

START

1501

CASE

CASE #1501

1941

COURT OF GENERAL SESSIONS OF THE PEACE
IN AND FOR THE COUNTY OF NEW YORK
PART FOUR.

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

- against -

WILLIAM CARTER, indicted with
Harry Coleman.

#1617
: B e f o r e
: HON. JOSEPH F. MULQUEEN, J.
: And a Jury.
:
:
:
:-----X

New York, Tuesday, March 5th, 1912.

THE DEFENDANT IS INDICTED FOR GRAND LARCENY IN THE FIRST DEGREE.
AND RECEIVING.

INDICTMENT FILED MARCH 21st, 1911.

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

ALLAN G. WELLMAN, Esq., Assistant District Attorney,
For The People.

MOSES A. SACHS, Esq.,
For the Defendant.

(A Jury is duly impaneled and sworn.)

(By order of the Court, all witnesses are excluded
from the Court Room.)

Amos G. Russell,
Official Stenographer.

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THE PEOPLE'S CASE

J O H N J E N S E N, called as a witness on behalf of
The People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WELLMAN.

Q What is your name ? A John Jensen.

Q Where do you live ? A 27 Flushing Avenue.

Q That is in Long Island City ? A That is in Long
Island City, yes, sir.

Q And where did you live on the 12th of March, 1911 ?
A 180 Thirteenth Avenue.

Q Long Island City ? A Yes, sir.

Q Do you remember the evening of the 12th of March com-
ing across from Weehawken on the ferry ? A Yes, sir, I do.

Q And that ferry lands at Forty-second Street east,
does it not ? A On the New York Side.

Q Where were you going from there ? A I was going
home. I was waiting for a cross-town car, forty-second
Street cross-town car.

Q Do you know if that is the red car ? A That is the
red car, yes, sir.

Q What happened on the 12th of March at Forty-second
Street, east ? A Well, I got out of the ferry, and was
standing waiting for a car, and there was a big crowd around
me, and I had some bundles I brought from Jersey in my right
hand, and in my left hand I had on my pocket book. I had the

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pocket book in my side pocket, pants.

Q In your trousers pocket ? A Yes; and then my wife said "Get the change ready for the car", so I put the bundles on the other side, and grabbed in the right hand pocket and got out ten cents for fare. While I was doing this, I felt some pushing and movement around me, and I was putting the bundles back in the other arm; I wanted to grab my pocket, but at the same moment a gentleman hollered, in back of me, "Have you got your pocket book?".

Q Who was that ? A The Officer; and I grabbed the pocket and said "No, it is gone", and I turned around and grabbed a fellow's hand. That was Coleman, the fellow that got convicted last year.

THE COURT: Strike that out. Gentlemen of the Jury, you must disregard that statement.

Q Just tell us about Carter, if you will ?

BY THE COURT.

Q Did you see this man there (indicating defendant) ?

A Yes, sir.

Q What did you see him do ? A He was standing there, and the Officer had hold of him.

Q You didn't see him do anything ? A No.

BY MR. WELLMAN.

Q Did you notice who was in front of you, whether or not it was this man ?

MR. SACHS: Objected to as leading.

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THE COURT: Well, that is leading. What did you see this man do? Where was this man standing?

THE WITNESS: This Carter?

THE COURT: This defendant here?

THE WITNESS: When I got notice that the Officer told me "there is your pocket book", I turned around, and I seen the Officer standing there, and he had hold of Carter and Coleman.

THE COURT: He was behind you?

THE WITNESS: He must have been behind.

THE COURT: Was he behind you?

MR. WELLMAN: Your Honor, I think I can clear that up.

Q Do you know where this defendant was? Did you see him at all before the Officer called your attention?

A No, sir.

Q That is, you didn't see this defendant at all until the Officer asked you something about your pocket book, and then you saw he had hold of this man and the man Coleman?

A That is right.

Q How much money did you have in your pocket book?

A I had twenty-six dollars.

Q And you say you had it in your left hand trousers pocket? A Left hand side.

Q Have you the pocket book with you? A I have the pocket book with me, yes, but I had different pants on.

