?

A About eighteen years at the same place.

Q Do you know the defendant? A How is that?

Q Do you know this defendant? A Surely I do.

Q How long have you known him? A May be three or four years.

Q He was a neighbor of yours for several years? A He was.

Q Right next door to you? A Yes.

Q You know his family? A Surely.

Q After his arrest, do you remember having a conversation with his mother? A Conversation with his mother?

Q Yes. A Do you want me to tell you?

Q Did you, yes or no? A I had a conversation with his mother. She came to see me.

Q Was the window the only part of your store that was open? A What?

Q Was the back window the only part of your store that was open? A No, I said it was the window and door.

Q Which door? A The door leading from the hall to the office, the back room.

CASE 1516

PETER CUSICK, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. COLLIGAN:

Q You are a member of the Municipal Police Force in this city and county? A Yes.

Q And you were a member of the force on the 7th of October, 1911? A Yes.

Q You were working that night? A Yes.

Q Where? A Sullivan street.

Q What were your hours? A From 11 P.M. to 7 A.M.

Q Did you see the defendant that night? A Yes.

Q Did you see him in the premises 65 Sullivan street in the city and county of New York? A Yes.

Q Explain the circumstances under which you saw him?

A About 2:05 A.M. I was patrolling my post and trying my doors. I noticed a light in 65 Sullivan street, which is a drug store, and I saw the shadow of two men. I immediately rapped my night stick and the other officer responded right away, and we both entered the hallway.

Q How long after you rapped your night stick, did the other officer respond? A Immediately.

Q How many seconds or minutes? A Well, probably a minute.

Q Where were you standing when you rapped your night stick?

CASE 1516

A In front of the door, 65 Sullivan Street.

Q Tell what happened? A The other officer responded, and we both went in the hall together, the hallway of 65 Sullivan street. We went to the rear where there is a door leading from this store which is occupied by a doctor's office. Miller, the other officer, went to the rear door that leads to the rear yard, and he stood on the stoop and he said "Cusick, cover that door in the hall." I covered that door. He said "They made their way through the window here in the rear." I was covering the door, and the defendant Dominick Galgane, walked out.

Q Had you tried the door to get in? A Yes.

Q Did he walk out before or after this conversation was had? A Walked out after.

Q What was said or done at the time? A Miller told me to cover him with a revolver, and I covered him as he was coming from the door.

BY THE COURT:

Q Where does that door lead to, the store? A Yes.

Q And he came out of the store through the door where you were standing? A Yes, sir, out of the doctor's office in the rear.

THE COURT: This was a side door.

MR. COLLIGAN: Yes, side door.

BY MR. COLLIGAN:

Q What did he say when he came out of the door? A He said,

CASE 1516

you ain't got me inside.

Q Was the other officer there when that was said? A Yes.

BY MR. COLLIGAN:

Q When he said "you ain't got me inside", how far away was the other officer? A About four or five feet.

Q What then was done? A I immediately placed him under arrest, and we went in and investigated the store, and found the safe turned over bottom side up, with bottom ripped out of it, about three-quarters of the bottom ripped out, sheet iron on the bottom and it was torn down the side about six inches.

Q Now, what condition did you find the window? A Broken.

BY THE COURT:

Q Which window? A The rear window.

Q What do you mean by broken? A The glass was broken in the window.

Q Was the window open or shut? A Up.

BY MR. COLLIGAN:

Q What kind of a night was it, what was the atmosphere that night? A Raining very hard that night.

Q What else did you find in there, if anything? A Found a hack saw and a jimmy on the safe.

Q That was the jimmy you found (indicating)? A Yes.

Offered in evidence. Received and marked People's Exhibit 1.

Q And this is the saw you found? A Yes.

CASE # 1516

Q Was it put together or in that condition? A In this condition.

Q Just like this? A Yes.

The saw is offered in evidence. Received and marked People's Exhibit 2.

Q Then what was done? A I proceeded to take him to the station house.

Q Did you have any conversation with him while going to the station house? A No conversation.

Q Did you ask him any questions? A In the station house.

Q What did you say? A I asked him, where did you get that punch he had in his pocket.

Q What did you take out of his pocket? A A punch.

Q Where is it?

(A punch is produced).

Q What did you say you asked him about that? A What he was doing with that punch and where he got it.

Q What did he say? A He said he did not know. He said he did not know he had it.

Q Did you say anything more to him? A No.

An iron punch is offered in evidence.

Received and marked People's Exhibit 3.

Q What did you find as to the defendant's clothes, anything peculiar about his clothes? A Yes, sir, found some white stuff on his knees in the station house.

91516
CASE # 1516

Q Did you ask him what he was doing there, or did you ask him anything about that jimmy or saw? A He said he -- he did not make no answer to that effect.

Q He would not answer you at all? A No.

BY THE 6TH JUROR:

Q I understood the officer to say that when he reached this door from the hall into the back room, that he tried the door and that it was fastened. A It was locked.

Q And through this same door the defendant afterwards came? A Yes.

BY MR. COLLIGAN:

Q That is, after you had told the other officer to cover the window? A Yes.

CROSS EXAMINATION BY MR. STARK:

Q What night of the week was this? A I couldn't exactly tell you the night of the week.

BY THE COURT:

Q You don't remember? A No.

BY MR. STARK:

Q Does your post cover Sullivan Street, including 65 Sullivan? A Yes.

Q And how many times did you pass up and down by that store since the time you went on that night? A I should judge may be eight times.

Q How long is your beat, or was it, that night? A Four

CASE # 1516

blocks.

Q From where to where? A From Canal to Spring.

Q Both sides of Sullivan street? A Both sides, and a block over to Clark street from Broome.

Q And every time you passed by this store, these eight times, you tried the door and found it closed? A I didnot try it every time.

Q You did not try it every time? A No.

Q How many times did you try it? A Probably about twice.

Q Were they successive times, once before this time, or were they intermediate times? A Once when I first came out and this time.

Q When you first came out, 11 o'clock? A 11 o'clock.

Q That was the time you first tried it? A Well, a little after eleven.

Q Did you look in there every time you tried the door?

A Every time I passed by, I looked in.

Q Was it raining when you first came out? A Yes, raining.

Q You say when you locked in this last time, you saw two men in the back? A I saw the shadow of two men.

