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I N D E X.

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THE PEOPLE OF THE STATE OF NEW YORK, :Before:

-against-

EUGENE F. VACHERON.

: HON. OTTO A. ROSENBERG, J
: and a Jury.

New York, February 27th, 1912.

Indicted for grand larceny, first degree.

Indictment filed November 17, 1911.

(No. 6508)

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

For the People: ISIDOR WASSERVOGEL, ESQ., Assistant
District Attorney,

For Defendant: Terence McManus, Esq.

(The taleamen are examined on the voir dire.)

(A jury is duly empanelled and sworn.)

Mr. Wasservogel opens to the jury in behalf of the
People.

At request of Mr. McManus all witnesses are excluded
from the Court Room.

H E N R Y B O D I N, called as a witness in behalf of the
People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A Tulan, Sullivan County.

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Q What is your business? A Farmer and Boarding house keeper.

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

Q How long have you known him? A Why, since the 29th of January.

Q What year? A 1908.

Q In the month of January, 1908, I believe, you were in the Bloomingdale Insane Asylum? A Sanitorium.

Q How long had you been there? A About three months and a half.

Q On the 29th of January, 1908, did you see this defendant? A Yes, sir.

Q Where did you see him? A He came up with my step-mother.

Q What is her full name? A Adele F. Bodin.

Q They came up to the sanitorium? A Yes, sir.

Q And saw you there? A Yes, sir.

Q Did you see the sanitorium on that day? A On that day.

Q Did you come to New York City? A Pardon me, but I had seen Mr. Vacheron once before, about two weeks before.

Q In the sanitorium? A Yes, sir.

Q At any rate on the 29th of January 1908, you came from the sanitorium to the City? A Yes, sir.

Q And you were accompanied by whom? A Mr. Vacheron.

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and Mrs. Bodin.

Q Where did you come to when you arrived here? A We went to a hotel, and had dinner, at the corner of 42nd street; then from there to the Brevoort.

Q And you engaged rooms at the Brevoort Hotel? A Yes, sir.

Q Where is that? A Fifth avenue and 8th street.

Q Is that in the county of New York? A Yes, sir.

Q What did you do next? A I went down town to draw some money.

Q Where did you draw this money? A Emigrant's Industrial Saving's Bank.

Q How much did you draw? A \$500.

Q What did you do with the money? A Well, I brought it back with me.

Q What did you do with any part of it? A I paid Mr. Vacheron.

Q How much? A \$260 dollars.

Q Was a receipt given to you at that time for this money?
A No, sir.

Q Were you at any time in the employ of the Compagnie Generale Transatlantique Steamship Line? A Yes, sir.

Q In what capacity were you employed by that line? A In various capacities, commencing on the pier, which was then Pier 42, and finally as cashier. I was five years in different positions there, and fourteen years as cashier.

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Q Did you at any time in the presence of this defendant see any persons connected with the French Steamship Line which you speak of? A (No answer).

Q Did any one from the French Steamship Line call on you at the hotel Brevoort when Vacheron was present? A Yes, sir.

Q What day was that? A That was on the 31st of January, 1908.

Q On that day who called? A Mr. Piperoux, who was formerly my chief of service.

Q Never mind that. He was connected with the French Steamship Line? A Yes, sir.

Q Was he accompanied by a lawyer named Nolan? A Yes, sir; and also the agent of the Company.

Q Did they bring anything with them?

MR. McMANUS: There is no dispute about it. I make an offer of proof and I submit I have a right to do so. I think I can expedite matters, by suggesting matters that we will concede: that the French Line produced and delivered to this man in the presence of defendant, any papers that they say were produced and delivered there to the complainant.

MR. WASSERVOGEL: There is no question about that, but I want him to say it of his own words.

Q This package was delivered to you in the presence of the defendant? A Yes, sir.

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Q Were the contents of the package checked up by anybody?

A By myself, but he was alongside of me and helped me check it.