THE COURT: You were asked if you have the pocket

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book with you. Have you ?

THE WITNESS: That is the same pocket book (producing same.)

MR. WELLMAN: I ask it be marked for identification.

(Same marked "People's Exhibit No. 1, for Iden.", of this date.)

Q Did you have on that same overcoat ? A No, sir, I had a dark spring overcoat.

Q And about that length ? A Yes, sir, about that length. It might have been a little longer.

Q When next did you see this pocket book ? A I seen it again when the Officer took it away from somebody. Somebody picked it up.

Q And you got your money back - twenty-six dollars ?

A I got my money back, yes, sir.

THE COURT: Somebody picked this off the floor of the car ?

MR. WELLMAN: This was on the street, waiting for the car. How many people were there around you ?

THE WITNESS: Well, there was a big crowd. I couldn't tell exactly.

Q People all around you ? A Yes, sir.

Q And you had not seen the Officer before that ? A No.

Q What time of day was this ? A This was about ten or fifteen minutes after eight.

Q At night ? A At night.

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Q This was Forty-second Street, in New York City and County ? A New York City.

CROSS EXAMINATION BY MR. SACHS.

Q When you left the ferry and walked toward the car, did a number of other persons also come from the ferry to the car ? A Yes, sir, there was a crowd on the boat. I walked with the crowd from the boat.

Q When you got to the car, did any persons from the ferry get to the car before you did ? A I couldn't tell that.

Q When you got up to the car, there were a number of persons waiting at the point where the car stops ? A When I got out of the ferry, there was no car there; we were waiting for the car.

Q When you got up to the point where the car started, was there a car there ? A No.

Q Were there some people there before you ? A I believe. I couldn't tell.

Q Have you no recollection at all ? A Well, there was lots of people around there.

Q You were not in front, were you ? Or were you in front ? A Where, in front ?

Q (By the Court) Were you in front of the crowd ?

A No; there was at least three or four rows in front of me.

Q (By the Court) Three or four rows of people ?

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A Yes, sir.

Q Have you any idea how many rows of persons were in back of you ? A No, sir.

Q There were persons at your side ? A There was.

Q Where was your wife standing in respect to yourself ?

A My wife was right in front of me.

Q The first time you ever saw the defendant was when the Officer had him in charge ? A That is right.

Q You don't know if he ever stood next to you, do you ?

A No.

Q You don't know if he ever put his hand upon your person ? A No.

Q You don't know if he spoke to anybody that was near you ? A If he spoke to anybody ?

Q (By the Court) You don't know whether he did, or not ? A No.

MR. SACHS: That is all.

HENRY BAUERSCHMIDT, called as a witness on behalf of The People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WELIMAN.

Q What is your name ? A Henry Bauerschmidt.

Q You are an Officer of the municipal police force ?

A I am.

Q Attached where ? A Thirty-fifth Precinct, Detec-

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tive Bureau.

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Q Where is that ? A East Eighty-eighth Street.

Q On the 12th of March, 1911, where were you stationed ?

A Twenty-third Precinct.

Q Twenty-third Precinct, Detective Bureau ? A Yes, sir.

Q (By the Court) Where is that ? A West Thirtieth Street.

Q On the night of that day, were you in the neighborhood of Forty-second Street, East ? A Yes, sir.

Q (By the Court) West, isn't it ? A Yes, sir.

Q Did you see the complaining witness, John Jensen, that night ? A I did, sir.

Q Where did you see him ? A I seen him on the south side of the foot of Forty-second Street, right at the curb.

Q And is that where the cars come in ? A Yes, sir.

Q (By the Court) By the Hudson River ? A Yes, sir, where the Forty-second Street cross town cars come in.

Q And did you see the defendant ? A I did, sir.

Q Did you see the defendant, Harry Coleman ? A I did, sir.

Q Did you see them near John Jensen ? A I did, sir.

THE COURT: State what you saw.

Q Had you seen them prior to that ? A I did, yes, sir.