Q Did you see two men? A Two men, yes.

Q Which is it, the shadow or two men? A Two men.

Q What else did you see? A I saw them running to the rear.

Q From where you were standing, could you identify them?

A No.

CASE # 1516

Q Then you rapped your club, and Officer Miller responded?

A Yes.

Q You both went into the building? A Yes.

Q Through which door did you enter? A The hall door.

Q Is that adjacent to the front door that you tried?

A Right next to the front door that I tried.

Q To the left or right? A To the right.

Q Right off the street or up a stoop? A Right off the street.

Q Was there a light in the hall, or was it dark? A Dark.

Q Was the hall door to the street open or locked? A Open.

Q Was it ajar or closed -- was it open from the bolt or from the knob, or closed? A Open wide.

Q Thrown back to the wall? A Yes.

Q So you went in without any interference? A Yes.

Q How far back did you go? A All the way back to this door.

Q How far back is that from the street, by feet? A Pretty nearly 100 feet.

Q And what made you stop there? A To try this door.

Q Did you try it or Officer Miller try it? A Both tried

it.

Q How, what did you do? A Went up and tried it, simply tried the door.

Q Did it have a knob to it? A No, no knob, not that I remember.

WITNESS
CASE # 1516

Q Was it glass or wood? A Wood.

Q Both tried that door? A Yes, sir, shoved in on that door -- I knew that door was there from before.

Q How about the rear? A That door was open leading to the yard.

Q Did you go out into the yard, A No.

Q Did Officer Miller go to the yard, A No.

Q How far did he proceed beyond you into the hall way?

A About four or five feet to the stoop.

Q There is a stoop in the building leading out into the yard, A Leading to the yard.

Q Is it beyond the hall line, or within the hall line?

A It is attached on the building leading down into the yard, and there is where he stood.

Q You say it was dark? A Yes.

Q Could he see you from the yard? A Yes.

Q You are sure of that? A Yes.

Q And you could see him? A Yes.

Q When did you first see this defendant? A Coming out of the door.

Q Coming out of which door? A The hall door.

Q You are sure that this is the man, A Yes.

Q And he said to you, you did not get me inside, is that what he said? A Yes.

Q What happened to the other shadow, or this other man that

CASE # 1516

you say you saw, A He must have jumped out through that back window, the only way I knew he could get out.

Q He was not in the store when you went back there? A No, not after we placed this man under arrest, he was not in the store.

Q Was that window in the back barred or screened? A It was latched on top.

Q Was it open like the window right behind you, without any bars on it? A There was no bars -- there was a screen - screen from the back over the window.

Q What kind of a screen, did you notice? A I didn't notice what kind of screen it was.

Q Was it there when you saw the window? A No, it was not there when I saw the window.

Q How do you know there was a screen there? A It was torn off. It was torn down from the building.

Q Was it like a fly screen? A Yes, sir, something, maybe a little closer than a fly screen.

Q You did not see this other shadow or man you speak about?
A Running from the front of the drug store to the rear.

Q Where was Officer Miller at this time? A On fixed post, Broome and Sullivan.

Q I mean, in the hallway, where was he at the time you were at this door, state your position, and state the position of Officer Miller while you were at your position in the hallway?

CASE # 1516

A He was about four feet away from me on the back stoop leading to the yard.

Q Could he see the window from where he was standing?

A Yes, sir, it was only about a foot from him.

Q You say you covered the defendant while Miller stood out on the stoop, you covered him with your gun? A Yes.

Q Then you said you went into the store? A With the defendant and Miller. Miller hollered to me, "Cover that man," just as soon as he stuck his head out of the door. I saw him at the same time.

Q The three of you went into the store? A Yes, sir.

Q You did not say anything about the condition of the defendant's clothes in the Police Court, did you? A No.

Q Why not? A There was nothing said. He did not make no plea up there, and I was just called up, and just told whatever I saw.

BY MR. COLLIGAN:

Q Were you asked that question? A No.

BY MR. STARK:

Q You were asked to tell what you saw, why didn't you tell that? A He asked me where I saw this defendant.

Q Why didn't you tell that? A I was not asked it.

Q You were asked to tell what you saw.

BY MR. COLLIGAN:

Q What is back there, a building, or fence, or what, behind

9191
CASE # 1516

this, in the back yard, A Yard and fences.

BY THE COURT:

Q What encloses the yard? A Fence.

BY MR. COLLIGAN:

Q How high is the fence? A Well, I couldn't say how high.

Q Have you any idea? A About five feet.

BY THE COURT:

Q Higher than you -- you have to be five feet eight to get on the police, A Yes .

Q Did you ever see a fence that was not higher than you?

A That fence is torn down in some places.

G E O R G E A. M I L L E R, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. COLLIGAN:

Q You are a member of the Municipal Police Force? A Yes.

Q Were you working on the night of October 7, 1911? A I was.

Q What were your hours? A From 11 P.M. until 7 A.M.

Q What was your beat, A Sullivan street.

Q Did you see the defendant on that night? A I did.

Q When and where? A At 2:05 A.M.

Q Under what circumstances? A Coming from the rear door of the premises 65 Sullivan street.

Q How did you happen to be there? A I responded to a

CASE # 1516

sound of a night stick of Officer Cusick who had told me there were two men in the store No. 65 Sullivan street. We went through the hallway to the rear of the store, and on investigation I saw the rear window had been broken into, which I thought they had gained an entrance through that window --

MR. STARK: I move to strike that out.

THE COURT: Strike out what he thought.

THE WITNESS: I was standing on the stoop.

BY MR. COLLIGAN:

Q Where did you stand? A On the stoop.

Q Outside of the building? A Yes.

Q Where did the other officer stand? A Right in front of the door.

Q Could you see Miller, or could you see the other officer, I mean? A I could.

Q What happened? A We saw the defendant coming from the rear door, the door opened.

Q Have you said anything, or the other officer said anything prior to that? A No.

Q Did you speak to the other officer? A No, I did not.

Q Tell what happened, A The defendant came from the rear door and I said "Cover this man, Cusick", and we placed the defendant under arrest, and upon further investigation, we went through the rooms, and in the room adjoining the store, we saw the safe with its bottom side up, and the tools upon the safe.