Q Did you then sign a receipt for the contents of the package? A Yes, sir.

Q Is this your signature to the receipt? A Yes, sir.

Q Is this the signature of Mr. Vacheron, signed as a witness? A Yes, sir.

MR. WASSERVOGEL: The receipt is offered in evidence.

MR. McMANUS: No objection, and we consent that the copy be substituted.

(Copy received in evidence and marked People's Exhibit 1.)

(Portions of Exhibit 1 now read to the jury by Mr. Wasservogel.)

Q On any time on the 31st of January, 1908, did you have a talk with the defendant regarding these certificates of stock?

A Yes, sir.

Q What, if anything, was said? A Well, on that day Mr. Vacheron spoke to me about those stocks. He said, "You are going up in the country and you will not be able to see the fluctuations of the market, you cannot watch the market."

So he says, "You had better leave me those stocks to sell for you", and I told him, I said, "I don't care to sell them now, because I paid \$2100." The market was then about between 10

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and 11 or 12 -- I forget which -- and he says, "But never mind, you won't be able to see how the market goes, and it might go up while you are there, and I can take advantage of it and sell it for you". So I said, "Well, they stand in my name; why, I will let you have it, it doesn't make any difference", so I let him have it.

Q Did he give you a receipt for it at that time? A No, sir, I told him then, I said, "You sell this stock at 23 because I want to make something on it."

BY THE COURT:

Q Did you tell him to sell it at 23? A At 23, yes, sir.

BY MR. WASSERVOGEL:

Q Which stock did you tell him to sell at 23? A Southern Railway stock.

Q Is that the stock which you had told him you bought at 21? A 21.

Q What did you tell him he was to sell the Bay State Gas at? A At 3.

MR. McMANUS: I object to that as leading.

Q Tell all that you said? A I gave him both stocks at once, this stock and the Bay state Gas that I had, and told him to sell that at 3.

Q Which at 3? A The Bay State.

Q And do you recognize the certificate which I now hand you, of Southern Railway stock? A Yes, sir.

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MR. WASSERVOGEL: I ask that it be marked for identification.

(Marked People's Exhibit 2 for identification.)

Q Did you leave New York then? A The following morning.

BY MR. McMANUS:

Q What date was that? A February 1st, 1908.

BY MR. WASSERVOGEL:

Q The day after you gave these certificates to the defendant, you went back to Sullivan County? A Yes, sir.

Q Did you hear from the defendant any time while you were up there? A Several times.

Q I mean about this stock? A Not that year.

BY THE COURT:

Q That is in 1908? A 1908.

BY MR. WASSERVOGEL:

Q Did you at any time in the year 1908 call on the defendant? A Yes, sir, I came down a little -- about the 20th of July -- I don't remember the date -- in 1908, and stayed about eight or ten days in town.

Q Did you have a talk with the defendant at that time?

A I did.

Q Relative to the stock? A Yes, sir.

Q What was said?

BY MR. McMANUS:

Q Where was this? A Why, in the Brevoort Hotel. I met

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him there.

BY MR. WASSERVOGEL:

Q Was he stopping there? A Yes, sir, he was stopping there too.

Q Go on? A I asked him how about my stock.

THE COURT: What year was that?

MR. WASSERVOGEL: July, 1908.

A (Witness continuing) And that it was all right, he would return it but he had mislaid it -- couldn't find it. So I let it go at that. I was buying an automobile at the time, but before I came to the City I must say that I had written a letter ---

Q Don't give the contents of the letter for the present; just the conversation. Did you see him again after July, 1908?

A Not that year, no, sir.

Q Did you see him any time in the year 1909? A Yes, sir.

Q What month? A I came down on the 21st of January.

Q But when did you see the defendant? A I think it was two or three days after I saw him, shortly after my arrival.

Q Did you have a talk with him then? A Yes, sir.

Q What was said? A Well, I asked him about my stock again, and still always the same story, that he had mislaid it.

MR. McMANUS: I object to that.