Q Now, state what they were doing, what you saw them do ? A I saw them on the rear of a green car that runs

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from Forty-second Street Ferry over to East Thirty-fourth Street, and I seen the defendant Carter on the back of the car, and Coleman on the steps of the car. When the passengers was going up, I noticed that they were jostling the passengers.

MR. SACHS: I object to that, and move to strike it out.

THE COURT: Strike it out.

MR. SACHS: I ask your Honor to instruct the Jury to disregard that statement.

THE COURT: The Jury will disregard it.

MR. WELIMAN: We have to prove they were acting in concert.

THE COURT: State where you saw them.

BY THE COURT.

Q You saw them on that car. Where else did you see them? A After going half a block east, they got off the car.

Q What did they do then? A They went back again to where the red cars were.

Q Walking together? A Walking together, yes, sir.

Q And talking? A And talking, yes, sir.

Q What did they do then? A They went back to where the red cars came in.

Q And how far was that - How long was that before

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Mr. Jensen came along ? A Mr. Jensen was there when they went back.

Q That was the only time you had seen them ? You saw them get on one car, or you saw them when they were on the car ? A Yes, sir.

Q Which was it ? A I saw them get on the green car.

Q And you saw them get off and walk back ? A To the red car, yes, sir.

Q And you say they were talking ? A Yes, sir.

Q Sure about that ? A Yes, sir.

BY MR. WELLMAN.

Q And did they come back to where the red cars start ?

A Yes, sir.

Q And there Mr. Jensen was waiting for the car ?

A Yes, sir.

Q State just what you saw ? A I saw the defendant Coleman get to the left side of the complainant, Jensen, and I saw the defendant Carter stand in front of the complainant, Jensen.

Q Did you notice where Mrs. Jensen was ? A Mrs. Jensen was to the -

Q Did you notice ? A Yes. Mrs. Jensen was to the right, a little ways in back of Mr. Jensen.

Q And where were you ? A I was directly ~~in~~ behind Coleman.

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Q And that is to the left of Jensen ? A To the left of Jensen.

MR. WELLMAN: Mr. Jensen, will you step up ? I would like to have the officer demonstrate this, if your Honor will allow it.

THE COURT: Ask your question.

Q Now, show us how this happened. Suppose this is where the Forty-second Street cars are going (indicating). Where was the defendant Carter, this defendant ? A Standing right over here (illustrating, with complaining witness, before jury box).

Q Where was the defendant Coleman ?

MR. SACHS: Objected to, on the ground that there is no proof to show that the defendant Coleman was acting in concert with the defendant Carter, or that Carter was acting in concert with the defendant Coleman.

THE COURT: He has already testified he saw them get on a car together, and get off, and walk back, talking. If there is not sufficient proof, I will instruct the Jury to dismiss this indictment.

Q Describe where Coleman was ? A Coleman was right here (indicating).

Q And where were you ? A I was right here (indicating.)

Q Just state what you saw them do ? A I saw the

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defendant Coleman.

MR. SACHS: May I interrupt? I want to know where Carter was.

THE WITNESS: Carter was in front of the complainant.

MR. SACHS: To the right?

THE WITNESS: Yes, sir. I saw the defendant Coleman raise the complainant's coat, - He didn't have this coat on. He had a lighter coat, - and stick his hand down in this man's pocket and draw something from his pocket, step forward and go to pass him (illustrating in front of Jury box with complaining witness).

MR. SACHS: I object to that.

THE COURT: Strike out "go to pass".

Q Just illustrate to the Jury what he did with his hand?

A Put his hand this way, and went down in the pocket, and drew this pocket book from his pocket (illustrating with complaining witness in front of Jury box.).

MR. SACHS: Objected to.

A (Continuing). Drew something from his pocket, and went forward, and stooped forward, and put his hand this way (illustrating with complaining witness, before Jury box.)

Q Where was the defendant Carter at that time?

A Defendant Carter was right on the right hand side.

Q And where were his hands, if you noticed? A His

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hands were on his side, like this (illustrating).

Q And his left hand, did you notice where his left hand was ? A Yes, sir.

Q Indicate how his left hand was ? A His left hand was this way (illustrating), and when Coleman put his hand out, this way (illustrating), Carter put his hand out, that way (illustrating).