CASE # 1516

Q Tools on the safe? A Yes.

Q Were these the tools, Exhibits 1 and 2? A Yes.

Q That jimmy and that saw? A Yes.

Q What was said and done, and tell the general condition of the place? A The safe was up on its bottom, and sheet iron cut away, and the cement -- all out away -- of course, we placed the defendant under arrest and took him to the station house.

Q Did he say anything in the station house? A No.

Q Do you know what this is called (indicating People's Exhibit 3)? A I believe it is called a punch.

Q Was that taken off the defendant in your presence? A It was.

Q Do you recollect if anything was said at the time to the defendant, in your presence? A Asked him --

Q What was said, if anything, to the defendant, in respect to this punch? A Asked him how he --

Q Who asked him? A Officer Cusick.

Q What did he say? A Asked him how he got that in his possession.

Q What did he say? A He said he did not know.

CROSS EXAMINATION BY MR. STARK:

Q You say you saw this defendant in those premises on the night in question, did you search him then? A I did not.

Q Did anybody search him then? A No.

Q Why not? A Did not have any occasion to search him.

CASE # 1516

BY THE COURT:

Q What is the rule as to searching? A The rule of the Department, when you get a prisoner in your custody, to take him to the station house, and search him in front of the desk.

Q That is the reason you did not search him? A Yes.

BY MR. STARK:

Q What was your beat that night? A I had Sullivan street.

Q What part of Sullivan street? A From Spring to Canal.

Q You did not have a stationary post that night? A I did.

Q You also had a patrol post, A Yes.

BY THE COURT:

Q Stationary for one hour, and then you patrol it for an hour? A Yes.

BY MR. STARK:

Q From Canal to Spring street, is that what you said? A Yes.

Q Did your patrol cover 65 Sullivan street? A It does.

Q Did you examine, or try the door, at 65 Sullivan street, at any time during your patrol? A I did.

Q When? A From 11 to 11:30, not positive about that, but I know I tried the door.

Q Did you try it later? A No, I did not.

Q Did you lock into the premises? A I did.

Q Did you notice anything strange when you tried the door?

A No.

Q When was the last time you tried this door that night, I

CASE # 1516

mean, with reference to the time?

BY THE COURT:

Q You mean before or after this arrest?

MR. STARK: Before.

THE WITNESS: I only tried it once, either from eleven to one, I think it was.

BY MR. STARK:

Q You tried it from eleven to one? A That is, once during that period of time. I cannot specify the time I tried it.

Q During that period of time you probably passed the place?

A Yes.

Q Without trying the door? A Yes.

Q Did you look in? A I did not.

Q And you say you saw the other officer in the hallway while you were standing out on the stoop -- it was dark in there?

A It was dark.

Q How could you see him? A The reflection from a light on the opposite side of the street.

Q Where was the light? A In the street, the opposite side of the street, the reflection showed through the hallway where you could distinguish any subject entering or leaving the hallway.

Q When you came up to respond to the call, then did you look into the store? A I did not.

Q What did you do? A Run right to the rear hall, the rear of the store, through the hall.

CASE # 1516

Q Did you go right around to the window? A I stood on the stoop there, and you could see the window from the stoop.

Q How far were you from the window? A About two feet.

Q There were two windows there? A Yes, there are.

Q Which is the window that was open or broken? A The window nearer to the stoop.

Q And you run right back to cover that window? A I did.

Q How long did that take to get ^{from} the street back to the back of the building to the stoop, to cover this window? A A few seconds.

Q Two seconds -- did you see anybody back there where you were? A I did not.

Q In the yard? A I did not.

Q Was the window open or closed? A It was open.

Q You went back into the store -- did you go into the store with the defendant? A Yes.

Q You saw this safe, what kind of a safe was it? A One of them big monstrous big safes -- I cannot give you the exact measurements of it.

Q See if you cannot describe to the jury the size of it, the width and depth and height? A About four or five feet in height and three feet in width.

Q Was it a heavy safe? A Yes, it was.

Q Did you see the condition of it? A I did.

Q Did you notice the cement? A Yes.

CASE # 1516

Q How thick was the cement? A About an inch in thickness, I think.

Q How thick was the metal sheet covering that? A About a quarter of an inch.

Q Could you look into the safe from any opening that was made, A No, you could not.

Q Do you know this defendant? A No.

Q Never saw him before in your life? A No.

Q How long have you been on post in that precinct? A Around two years in that precinct, but not on that post.

THE PEOPLE REST.

MR. STARK: I move, your Honor, to dismiss the indictment upon the ground that the People have failed to make out a case as charged in the indictment.

Motion denied. Exception.

MR. STARK: I move to dismiss upon the ground of insufficiency of proof of intent to break and enter.

Motion denied. Exception.

MR. STARK: I move to dismiss upon the ground of insufficiency of proof of the breaking and entry by this defendant.

Motion denied. Exception.

CASE # 1516

D O M I N I C K G A L G A N E, the defendant, called as a witness in his own behalf, being duly sworn and examined, testified as follows:

(Residence 72 Watt Street).

DIRECT EXAMINATION BY MR. STARK:

Q How old are you, Dominick? A How old I am?

Q Yes. A Twenty.

Q You live with your parents? A Yes.

Q Do you remember the night of October 7, 1911? A I do.

Q Will you please state in your own way, for the gentlemen of the jury, just what you did that night? A Why, I had been working that day at the present time, where I am employed now, and I left home after having supper that night, about 8 o'clock. I entered a saloon at 64 Sullivan street, the opposite side of the drug store, which I have been making my nights there pass by for the past three years, playing pinochle, &c., and I stayed in that saloon with numerous friends from about 8 to 1 o'clock. At 1 o'clock I left the saloon and proceeded north to Bleecker street, to a restaurant, to have something to eat. I entered the saloon and had something to eat, in the meantime I met a few friends of mine there, and we had a conversation concerning the World's series of baseball at the time that was going to be held, and I left the restaurant -- ~~I~~ entered at one o'clock and I had my meal, and I left about twenty minutes to two. In leaving the restaurant it was necessary for me to pass the opposite

CASE # 1516

side of that drug store to go to my home.

Q Where is this restaurant? A It is on Bleecker street, between Thompson and West Broadway.