THE COURT: Strike that out.

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Q Tell us what was said as near as you can recall, the substance of what was said? A Let's see. "Your stock will be all right, I will give it to you, but I cannot find it, I think I have left it home, or left it in the office downtown, but I will get it for you before you go". Well, we talked of various matters relating to the firm ---

Q Just confine yourself to the stock. Did you see him again during this visit to the City? A Yes, sir.

Q When? A Well, several days ---

Q Did you see him on the 3rd of February 1909? A Oh, I went down to his office then.

Q On that day? A Yes, sir.

Q At his office? A Yes, sir.

Q Where was his office? A 42 Broadway.

Q Did you have a talk with him on that occasion? A Yes, sir, I was getting suspicious ---

THE COURT: Strike that out and the jury will disregard it.

Q Just tell what was said; what did you say and what did he say? A I told him, "Mr. Vacheron, I would like to get some receipt for my stock, because I have nothing to show for it ---"

MR. McMANUS: I move to strike that out.

THE COURT: Motion denied. This is a conversation which he had with the defendant.

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A (Witness continuing) I told him I wanted a receipt for that stock, I said, and he said, "Well, I will give you a receipt for it until I find it", so he made out the receipt, as you see it there. He said, "I cannot give it to you in any other way, but this way", he said, and put it down as a loan.

Q What else did he say? A He said, "Because I will put myself in a hole."

Q What else did he say? Give us the entire conversation. A Well, there was so many things said before that ---

Q No, I simply want you to confine yourself to the fact, nothing else, and tell us all that he said on that occasion relative to the 100 shares of Southern Railway stock?

A Well, he looked in his office at the time for the stock.

Q What do you mean by hunted in his office? What movements, can you describe, that he made? A He took nearly all of the papers out of the safe, and looked all over, and he couldn't find the stock. He said then, "I must have left it in a valise, or probably it is home, or probably in the safe of the hotel"; he said, "I am not sure, but I will look it up, but you will have your stock." I said, "You give me this receipt, very well." I told him then the stock had gone up in December, up to 27. He said, "Well, it makes no difference whether it goes up or down. By June I will reimburse you at the rate of \$2700, irrespective of whether the stock goes up or down. I told him, I said, "I want that receipt, because I want to put it in my

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papers, if anything should happen to me I would have nothing to show for it."

Q Did he then write out a paper for you? A He wrote that receipt.

Q Is this his handwriting? A His signature, yes, sir.

Q And what did he say at the time he handed this paper to you, which will be marked in evidence People's Exhibit 3?

(Marked in evidence as People's Exhibit 3.)

A He told me he had some gold bonds, he expected to get money soon, he had some gold bonds from his place up there.

Q No, I mean with reference to the form of this receipt. What did he say about that? Give us the entire conversation with reference to that? A Well, he made out the receipt, as you see it, and he said, "I can't give it to you in any other way. It would put me in a hole." So I took it that way, as I could not get any other form of receipt from him.

MR. McMANUS: I object to that.

THE COURT: Strike it out and the jury will disregard it. Do not make these comments. It is for the jury to determine.

(People's Exhibit 3 is now read to the jury by Mr. Wasservogel.)

Q Did you ever see this paper that I now show you? A Yes.

Q When did you see that? A Some months after.

Q How? A By mail.

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MR. WASSERVOGEL: I offer it in evidence.

(Marked People's Exhibit 4.)

(People's Exhibit 4 now read to the jury by Mr. Wasservogel.)

Q After the receipt of this paper, (People's Exhibit 3), on February 3rd, 1909, the receipt for the 100 shares of stock-- did you have any other conversation with the defendant? A Oh, I talked about various other matters.

Q I mean after that did you see him again? A Yes, I saw him occasionally.

Q I mean did you speak to him about this stock again?

A Not then.

Q When did you, if at all? A I think the next morning.

Q Was this stock ever returned to you? A No.

Q Was there any money ever paid to you by the defendant?