Q Where was the pocket book ? A The pocket book was in Coleman's hand.

Q Did you notice whether Carter looked down, or not ? A Yes, sir. Carter looked down.

Q How was he looking ? A He was looking sideways, watching Coleman.

MR. SACHS: Objected to.

THE COURT: Strike out "watching Coleman".

MR. SACHS: I ask your Honor to instruct the Jury to disregard it.

THE COURT: I instruct the Jury to disregard any inference of the witness. It is the duty of the jury to pass on the evidence, not the Officer's. He must confine himself, if possible, to what he saw; not what he thought or imagined.

Q Now, Officer, get on the other side, and state where you were when you saw this ? A I stepped forward with Coleman, and when he went over this way, I went down on

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his hand (illustrating).

Q Grabbed his hand ? A Yes, sir.

Q And what became of the pocket book ? A It fell to the ground.

Q Go on from there, in your own way ? A I reached over, and I grabbed the defendant Carter, and I turned around, and I told the complainant that he had been robbed.

BY THE COURT.

Q Didn't you grab Coleman, too ? A I had Coleman by the wrist.

Q Then you grabbed Carter ? A Yes, sir.

Q And then you spoke to the defendant ? A Yes, sir.
BY MR. WELLMAN.

Q You then arrested him; is that it ? A I did, yes, sir.

BY THE COURT.

Q You did not tell him the truth when you told him he had been robbed. That is not what robbery is. That is larceny. You told him something ? A Yes, sir.

CROSS EXAMINATION BY MR. SACHS.

Q How many cars start from the westerly end of Forty-second Street, how many lines of cars ? A Two lines.

Q The one that goes through to Thirty-fourth Street and the one that goes through Forty-second Street ?

A Yes, sir.

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Q (By the Court) What time was this ? A About eight-ten.

Q In the morning ? A P. M.

Q And when you saw the defendant Carter on the Thirty-fourth Street car, he was on the platform ? A Yes, sir.

Q The other man was on the step ? A Yes, sir.

Q At the time Carter was on the platform and Coleman on the step, how far were you from that car ? A I was right inside the car.

Q Going to Thirty-fourth Street ? A Yes, sir.

Q Then they got off ? A No, they rode part of the way, half a block up, east, and then they both jumped off.

Q Did they go directly back to the foot of Forty-second Street ? A They did, yes, sir.

Q Did you see them speaking to each other ? A No, sir.

Q You didn't hear what they said ? A No, sir.

Q You don't know whether they were speaking about the mistake each had made in boarding a Thirty-fourth Street car instead of a Forty-second ? A I couldn't say.

Q Then you followed Coleman, or both of them, into this crowd waiting for the red car ? A I did, yes, sir.

Q When Coleman, as you described, took the pocket book from Mr. Jensen, the complaining witness, was there any space between him and Jensen ? A No.

Q None at all ? A None directly behind him, no.

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Q I beg pardon? A In back of him, do you mean?

Q Was there any space between Jensen and this man Coleman you speak about? A No.

Q Was Coleman directly up against him? A Yes, sir.

Q Did he ~~mak~~ move back at all before he lifted the coat?
A Yes, he did.

Q Did he bend down? A Yes, sir.

Q And when he moved back, then there was some space between Coleman and the complaining witness? A Well, I was in back of Coleman.

Q I understand that; but when he stooped down to lift up the coat, there was some space between him and the complaining witness, was there not? You were in back of him all the time? A Yes, sir.

Q Did you see the complaining witness's wife that day or that night? A I did, yes, sir.

Q Was she standing in front of him? A No, sir; she was standing in a little towards the back, back of the defendant Garter.

Q If the complaining witness states that his wife was in front of him, is he telling the fact, or not? A He is not telling the fact, no, sir.

Q When the defendant Coleman stooped down to lift up the overcoat, there was some little distance between him and the complaining witness? A Yes, there was no distance.

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Just enough for him to stoop down.

Q Well, now, that is some distance, wasn't it ? A Yes.

Q It was more than an inch ? A Oh, yes.

Q And less than a mile, of course, but there was some distance ? A Yes, sir.