Q Describe the route you took to go home? A I came on Bleecker street west, three blocks from West Broadway to Sullivan, and then down south on Sullivan street to go to my home, and it was necessary to pass there, and in passing there I saw Officer Cusick, which I have a strict acquaintance with for the past few years, and Officer Miller rapping their sticks, and running into this hallway at 65 Sullivan street. I entered the hallway on account of me having an acquaintance with Officer Cusick. I did not think it would mean anything serious harm for me to enter there, and when I was about ten feet away from the street entrance, Officer Cusick was standing on the rear stoop and Officer Miller was not in sight at all, as far as I could see, and Officer Cusick heard my footsteps approaching in the hallway and I was walking towards him and he was walking towards me from the rear. He said to me, "What are you doing here, Dominick?" I said, "I just see you fellows run in here and I just wanted to see what the trouble is." He said, "I think you are implicated in this burglary", and I said, "Peter, I ain't that kind of a fellow. I wouldn't do a thing like that." He said, "Well, you stay here anyway until we look over the place," and so he took me down by the door that he said he saw me coming out of, which was locked -- might have been open, but ~~xx~~ it was closed, and the two officers pushed it through. There was a big couch up against this door, when these officers pushed it through, and they had quite difficulty in getting it out of the way, and then they entered the place with me and they lit a few matches and looked around and could not see anybody else there. Then they took me to the station house.

CASE # 1516

Q When you left the saloon at 64 Sullivan street, did you go alone? A To the restaurant?

Q Yes. A Yes.

Q When you left this restaurant, did you come out alone? A I did.

Q You say you left the restaurant about twenty minutes to two? A Yes, about twenty minutes to two.

Q When you were walking down Sullivan street on your way home, were you alone? A All alone, yes.

Q When you saw Officer Cusick, was he on the same side of the street as you were? A He was on the opposite side.

Q You had been drinking that night? A I had a few drinks while I was playing.

Q Go on and tell the rest of the story? A And I got in the station house and Officer Cusick searched me and he pulled out this punch which I use in my line of business as an undertaker. I have had my own business and I failed in it and went to work for a party by the name of Cadita, and in using this punch I will describe what it is for, which, some of these people might think it is a burglar's tool. It is only the size of a pencil. When I am fixing a casket, after I have the interior of the casket trimmed with silk and excelsior, I turn it over on the side to place the extension bar handle on the sides of the casket, and for this reason I use this punch. When you insert the nail in this hole, when you

CASE # 1516

get about one-eighth of an inch of the handle, you cannot hammer the nail because you are liable to disfigure the silver-plated handle, and with this punch you drive the nail into invisible sight where you cannot see it any more, and that is the reason I use this punch. Any undertaker in the city of New York has the same thing.

Q You are a graduate of the Embalming School? A Yes, sir.

Q Your business is that of undertaking business? A I am working at it now, but previously had my own business.

Q Together with your father? A My father was the owner of it and partner with another man, and I was conducting the place.

Q You used to live in Sullivan street? A I lived in 65 and 67, right over my store.

Q Right next door to the premises in question? A Right next door to Mr. Perilli's drug store.

CROSS-EXAMINATION BY MR. COLLIGAN:

Q Then you knew the layout of this place pretty well?

A No, I never knew the layout of it.

Q You had been working right along? A Yes.

Q Who were you working for? A I failed in business this month a year ago, 1910.

Q Or 1911? A 1911, I mean.

Q 1911? A Yes.

Q In March you failed? A In March I failed.

CASE 1516

Q What have you done since? A Right after I failed in March I went to work for Mr. Paul Cadeta, of 236 Elizabeth street.

Q How long did you work for him? A I worked for Cadeta right up to the day of my arrest.

Q You were working the day of your arrest? A Yes, I was, certainly.

Q Absolutely sure of that? A Certainly am. As I stated, I was.

Q You were not supported by your folks? A No, sir; I pay my folks my board.

Q What drew your attention to this thing, tell us the first thing that happened? ~~the~~ A That drew my attention to what?

Q To the officers that night? A The sounding of the sticks, of course.

Q Where were you when the sounding of the sticks occurred? A I was about, just about the other side of the place.

Q The other side of the place? A Yes, the opposite side on the sidewalk.

Q You know one of these officers very well? A I do.

Q Where was he? A He was rapping his stick, and then he ran in first.

Q That was Officer Cusick? A Yes.

Q Where was the other officer? A He followed him in.

CASE # 1516

Q Where did you see the other officer first? A Both standing -- both running in the place.

Q Haven't you stated awhile ago that Officer Cusick ran in first and then you came in after and then the other officer came in? A I did not state such a thing.

Q If I made a mistake, I want to apologize. A I said Officer Cusick ran in and was followed by Officer Miller, as I stated.

Q You knew Cusick pretty well? A I knew him quite a while.

Q And now you state that, in view of that fact, notwithstanding that fact, Cusick would deliberately put you in a position where you are likely to go up the river? A I suppose he would, to cover himself. He did not have anybody else to arrest, and so he had to lock up somebody, I suppose.

Q All you did was stay in the hall? A I went in the hall with him. He dragged me in ~~in~~ the back.

Q You went into the hall voluntarily? A Yes, sir; I did. Then he took me the rest of the distance to the door.

Q What did you do when you first reached the hall? A I simply walked in, and when half-way in the place Cusick stopped me.

Q What did he say to you? A He said, "What are you doing here?" I said, "Nothing. I just came in to see what the trouble is."

WITNESS
CASE # 1516

Q Then what happened? A Then of course he arrested me. That is all that happened.

Q Didn't he have some further conversation with you?
A He told me, he said, "I think you have been burglarizing this place." I said, "I think I ain't."

Q Did he bring you in the place at all? A He brought me down as far as the door.

Q Didn't he bring you in the place? A I didn't go in the store at all. I stood by the door.

Q Didn't he have hold of you? A No.

Q Did not have hold of you? A No; there was not one policeman had his hand upon me.

Q Do you want to state to the jury that neither of these officers went into that place? A Two of them went in -- three officers, in fact.

Q You waited outside? A I waited in the door, just like this is the door, and I stood here with my shoulder up against it.

Q Up to that time they had not said anything to you?
A No.

Q They went inside? A They went inside.