A No, sir.

CROSS EXAMINATION BY MR. McMANUS:

Q How old a man are you, Bodin? A Fifty-three.

Q And prior to 1908 you had been employed by the French Line of steamers, the Compagnie Generale Transatlantique for how many years? A Nineteen years.

Q And you had been employed by them in what capacity?

A My last position was as cashier.

Q Cashier for the company? A Yes, sir.

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Q In its main office? A In its main office.

Q How many years had you been its cashier? A Fifteen --
fourteen.

Q Fourteen? A Fourteen.

Q What was your employment with them prior to those
fourteen years? A I was employed as bookkeeper.

Q And you were bookkeeper for about four years? A No,
I was about two years and a half.

Q And before that what were you? A Two years and a
half on the pier.

Q What was your work on the pier? A As check clerk,
tally man.

Q That was the first employment you had then for the com-
pany? A Yes, sir.

Q Now, of course, as cashier you had charge of all of the
funds of the company? A Yes, sir.

Q And you had therefore a great and considerable busi-
ness experience? A Yes, sir.

Q Passing on accounts of all kinds, paying out money on
all kinds of bills, and were a pretty good business man; is
that right? A Yes.

Q What was your employment before you went to the French
Line? A Well, I had been employed in two different places. I
worked a while at my old trade, as stamper.

Q Stamping? A Stamping on paper and envelopes, monograms,

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crests, and so forth.

Q Were you in business for yourself? A No, sir, I was long before that, though.

Q You had been in business for yourself before you went in the employ of the French Line? A Yes, sir.

Q For how many years were you in business for yourself?
A Two years.

Q What other employments had you been engaged in? A Well, I was once employed as waiter.

Q But you had gradually gone up through all these years-- you elevated yourself? A Yes.

Q You had ambitions and were ultimately the cashier of the important French Line of steamers? A Yes, sir.

Q And in the course of your connections with the company, you saved some money, is that right? A Not very much.

Q Well, I didn't ask you that. A Some, yes.

Q And you invested money, is that right? A Well, I had it in the Savings Bank.

Q Well, you had money in Savings Banks, didn't you? A Yes, sir.

Q You also bought stocks? A Occasionally.

Q There is no need of any hesitation ---

MR. WASSERVOGEL: The witness has no hesitation, and I object to his characterizing his evidence; ask questions.

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Q But you did make investments? A Yes, sir.

Q And you were familiar with the method of doing business?

A Yes.

Q In connection with investing money in stocks and so on? A To a certain extent, yes.

Q And of course you had several bank accounts? A Yes.

Q Savings Bank accounts? A Yes, sir.

Q And you would take your money out of the bank and put it in stocks when you felt like it, when you thought you were making a good investment? A Yes.

Q And you were a pretty careful man during all these years, weren't you? A Yes, sir.

Q Methodical? A Yes.

Q Your business training made you so? A Yes, sir.

Q As a cashier of a great big institution you had to be methodical? A Yes, sir.

Q And therefore you were in the habit of getting receipts for documents generally, and getting receipts for payments you made, weren't you? A Yes, sir.

Q In fact it was your invariable custom, wasn't it?

A Yes, sir.

Q You got sick in the fall of 1907, while you were in the employ of the French Line? A Yes, sir.

Q And you were committed to the Bloomingdale Asylum at the

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instance of the French line, - is that right? A Yes, - in the sanitorium.

Q Well, after having been first sent over to Ward's Island, in the City Hospital? A Yes, sir.

Q And from there you were transferred to the Bloomingdale Asylum? A Yes, sir.

Q Or sanitorium? A Yes, sir.

Q And you knew of Mr. Vacheron before that did you not?

A Before I went up there?

Q Yes. A I didn't know him; I had heard of him.

Q You knew of him, I say? A I knew of him.

Q Your father had married another lady -- you had a step-mother? A Yes.

Q And you knew of course that Mr. Vacheron was related to her, did you not? A I knew that.