Q At the time Coleman stooped down, did he push against the complaining witness ? A No. When Coleman stooped down, I noticed he was very cautious.

THE COURT: Strike that out. Officer, don't give your conclusions.

Q When Coleman stooped down, to take that purse, if he did, did he push up against the complaining witness ?

A Yes, I believe he did.

Q Did he push up against the complaining witness, or did the complaining witness push back against him ?

THE COURT: Do you understand the question ?

THE WITNESS: Yes, sir. I couldn't tell you whether the complaining witness pushed against him, or not.

Q Isn't it a fact the complaining witness stood perfectly quiet ? A Yes, sir.

Q Now, you are sure of that ? A Yes, sir.

Q So, there was no one pushing him in front, was there ?

A No -

Q "Yes", or "no", please ?

MR. WELLMAN: At what time ? I object, as indefinite.

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THE COURT: At what time ?

MR. SACHS: At the time the pocket book was taken from him.

THE WITNESS: Yes, there was.

Q What ? A There was a pushing in the front.

Q You said that the complaining witness was standing perfectly quiet at the time the pocket book was taken from him, didn't you ? A Yes, sir.

Q Now, I ask you if there could be any pushing in front at the time the pocket book was taken ?

MR. WELLMAN: Could be ?

MR. SACHS: Yes, if you say he was perfectly quiet.

MR. WELLMAN: Objected to as calling for a conclusion.

THE COURT: Objection sustained. Let him state what he saw. That is a matter of argument.

Q Did you hear the defendant Coleman say anything after he obtained the pocket book ?

THE COURT: "Yes", or "no".

A No.

Q Did you see him speak to this defendant at all after he obtained the pocket book ? A No.

Q Did you ever see the pocket book in this defendant's hands ? A No.

Q (By the Court) How much time elapsed from the time he took the pocket book until you arrested him ? A A second.

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Q And how much time elapsed from the time you started watching Coleman up to the time the pocket book was in his possession ? A About ten minutes.

Q During the ten minutes he was in the crowd ? A Yes, in the crowd, yes, sir.

Q And during those ten minutes you didn't see him speak to the defendant Carter ? A I did.

Q How long a time elapsed from the time he last spoke to Carter up to the time you arrested Coleman ? A About two minutes.

Q And then you saw Coleman, after he obtained possession of the pocket book, step in front of the complaining witness ? A I did.

Q And you say now that the complaining witness's wife was to his side ? A Yes, sir.

Q You showed to the Jury a movement of Coleman's hands ? A Yes, sir.

Q And it was then, was it, that you grabbed him ? A I did, yes, sir.

MR. SACHS: That is all.

RE-DIRECT EXAMINATION BY MR. WELLMAN.

Q Now, Officer, you said that you did not see Coleman speak to Carter after Coleman took the pocket book and after you arrested him; is that right ? A Yes, sir.

Q Now, did you ask Coleman whether he knew Carter,

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or Carter whether he knew Coleman ?

MR. SACHS: Objected to, if your Honor pleases.

Q (Continuing) After you arrested him ?

THE COURT: I will sustain the objection as to the first question.

Q Did you ask this defendant whether he knew the defendant Coleman ?

THE COURT: "Yes", or "no".

A Yes.

Q And what did he say ? A He says he did not know him.

MR. WELLMAN: That is all.

THE PEOPLE REST

MR. SACHS: I respectfully ask your Honor to take from the consideration of the Jury that count charging this defendant with grand larceny in the first degree, and instruct them to acquit, on the ground The People have not made out a case.

THE COURT: Motion denied.

MR. SACHS: Exception.

THE DEFENDANT RESTS

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(Mr. Sachs then summed up the case to the Jury on behalf of the Defendant.)

(Mr. Wellman summed up the case to the Jury on behalf of The People.)

MR. SACHS: If your Honor pleases, before your Honor proceeds to charge the jury, may I ask your Honor to instruct the Jury to disregard the statement made by the District Attorney that "by the time you reach the end of the term you will find this the neatest kind of a pocket picking case" ?

MR. WELLMAN: I didn't say exactly that.