Q And was the door open? A After they opened it.

Q What did they do inside? A They looked around with matches.

Q Then what did they do? A I don't know, that is all

CASE # 1516

that --

Q If you were so interested, why didn't you walk inside to see what the condition of things was? A I did not walk in that place at all. I did not put my foot in the store.

Q You went over there to see what was doing? A I walked in the hall, that was as far as I got.

Q You were not interested enough to walk ~~in~~ in the store? A No, it was not none of my business.

Q You thought it was business enough of yours to go in there when you heard the officers rap? A I thought probably they -- one of the boys around there was in trouble, and I just walked in.

Q When the first officer rapped, the other officer was right there? A The two of them were rapping while they were running.

Q Officer Cusick was not standing in front of the door, was he? A No.

Q Where did you see him? A I saw him running into the hall.

Q You are positive Cusick did not stand in front and wait for the other officer? A I ain't exactly positive. I could not say I am positive of it.

Q This rivet punch, you heard the officers say they asked you what this was for, in the station house? A Yes, and I absolutely told them I used it for caskets, that was all

CASE # 1516

the words I said, used it for caskets.

Q You never had occasion to use one of these (showing the witness the jimmy)? A No, it is not my line of business.

Q You never used one of these? A Never saw one in my life until now.

Q Did you ever hear that this place was burglarized three weeks before? A No.

Q Never heard that? A No.

Q And you never saw one of these saws before? A I have seen them sometimes.

Q Did you ever have occasion to use one of them? A I should say not.

Q Never used one on a safe? A I should say not.

BY MR. STARK:

Q The District Attorney asked you what you did when you got inside -- did you get a chance to do anything, did not the officers hold the guns up to you? A Certainly.

BY MR. COLLIGAN:

Q Didn't I ask you to state to me everything that happened, why didn't you say an officer held a gun up to you?

A He came walking up the hall with a gun.

Q Tell us how this happened -- you came in after the two officers? A Yes.

Q And one of them was a friend of yours, you had known him for years and he held a gun at you? A I said I know him

CASE 1516

about one or two years.

Q. You did not get a chance to do anything -- didn't you state a few minutes ago that you were standing unmolested in the hall when they were in those rooms? A. I said I was standing up against the door where they left me.

Q. Were you not standing voluntarily there? A. Yes; I did not make no attempt to run away or anything.

Q. You could have run away? A. What did I want to run away for?

Q. Couldn't you have run away? A. It was not necessary for me to run away.

Q. You said you did not have a chance to do anything, they grabbed you and held you right there? A. They did not grab me but took me by the sleeve and said, "You wait here until I look in this place."

Q. You waited and they went in? A. Yes.

Q. Then you were wrong when you said to your attorney that you could not do anything because they had you? A. I did not mention a word at all that I could not do anything -- what should I do?

F R A N K V E T R A N O, called as a witness in behalf of the defence, being duly sworn and examined, testified as follows: (Residence, 66 Sullivan Street.)

DIRECT EXAMINATION BY MR. STARK:

Q. On the night of October 7th, 1911, were you in the

CASE 1516

saloon of 64 Sullivan street? A Yes.

Q Did you see the defendant in there? A Yes.

Q What time of the night were you there? A Close onto twelve o'clock.

Q How long had you been in there? A About half an hour.

Q Then you left? A Yes.

Q Where did you go to from there? A Went to a restaurant on Bleecker street.

Q What is the name of it? A Reed's restaurant.

Q How long did you stay there? A About half an hour.

Q Do you remember seeing this defendant Dominick Galgane in that Reed's restaurant that night? A Yes.

Q What time of the night was it that you saw him there?

A It was after one.

Q Do you know about what time after one? A About twenty minutes after, I guess.

Q What time did you leave the restaurant? A Right after he came down.

Q Then what did you do after that? A Went home.

Q 64 Sullivan street, or 66 Sullivan street, where you live, is opposite 65 where Mr. Perilli has his drug store? A Yes.

Q How long have you lived in that neighborhood? A All my life.

Q Do you remember when Dominick used to live there at

CASE 1516

67? A Yes, sir; 67.

CROSS-EXAMINATION BY MR. COLLIGAN:

Q You have known him a pretty long time, haven't you?

A About five years.

Q You say on a certain night in October, 1911, you were in a certain restaurant at 12:30, is that it? A No.

Q What time did you go to the restaurant? A I left the saloon at 12:30.

Q You are sure you said 12:30? A Yes.

Q Are you sure you did not say twelve o'clock a few minutes ago? A No, sir; I entered the saloon at twelve o'clock.

Q You said you were in the saloon close onto twelve o'clock -- now you say you were there until half-past twelve, when were you telling the truth? A I entered the saloon close onto twelve o'clock.

Q Have you not said you were there since ten o'clock?

A No.

Q What night was this? A Thursday night, I think.

Q Sure? A Not positive; I think it was Thursday or Friday.

Q What date was it? A October 7.

Q How do you know it was October 7? A They asked me where I was that night.

Q When did they ask you? A The morning after the thing occurred.

CASE # 1516

Q Who asked you? A Friends.

Q Who asked you? A My friends asked me.

Q Did one man or two men ask you at once? A They had conversation on the corner.

Q Who asked you, what is his name -- don't you know who asked you? A Selzer.

Q What is his first name? A Michael.

Q What is his business? A He is only a young fellow. I think he is an errand boy.

Q So it was an errand boy next morning asked you what time you were in that saloon? A No, sir.

Q Where did you go after you left the saloon? A To a restaurant.

Q What time? A I left the saloon around half-past twelve, and I got there about quarter of one.

Q Who did you leave the saloon with? A Alone.

Q At 12:30 you left the saloon? A About 12:30.

Q What time did you leave the restaurant? A About quarter of one.

Q How far is the saloon from the restaurant? A Seven or eight blocks.

Q How long were you in the restaurant? A About half an hour.

Q Who did you see in the restaurant? A Did not notice anybody in particular.

CASE # 1516

Q You did not notice anybody particularly? A No, not at the time I entered.

Q Not at the time you entered? A No.

Q Who did you see before you left there? A The defendant Dominick Galgane.

Q What time did he go in? A Just as I was coming out.

Q Just as you were coming out? A Yes.