Q And you knew while you were up there that Mr. Vacheron's services had been engaged to try to get you out? A Yes.

Q And you didn't want to stay up there, of course? A No.

Q You were very anxious to get out of an institution of that kind, were you not? A Yes.

Q And you very gladly welcomed any effort that Mr. Vacheron could have made to get you out; is that right? A Yes.

Q And of course when you were released on January 29th, or whenever it was, you came right down with Mr. Vacheron and your step-mother from the Asylum? A Yes, sir.

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Q And you were then very glad to pay for the services that had been rendered by Mr. Vacheron, were you not? A Well, I expected to pay for the services, of course.

Q Well, I know, but a man released from an institution of that character -- you were pretty grateful, weren't you? A To a certain extent.

Q What was the limit of your extent of gratitude? A Why, he had been hired by my step-mother, and, of course, I was willing to pay him.

Q Weren't you pretty well overjoyed at getting out then? A Yes.

Q And you knew it was through his efforts that you got out? A Yes.

Q And you say he simply asked you for \$260, as his fee for services and disbursements in the matter? A Yes, sir.

Q And you went down to the bank that day and drew five hundred dollars, is that right? A Yes, sir.

Q From the Emigrants Bank, and drew it in cash? A Yes.

Q And then came back to the Brevoort House, was it? A Yes.

Q At Fifth avenue and 8th street? A Yes.

Q And this man was there? A Yes.

Q And you paid him what he said was his bill for the services, \$260? A Not that same day. I paid him on the 31st.

Q Didn't you say in your direct examination that it was the same day? A I paid him on the 31st.

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Q You came down on what day? A I came down on the 29th.

Q The 29th? A Yes, sir.

Q And what day was it that you went down to the Emigrants Bank? A The same day.

Q The 29th? A Yes, sir.

Q And you drew out the money that day? A Yes, sir, but I didn't pay him then.

Q You remained then in the hotel Brevoort until the 31st? A Yes.

Q In other words, he did not press you for any money the first day? A No, I asked him how much I owed him before -- after.

Q And up to that time he treated you pretty decently, you thought? A Certainly.

Q When the 31st came along you asked him what his bill was, is that right? A That's it.

Q And he said \$260, you say? A Yes, sir.

Q And accordingly you paid him this \$260 right out in cash? A Yes, sir; I gave him the \$500 bill; he went down stairs and brought me the change, \$240.

Q Right from the clerk of the hotel? A He went and got it down-stairs; I paid him in my room.

Q Didn't you ask for a receipt at that time? A I did not.

Q Was it your custom to always ask receipts? A I didn't think it was necessary.

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Q Yes or no to that question? A No, sir.

Q Hadn't been your custom to always ask receipts? A Yes.

Q Why didn't you ask a receipt then? A Because I knew he was a cousin of my step-mother's, and I didn't think it was necessary to ask him for a receipt. She was present when I paid him.

Q Didn't you know as a careful business man, as you always had been, that it was usual for people to get receipts?

MR. WASSERVOGEL: I object to that as argument.

THE COURT: Overruled.

A Certainly.

Q Especially when a cash payment was made? A Yes, sir.

Q And you didn't ask or expect one at that time? A I never asked for one.

Q And it was not until a year later that you asked for a receipt? A Yes, sir.

Q You have just said that you got the \$500 bill cashed at the hotel, and that he brought the money back to you and that you gave him \$260, out of it? A Yes, sir, - no, he brought me the balance.

Q He brought you the balance? A \$240.

Q Isn't it a matter of fact that before he received this \$260 that you had gone over to Rogers, Peet & Company, with Mrs. Vacheron, and to a number of other places and made purchases out of that \$500 before you gave Mr. Vacheron? A I had other

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money besides.

Q Yes, or no? A I had other money besides that.

Q Isn't it a matter of fact that you had no money when you came down from Bloomingdale? A No, I had the bank book.