MR. SACHS: Well, that is what you said in substance.

THE COURT: That is only a mere expression of opinion. The Jury will decide the case on the facts as found by them from the evidence, and in accordance with the law as given by the Court. Now, inferences drawn by counsel on either side, or statements made by them, concerning the evidence, are to be respectfully considered by you, and given as much weight as you think they are entitled to, under all the circumstances of the case. They are not binding on you at all. That is only an expression of opinion. It is the duty of counsel to draw his deductions from the evidence; it is the duty of the District Attorney to draw his deductions;

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and it is your duty to weigh the evidence and draw your deductions, and if yours agree with counsel on either side, agree with them, not because he said it, but because you agree with them.

MR. SACHS: Will your Honor give me an exception?

THE COURT: Yes.

MR. SACHS: I ask your Honor to charge the Jury -

THE COURT: I have not charged as yet.

MR. SACHS: I ask your Honor to instruct the Jury not to consider the statement made by the District Attorney that the Officer saw them on the other car together, but what he saw was not allowed by the rules of evidence.

THE COURT: Yes; you will disregard that.

MR. SACHS: I renew the motion I made at the end of The People's case.

THE COURT: Motion denied.

MR. SACHS: Exception.

THE COURT'S CHARGE

MULQUEEN, J.:

Gentlemen of the Jury, this defendant has been indicted by the Grand Jury for the crime of grand larceny in the first degree. The Grand Jury charge that Harry Coleman and William Carter, this defendant,

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in the County of New York, on the 12th of March, 1911, in the night time, with force and arms, one bill-fold, of the value of fifty cents, and the sum of twenty-six dollars in money, lawful money of the United States of America and of the value of twenty-six dollars, of the goods, chattels and personal property of one John Jensen, from the person of the said John Jensen, did take, steal 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.

That is a very simple charge, as contained in this indictment, and, to put it in ordinary phraseology, the facts charged are that John Jensen had a bill-folder, or, as has been testified, a pocket-book, of the value of fifty cents, and the sum of twenty-six dollars in lawful money of the United States of America and of the value of twenty-six dollars, on his person, in the County of New York, on the 12th day of March last, in the night time. That is allegation number one.

Secondly, that this defendant and another person did then and there feloniously steal, take and carry away that property from his person, against the form of the Statute in such case made and provided.

Now, you understand, as I have told the other jury, that an indictment is only a charge. Men are not to

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be convicted because they are charged with crime. The charge must be made good by evidence. The Grand Jury hears a story presented to it, and then charges the defendant with the crime, and this Court is established to try the indictments; so that, if you were to presume them guilty simply because they were indicted, it would be a great saving to the community if you abolished this Court and all necessary accoutrements.

But that is not the law. The indictment lets him know what the charge is, and lets you know what the charge is, and it is put in writing because things in writing do not change. If it was an oral charge, there might be a half dozen different aspects of it. It is written, so that it may remain permanently fixed; and the charge is that John Jensen had on his person, on the 12th of March last, in the night time, the sum of twenty-six dollars in money and a pocket book, and that this defendant and another person feloniously did steal, take and carry it away from him, a very clear charge.

The Statute referred to in the indictment is Section 1290 of the Penal Law. You know, this is not a case between John Jensen and this defendant. This action is entitled The People of the State of New York against Harry Coleman and William Carter, and by that term, The People of the State of New York, is meant organized society, all the people, men and women, black and white,

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rich and poor, that live within the borders of this State; and they have organized a society for their mutual aid and advancement, and for the purposes of the government, the attainment of life, liberty and the pursuit of happiness, and that society makes laws, and the laws which define the crimes are called the penal laws, and they are binding on every one who wishes to live within the borders of our State.

Now, the particular law to which the People refer here is Section 1290 of the Penal law, defining larceny, and it says:

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

You could not have a plainer law than that. What is larceny? It is the taking of personal property with felonious intent.

Was there any property taken from Mr. Jensen?
Is that established by the evidence? Second, what was the intent of the taker? If the intent was to deprive

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Mr. Jensen of it and to appropriate it to the use of any other than Mr. Jensen, then that was the crime of larceny; and the question is whether the evidence shows that this defendant was guilty of that crime of larceny.