Q At 1:15? A Around that.

Q Who else did you notice go in there that night?

A No one in particular.

Q Who else did you notice coming out there that night?

A Dominick Galgane.

Q Anybody else? A No -- the cashier --

Q There were several people in there? A Several.

Q Some went in and some went out? A Yes.

Q But all you noticed was this man? A Yes.

Q Are you absolutely sure you are telling the truth in this case? A Yes.

Q You are positive of it? A Yes.

Q What did the little errand boy ask you? A I heard him conversing about the case.

Q What did he ask you? A He asked me about the thing happening there that night, and I told him I don't see how it could happen when I was with him about five minutes. I was talking with him that night.

CASE # 1516

Q The defendant did not come to you? A No, sir.

Q No man came to you, just this little errand boy?

A They were talking about it, yes.

Q You recollect all about this man on that night? A Yes.

Q But you cannot recollect in respect to any other person? A No, sir.

BY MR. STARK:

Q Because he was arrested you remember this night so well?

A Yes, sir; he was arrested, I heard of it the next morning he was arrested.

Q That is why you remember it so well? A Certainly.

BY MR. COLLIGAN:

Q And that is the real reason you cannot remember anything else? A No, sir.

BY MR. STARK:

Q Were you drinking in the saloon? A Yes.

Q When you saw Dominick in there, did you observe his condition? A Yes, sir; he was kind of intoxicated.

S I R E G A L G A N E, called as a witness in behalf of the defence, being duly sworn and examined, testified through the official interpreter, Mr. Mustachi, as follows: (Residence, 72 Watt street, City and County of New York.)

DIRECT EXAMINATION BY MR. STARK:

Q You are the mother of the defendant Dominick Galgane?

CASE # 1516

A Yes.

Q Do you remember the month of October, 1911, after the arrest of your son, that you had a conversation with the complaining witness, Mr. Perilli? A Yes, sir.

Q Please state to this court and jury what he said to you and what you said to him?

MR. COLLIGAN: I object to this.

THE COURT: Mr. Stark, you should have asked these questions of the complainant.

MR. STARK: It is also permissible with any witness with whom he spoke, if it is a declaration against interest.

THE COURT: You must ask him and give him a chance.

MR. COLLIGAN: The complaining witness himself knows nothing about the robbery.

THE COURT: I know, but you can recall the complainant, if you wish to. Proceed.

THE WITNESS: My son told me it was not him that done that --

BY THE COURT:

Q What did you say to Mr. Perilli and what did he say to you about this? A Told me that he would trust my son all alone in the drug store, and he would always trust him there, he had nothing against him, and told me also that the defendant, my son, knows who done it, and if he won't tell who done it then he will have to pay the penalty. Mr. Perilli told me

CASE 1516

that.

BY MR. STARK:

Q Is that all of the conversation? A And the brother of Perilli told me also --

THE COURT: Strike out about the brother of Perilli.

BY MR. STARK:

Q Is there anything else the complainant said to you or that you said to him? A That is all.

CROSS-EXAMINATION BY MR. COLLIGAN:

Q So he told you that the defendant here could tell about it? A Yes.

Q And he told you that your son could tell who the other fellows were, didn't he? A Yes.

THE DEFENCE RESTS.

MR. STARK: I now move to dismiss the indictment upon the ground that the People have failed to make out a case to substantiate the charge in this indictment, on the various counts alleged therein, burglary in the third degree, petit larceny and receiving.

THE COURT: There is evidence of a larceny.

MR. STARK: I ask your Honor to dismiss the third count of the indictment, alleging receiving.

THE COURT: Yes.

MR. STARK: I ask your Honor to dismiss the second count, petit larceny.

CASE # 1516

(Motion denied, and exception.)

MR. STARK: I ask your Honor to dismiss the first count, burglary in the third degree.

(Motion denied, and exception.)

MR. STARK: I ask your Honor to direct an acquittal on the ground of insufficiency of evidence of the intent to break and enter and to commit larceny.

(Motion denied, and exception.)

THE COURT: It is for the jury to find whether there is any evidence here showing intent.

P E T E R C U S T I C K, recalled in rebuttal, testified as follows:

BY THE SECOND JUROR:

Q The prisoner stated that he was acquainted with you and knew you for several years, is that true? A No, about a year -- not a year.

BY MR. COLLIGAN:

Q He stated that he came in after you two men, that you were running down the street, is that the fact, or were you standing in front of the drug store when you rapped? A Standing in front of the drug store.

Q You went in with the other officer, or before him?

A With the other officer. We both entered together.

BY THE COURT:

Q Where was this door through which you saw him come;

CASE 1516

did that door lead into the store or into the street?

A Leading into the store.

Q From the store -- the door went from the store? A It went into a doctor's office.

Q That is, this doctor's office -- there is only one place -- what doctor do you mean? A That is the man that owns the premises there.

Q It is a drug store doctor's office in the drug store?

A Yes.

Q And that doctor's office is a part of the drug store?

A The rear room.

Q Where did that door lead to, did it open onto the street? A No, into the hallway.

Q What hallway, the hallway of the house? A Yes, the hallway of 65.

Q How far from the street was that door? A Must be pretty near 70 feet.

Q You saw that door open and this man come out of it?

A Yes.

Q Out of the drug store? A Yes.

BY MR. COLLIGAN:

Q You tried to open it first yourself? A Yes.

Q And asked him to open it? A I did not ask him. I tried it.

BY THE COURT:

Q You did not arrest him on the street? A No.

CASE 1516

Q Or going into the house? A No, sir.

Q But coming out of that drug store? A Yes.

BY MR. STARK:

Q When you searched this defendant in the station house, did you find anything else upon him in the nature of articles belonging to the drug store? A No, sir.

(The Court admonishes the jury in accordance with section 415 of the Code of Criminal Procedure, and takes an adjournment until to-morrow morning, March 29, 1912, at 10:30.)

CASE 1516

People vs. Dominick Galgane.

47

New York, March 29, 1912.

Trial resumed.

FRANCIS S. PERILLI recalled by the people:
BY MR. COLLIGAN:

Q Mr. Perilli, you were in court yesterday when the mother of this defendant testified? A Yes.

Q You heard what she said as to the conversation that took place when she came to see you? A Yes.