Q Well, they didn't take your bank book in Rogers, Peet, did they? A No.

Q Well, did you draw any other money besides this? A I had money coming to me with this package of money -- there was something of a balance in there.

Q When did you get the package? A I got it on the 31st.

Q Didn't you go out and make purchases before the 31st? As a matter of fact, didn't you go out on the 29th, in the afternoon, after you had drawn the money out? A Yes.

Q The \$500, and make purchases? A Yes.

Q In other words now you know you are mistaken when you said you gave the \$500 to Mr. Vacheron to go down to the Clerk on the 31st? A I am not mistaken.

Q Well, will you tell me then where you got the money for the other purchases on the 29th? A There was a balance of money that was given to me at the Asylum, - I forget how much, there was some money there coming to me -- I think it was \$80-- I am not sure about the amount, \$80 or \$100.

Q You got that? A Yes, sir.

Q And you are sure now? You change again, is that right?

MR. WASSERVOGEL: I object to these remarks?

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A I am not changing.

THE COURT: Strike it out and the jury will disregard the remark.

Q Is it not a matter of fact that up at the hospital they were going to discharge you because of the fact that you did not have money there with which to pay your bill? A I believe so, yes.

Q And now you say you had eighty dollars when you were up there, is that right? A I think I had, yes; I don't remember.

Q I want you not to guess. This man's liberty is at stake here, and I want you to be sure in every answer you make and not to say just what you think or guess, but I want you to be sure? A I will answer to the best of my ability. I was very weak at the time, and there is a good many things I don't remember.

Q Then don't give answers to the District Attorney simply because ---

MR. WASSERVOGEL: I object to these speeches on the part of Mr. McManus.

THE COURT: Objection sustained, and the jury will disregard the remarks.

Q Please look at this paper and see if you have ever read that? A I never saw this paper before.

Q Didn't Mr. Vacheron show you that letter on the occasion of his visit to you in the Asylum? A No, sir.

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Q But you knew, however, in November 1907, that your Board up there had not been paid, didn't you? A 1908, you mean?

Q No, I mean on December 28th, 1907? A Why, the company had paid for my board.

Q Didn't you know that it had not been paid then? Didn't you know that the company had refused to make any further payment of board? A Yes, that is right.

Q So your recollection to that is refreshed, is that right? A Yes; I guess that's right.

Q This receipt you say -- which is dated January 31, 1908, and is marked "Duplicate bill" -- was given to you not until February 3rd, 1909; is that right? A It was given to me later than February 3rd.

Q How much later? A Oh, perhaps two or three weeks later; I don't remember exactly.

Q Had Mr. Vacheron ever disputed the fact that you had paid him \$260 for his services? A No.

Q And this was a year and two or three weeks after he had rendered his bill to you, isn't that right? A Yes, sir.

Q And then it was that you asked for and received this receipt for \$260, dated January 31st, 1908? A Well, on February 3rd when I got the other receipt I asked for this one, and he told me "Surely", he said, "You have received the first one"; he says, "You had better go back home first and look

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amongst your papers, whether you haven't got it." I told him "No, I never got one." He said, "You had better go anyway and make sure, and then I will send you one, if you haven't got it."

Q So then you told him, following that, that you had not been able to find any, isn't that right? A Yes, I wrote him a letter.

Q And then it was that he gave you this one, which is marked "Duplicate Bill"? A Yes, he marked it "duplicate".

Q Did you ever object in any way to taking it with the mark "Duplicate Bill" on it? A I think I wrote him to that effect.

Q You did? A I think so.

Q Now we will come back to the time you made the payment of \$260, which was January 31st, 1908; is that right? A Yes.

Q What time in the day did you make that payment? A It was in the afternoon.

Q And that was following your receipt of the various papers from the French Line? A Yes, sir, towards evening.

Q He was present, of course, when the papers and documents were received from the French Line? A Yes, sir.

Q This receipt calls for thirty-eight different packages or documents, doesn't it, or about that?