Larceny is divided into degrees, according to the circumstances of time or place, the amount of property taken.

Grand larceny in the first degree is defined as follows:

"A person is guilty of grand larceny in
"the first degree, who steals, or unlawfully
"obtains or appropriates, in any manner specified in this article, property of any value,
"by taking the same from the person of another
"in the night time."

It does not make any difference how much money was taken. If five cents be taken from the person of another person in the night time, from the person, rather by a thief, in the night time, that is grand larceny in the first degree. If it were in the day time, it would be grand larceny in the second degree. So the amount of money involved here is not an essential element. There must be property of some value.

It is alleged here that it was twenty-six dollars of the United States of America, and that it was taken with felonious intent from the person of the owner, in

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the night time.

Now, you have heard all the testimony here, and there is a rule of law to which I wish to call your attention, and that is that any person who aids or abets, counsels or advises another to commit a crime, is equally guilty with the person who actually commits it. The evidence does not establish that Carter put his hand in this man's pocket, but that Coleman did. Now, if they were acting in concert, that is, if they were there for the purpose of committing larceny, then they are each equally guilty, and you must find that from the evidence, beyond a reasonable doubt, before you can convict the defendant.

The rule of law is that the defendant is presumed to be innocent; that is the old principle of the English law, which the Americans inherited as naturally as they inherited their speech from the English, that a defendant is presumed to be innocent. He is not brought into Court and told to establish his innocence. That is taken for granted. The People, who make the charge against him, must prove that he is guilty, and that has been enacted into the Criminal Code, in Section 389, so there should be no dispute about it. A defendant in a criminal action is presumed to be innocent until the contrary be proved, and in case of reasonable doubt

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whether his guilt is satisfactorily shown, he is entitled to an acquittal. That means, satisfactorily shown to the Jury.

It is the duty of the Court to instruct the Jury in the law. The law in this case is very plain, and the facts charged are very plain. It is not a complicated case. Then the duty of the Court ends.

You take the law from the Court, and you keep in mind the charges contained in the indictment, and the evidence, and the rule is that, if you are satisfied beyond a reasonable doubt by that evidence that the defendant is guilty, then you should say so. If you have a reasonable doubt on any of the elements in the case, that Jensen had the money on his person, that he took it from him, the time when it was taken, that he was acting in concert with Coleman, who took it, if you find that Coleman did take it, then you must acquit him.

If you are satisfied beyond a reasonable doubt on all those points, you must find him guilty of grand larceny in the first degree. If you are in doubt as to the time - you heard the Officer say it was about eight P. M. - then you could only find him guilty of grand larceny in the second degree.

The burden of proving guilt is on The People. They must produce the evidence before you. And the rule is

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that on the whole case you must have a firm conviction to a moral certainty of his guilt before you have proof beyond a reasonable doubt. The proof must be sufficient, not merely to create the thought that he is possibly or probably guilty, but must produce a firm conviction in your minds of his guilt. If your minds are in such a state, after hearing all the evidence and carefully weighing it, that you cannot say you are firmly convinced that he is guilty, then you must acquit him.

Any requests to charge ?

MR. SACHS: Will your Honor charge the Jury that your denial of my motions is not to be accepted by them as any intimation of your Honor's views on the case ?

THE COURT: I so charge. Those are matters of law. The Court is responsible for them. Keep in mind the law, keep in mind the charge in the indictment, and then say what you judge of the evidence; and, as I said before, if you are satisfied by that evidence, beyond a reasonable doubt, that the defendant is guilty, say so. If you are not satisfied, you must say so by a verdict of not guilty.

Any requests, Mr. Wellman ?

MR. WELLMAN: None, your Honor.

MR. SACHS: Will your Honor charge the Jury that the fact that the defendant did not take the stand is not

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to be construed against him ?

THE COURT: I so charge.

I hereby certify that the foregoing is a complete
and accurate transcript of my stenographic notes taken
upon the trial of the foregoing case.

Amos G. Russell
Official Stenographer.

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