Q Is that true or untrue? A The conversation that took place --

Q State what the conversation was? A She came to see me whether I wanted to be in any way lenient to her son in this case.

Q Tell the whole thing? A I said I had nothing to do with the case because the law itself was working at it and she said that I wanted to be stubborn, and I said I don't see any stubbornness on my part. I cannot do anything but appear in court when they call me. She said if you want to do that I am going to spend any money I have on my son and try to force you to the last. I said, if you want to be that way with me, in case you want to go --

Q Was there any conversation in respect to the guilt or innocence of the son? A She said my son is not guilty, you

CASE # 1516

know that. I said I don't know anything about it and the policemen informed me they found your son inside. As friendly as we are, you could say something to me and I probably would do something to your son if your son would tell the truth and say who the others were with him.

Q You were very friendly with his father and mother?

A Yes.

Q You have done favors for them? A Yes.

Q Did you ever keep any money for the mother in your store? A Several times I did.

Q Did you ever have any conversation in respect to those deposits? A She left money to me I believe once, about \$30, and she said keep it for me because my house is not safe, especially when my son is around.

Q You have been in the habit of keeping money for people in your vicinity and not charging them anything? A I do now and then.

CROSS EXAMINATION:

Q In reference to this conversation, do you know how many sons Mrs. Galgane has? A I believe two sons, but she referred to this one.

Q Did she mention anybody by name? A Surely, Dominick.

Q Didn't you tell her in that conversation that you thought that Dominick did not commit this crime or words to

CASE 1516

that effect? A She said she did not believe her son done anything, she was sure of that, but I said the police found him inside and how could she say anything against it.

Q What you said to the mother was that you thought Dominick was innocent of this crime? A No, I did not say anything like that.

Q You said he was honest, didn't you? A I did not say anything like that. I believed in the information I received from the officers.

Q Will you say now that you did not say that? A I did not say that, no.

JOHN GALANTE, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(Residence 13 Macdougall street)

Q What is your business? A Rag business.

Q Do you know the defendant Dominick Galgane? A I do.

Q How long have you known him? A About seven years.

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

Q What is his general reputation for honesty, truth and good character? A As long as I know him I know him to be an honest young man and a good hard working fellow.

CROSS EXAMINATION:

Q How long did you say you knew him? A About seven

CASE # 1516

years.

Q Have you always known him to work? A Well, I know him for seven years but at the time I knew him I knew he had work.

Q Who did he ever work for? A He worked for himself and he worked for an undertaker, 105 Thompson street.

Q Don't you know as matter of fact he is inclined to be a loafer and hangs around saloons?

Objected to. Objection sustained.

THE COURT: The jury will disregard that question.

TESTIMONY CLOSED.

DEFENDANT'S COUNSEL: I renew the motions made yesterday afternoon to dismiss the indictment and I ask your Honor to direct a verdict of acquittal.

Motion denied and exception.

Griffith

CASE # 1516

THE COURT'S CHARGE.

MULQUEEN, J.

Gentlemen of the Jury: This defendant has been indicted by the Grand Jury of this county for the crime of burglary in the third degree. The indictment charges that in the County of New York on the 7th of October, 1911, he burglariously and feloniously did break into and enter a certain shop of one Francis S. Perilli, situated in the County of New York, with intent to commit some crime therein, to wit, with intent, the goods, chattels and personal property of the said Francis S. Perilli in the said shop then and there being, then and there feloniously and burglariously to 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.

You understand the indictment is only a charge against the defendant, and it is intended to let you know exactly what the charge is, so that you must keep it in mind. What is the charge? The indictment states briefly as follows, that Francis S. Perilli had a shop in the county of New York, on the 7th of October, 1911--that is the first allegation; and, second, that this defendant did feloniously and burglariously break into and enter the same, and third, that at the time he broke in and entered as aforesaid he

1516
 CASE

intended to commit some crime therein, to wit, to commit the crime of larceny. That is a very plain statement. There will be no difficulty in keeping those allegations in your mind, and that is all the indictment is for.

A defendant is not to be convicted because he has been arrested and indicted. You are here to determine whether or not the evidence in this case, when viewed in the light of the law as given to you by the Court, satisfies you of his guilt of the charge.

There are other counts in the indictment, but I think I will take them from your consideration--namely, the crime of larceny, and criminally receiving stolen property, because, on the evidence, if you have any reasonable doubt of his guilt of the crime charged in the first count, you may not convict him of the other counts. There is no evidence of criminally receiving stolen property or of larceny.

You understand this is an action between the People of the State of New York and this defendant. It is not an action between any private individual, or private interest and this defendant. The People of the State of New York comprise all the people living in this State. It is an organization or society, a combination for the purpose of obtaining all the benefits that may flow from such organization or society, and that society makes laws which are bind-

CASE # 1516

ing upon every one, and the violation of one of those laws is a crime.

The particular statute which the People charge this defendant with violating is found in Section 404 of the Penal Law. Burglary in the third degree: "A person who with intent to commit a crime therein breaks and enters a building, or a room, or part of a building, is guilty of burglary in the third degree." There could not be a simpler law than that. No one can fail to understand that, no matter how slight his intelligence may be.

A person is guilty of burglary in the third degree under what circumstances? If he breaks and enters into a building with felonious intent--with the intent of committing a crime therein. If a man be locked out of his own house and breaks a window or door to get in, that is not burglary. It is a breaking and an entry, but his intent is to get into his own house, which he has a right to do, but, if you break and enter into your neighbor's house with intent to commit larceny, that is burglary in the third degree, if there are no other elements present, and there are no other elements alleged here.

These terms break and enter have long been used in the English law, from which our law was taken as naturally as the English speech was taken, and they have been construed by the Judges, and the law has been fixed in the Code, so

CASE # 1516

that there should be no dispute about it. The word break means, first, breaking or violently detaching any part internal or external of a building; or, opening for the purpose of entering therein, by any means whatever, any outer door of a building, or of any apartment or set of apartments therein separately used or occupied, or any window, shutter, scuttle, or other thing used for covering or closing an opening thereto or therein, or which gives passage from one part thereof to another."