MR. WASSERVOGEL: If you say there are thirty-eight I will take that statement.

Q (Continuing) And they included not alone this one

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hundred shares of Southern Railroad stock, but a lot of other stocks, didn't they? A A few more.

Q For example, there were two certificates of Hercules Electric Drill Company, is that right? A Yes.

Q And 6 bonds of the Realty Securities company? A Yes.

Q And a bill of sale from Jennie Bodin to Henry S. Bodin; is that right? A Yes.

Q And a number of bank books? A Yes, sir.

Q How many different bank books do you own? A Oh, four or five.

Q And a bank book of the Excelsior Savings Company and of the Seamen's, - two for the Seamen's, weren't there? A Yes.

Q And the Union Dime? A Yes.

Q And the Metropolitan? A Yes.

Q And the Broadway; is that right? A Yes, sir.

Q And the East River? A Yes.

Q And the Emigrant? A No, I had that with me.

Q But there were seven or eight bank books all told?

A About that.

Q And in addition there were other stock certificates in addition to those that I have mentioned, is that right? A That is all.

Q Weren't there others? A That's all.

Q Wasn't --- A The Bay State and the Southern Railway,

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and those two I have mentioned; that's all.

Q Any certificate of the Cass Realty Company? A Well, that was the Realty Sureties Company, it was the same firm, they succeeded the other. I may add that it was a worthless stock.

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Q Wasn't there a receipt for a renewal of a bond, A. A. Leach, dated January 27th, 1907? A Oh, yes; that was a surety bond of the American Surety Company that I paid him.

Q And there was also cash amounting to \$33.95? A Yes, sir.

Q All of these documents that were turned over to you were all properly indexed by you, marked on the back of the envelopes and so on; is that right? A Yes, sir.

Q In other words, you were a very careful and very methodical man as a matter of habit, weren't you? A As a cashier, yes.

Q And these were all your personal belongings? A Yes.

Q And you were, as a matter of fact, careful with respect to them, weren't you? A Yes.

Q Now, just tell us again the conversation that you had with relation to this stock delivery to the defendant Vacheron?

A You mean on the 31st?

Q Yes, sir. Had he ever spoken to you about it before?

A No, not before that.

Q You are sure now it wasn't until then that he spoke of the stock? A No, sir.

Q And it was not until after the delivery had been made by the French Line's attorney? A Exactly. He didn't know I had the stock previous to that.

Q Tell us again just what was said? A Well, after pay-

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ing him the \$260 he said to me --

THE COURT: Was this the 31st?

THE WITNESS: The 31st.

MR. McMANUS: 31st of January, 1908.

MR. WASSERVOGEL: On the 29th he came to New York, and the stock transaction was the 31st of January.

Q Tell us again just what the conversation was on the 31st of January with respect to the delivery of this stock?

A Well, he said to me, "You are going up there in the country. About those stocks, now you had better leave them to me to sell, because you won't be there to watch the market and it may go up or down." So I told him, I said, "The stock I paid \$2100 for and the market is only now between ten or eleven, somewhere around there".

Q This was on the 31st? A Yes, sir.

Q And you had been up in Bloomingdale for three months, is that right? A Yes.

Q And had just gotten out of there, is that right?

A Yes.

Q And yet you were able to keep accurately familiar with the value of that stock, the market price of that stock on each day? A Not on each day, but I had glanced at the paper.

Q Even right then? A Well, a few days, yes, about those dates I naturally glanced at the papers.

Q And you knew the stock was selling at 10 and 12?

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A Between 10 and 12. Therefore I told him I paid \$2100 for it.

Q When had you bought that stock? A Sometime in March.

Q Of what year? A I am not certain whether I bought it in 1907 or 1908; that I am not positive.

Q Well, it must have been 1907, wasn't it -- or 1906?

A No, sir; not in 1906; it was in 1907 or 1908 that I bought it.