That is, if this door was not locked, but simply closed, and one turned the knob and opened the door, that is a breaking within the meaning of the word as used in the statute defining burglary. If a window was broken, as testified to here, and then raised by opening the catch, that is a breaking. If the door was opened with a key, that is a breaking.

The word enter is defined also. It says, "The word enter as used includes the entrance of the offender into such building or apartment, or the insertion therein of any part of his body, or of any instrument or weapon held in his hand, and used, or intended to be used, to threaten or intimidate the inmates or to detach or remove property." The term building as used in this article includes a railway car, vessel, booth, tent, shop or other erection or inclosure."

CASE # 1516

So that if you find that Perilli had a shop in the County of New York and that that shop was securely fastened when he went home, all the doors and windows, as he said, if any one violently detached the door or the window, or if any one by any means opened one of those doors or windows for the purpose of committing a crime inside, that would be a breaking, and if those persons went through the opening thus made, that would be an entry, and then the next question would be to prove the intent of the person entering that shop.

The indictment charges that the intent was to commit larceny, to steal the goods, chattels and personal property of the complaining witness Perilli. Such conduct is larceny, a crime, as you will see from Section 1290 of the Penal Law: "A person who with the intent to deprive or defraud the true owner of his property or of the use and benefit thereof, or to appropriate the same to the use of the taker or any other person, takes from the possession of the true owner or any other person personal property, steals that property and is guilty of larceny." That is a very plain law. It forbids the taking of personal property from the owner or from the custody or possession of the owner or anybody else with intent of depriving the owner of his property, and appropriating it to the use of the taker. Larceny may be defined as the taking of per-

CASE # 1516

sonal property with felonious intent. That is a crime.

So that, if the persons who broke and entered this shop, if you find anybody did, they intended to take away the personal property of Perilli found therein, and deprive him of it, they would be guilty of burglary. The question arises as to how you can prove intent. You can see a door or a window and say whether it has been broken or opened, but how can you see intent. Intent is the silent operation of the mind. It is the end sought by the person in doing any act. So, the law is that since you cannot prove it as a physical fact, you may prove it by proving other facts from which the jury may find what the intent of the person was. Now, why should persons break into and enter the store of another person at two or three o'clock in the morning? What evidence is there that they did anything in that shop? If you believe any one entered his place and turned the safe upside down and ripped off a part of the bottom covering and attempted to open the safe in that way, or that a case was opened and articles were missing, you may find from those facts what was the intent of the persons who entered that shop. The law is that from a man's acts you may infer his intent. If a man is sane and sober and his mind be in a normal state, you may infer his intent from his acts. And the jury may find that he intended to do exactly what his actions

CASE # 1516

indicate -- the natural consequences of his acts. There is testimony here from which you may find the intent of the persons who entered that place, if you find any one entered it, but the Court is not presuming to pass upon any facts. You understand that. There is a sharp line of division between the power of the Court and your power. The Court has its power and you have your power. The duty of the Court is to see that the defendant receives a fair trial, and that means a legal trial. So long as the law is carried out, he cannot complain of the Court. Of the facts the Court has nothing to say. That is your sole and exclusive province. You have sole jurisdiction over the facts. You have heard all of the witnesses on the stand. You must determine whether these policemen told the truth or not. The complainant Perilli knows nothing about this case except what he learned after the crime was complete. Do you believe he had a store? Do you believe he saw it in the condition in which he said? Do you believe these officers were walking along there and made the observations to which they have testified, and that they saw this man coming out of the door, after one had called out to the other to cover the window. You must pass upon the credibility of the witnesses.

Do you believe the defendant's story? You must not decide these questions rashly or quickly. You must weigh

LIBRARY
1516
CASE 1516

them deliberately, realizing you are doing the most important work that you will ever be called upon to do in time of peace. The administration of the criminal law is the most important work done in this county. Your duty is to pass upon the facts as they are submitted to you by the witnesses and to accept the law as given to you by the Court and to give your honest verdict -- that is all the law requires.

If you are satisfied to a moral certainty from all the evidence on both sides that there was a shop; that some one broke and entered there with felonious intent and that this defendant was one of them, then find him guilty, because that is the proof the law requires. If the evidence falls short of that, leaves you undecided, creates the thought that he is possibly guilty or the suspicion he is guilty, that is not enough. You must be satisfied to a moral certainty that he is guilty from the evidence. That is all you are to consider. You must take the law from the Court, and there is no ambiguity about the law-- the law is plain. Weigh the evidence; decide whether or not you are firmly convinced that he committed the acts charged in the indictment, and if they constitute the crime of burglary in the third degree as given to you by the Court, you may find him guilty. If not, you may not find him guilty.

CASE # 1516

MR. STARK: I respectfully ask your Honor to charge the jury that they must find such criminal intent as a fact on the evidence, before they can convict.

THE COURT: Criminal intent must be found as a fact from the evidence. That is what I told you, before you can convict him.

MR. STARK: I ask your Honor to charge the jury that evidence of good character will create a reasonable doubt where otherwise there would be none.

THE COURT: That is the law. You have heard the evidence here, and you must weigh any evidence of good character the same as you weigh the other evidence. You must determine how much weight you will give that evidence, and the law is that if the evidence satisfies you that the defendant was of good character, that fact alone may be the basis of reasonable doubt in a case where otherwise there would be no ground for reasonable doubt. Reasonable doubt is a doubt that is based on reason. A man who has a reasonable doubt can give a reason for it. It is not a doubt that is based on sympathy, or on a whim, or on a desire to avoid doing your duty, but it is the condition of an honest juror's mind when he finds himself unable to say from the evidence that he is convinced to a moral certainty that the defendant is guilty. It is based on a reason connected with the evidence or lack of evidence in the case,

CASE # 1516

and good character evidence may, in your discretion, form the basis of reasonable doubt.

MR. STARK: I ask your Honor to charge the jury that elements of the crime of burglary, breaking and entry, and of the intent, must each be established beyond a reasonable doubt.

THE COURT: I so charge.

The jury retire.

Later, the jury rendered a verdict of guilty of burglary in the third degree.

MR. STARK: I move, if your Honor please, that the verdict of the jury be set aside on the ground that it is contrary to law and contrary to the evidence in this case and upon all the other grounds mentioned in Section 999 of the Code of Criminal Procedure.

Motion denied, and exception.

CASE # 1516