Q Don't you know that the transaction you are testifying to now occurred on January 31st, 1908? A Oh, I thought you meant when I had bought the stock.

Q Yes, I am asking you, when did you buy this stock?

A I bought it long before.

Q Didn't you say just a minute ago you didn't know whether you bought it in 1907 or 1908? Now, when did you buy it? A Oh, yes, just excuse me, I didn't think. It was either 1906 or 1907.

Q As I said to you? A Yes, sir. I made a mistake.

Q And you bought it when it was up pretty high? A I paid 21 for it.

Q It had gone down after that, as those things generally do? A Yes, sir.

Q And it was down to 10 or 12 at this time? A About that time; yes, sir.

Q Didn't you think it might go lower then? A Well, I

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didn't care whether it went lower, because I was not obliged to sell.

Q But weren't you as a matter of fact anxious to dispose of that stock about that time, in order to get some of this money in? A No, sir.

Q Didn't you fear that it might go so low that you would never get back to anywheres near the price where you bought it? A No, sir.

Q You were sure that it would come back? A Why, certainly; it is an active stock.

Q So you gave this to him and told him to hold it till it got to more than double its then value? A To 23.

Q And did you take this certificate out of the box, or how did you deliver it? A I took it out of my trunk.

Q In other words, was the trunk delivered to you by the company? A Well, yes, I had the trunks there in the hotel.

Q I mean, the company had sent up the trunk containing these various securities? A No, the securities were in a package that they had brought me up; I had put the securities in my trunk.

Q So you had taken these securities and these other things that had been delivered to you by the company's representative and had put them in the trunk before you talked over this matter with Mr. Vacheron? A Yes, sir.

Q So you had to go to the trunk to get out this certifi-

cate to deliver it to Mr. Vacheron? A Yes.

Q And all your talk was about his getting 23 -- selling it at 23? A Yes, sir.

Q Or most of the talk? A About that stock, yes, sir.

Q You haven't said much about this other stock, this Bay State Gas, have you? A Why, he asked me for both at the same time.

Q So you gave him the other, is that right? A Yes, sir.

Q And the other was worth about \$1.50 a share, wasn't it? A Something like that.

Q And there were only about twenty shares of that?

A That's all.

Q Or were there thirty? A Thirty.

Q Bay State Gas? A Bay State Gas.

Q How much had you bought that for? A Oh, about 1.

Q Now, as a matter of fact, wasn't the Bay State Gas in the same envelope, and didn't Mr. Vacheron tell you that the Bay State Gas was in the same envelope in which the Southern Railway stock was included? A It was not in the same envelope.

Q As a matter of fact, did you know at that time that you had actually delivered the Bay State Gas to Mr. Vacheron?

A Certainly. I gave him both.

Q As a matter of fact, wasn't it he that told you some time after that? A No, sir.

Q Just wait till I complete my question. As a matter

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of fact isn't it so, that it was sometime after that that Mr. Vacheron had told you that that Bay State Gas he had found in that same envelope in which the Southern Railway stock was contained? A No, sir.

Q He never told you that? A No, sir.

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

Q Positive? A Yes, sir.

Q As positive as with regard to any other statement you have made here? A Yes, sir.

Q And as a matter of fact, didn't he repeatedly refer to that fact in his conversations with you, or in his communications with you -- to his not being able to locate that Bay State Gas stock? A That stock and the other --

Q No, --

MR. McMANUS: I ask that that be stricken out.

THE COURT: Strike it out, as to the Bay State stock.

Q (Question repeated by stenographer as follows:) And as a matter of fact, didn't he repeatedly refer to that fact in his conversations with you, or in his communications with you -- to his not being able to locate that Bay State Gas stock? A Yes, he told me that, but that included --

Q And didn't he tell you that if he did not locate that he would make it good? A Yes.

Q And that refers to the Bay State Gas? A He wrote me that.

Q And as a matter of fact he was not able to locate it and he did make good to you in cash, didn't he?

MR. WASSERVOGEL: I object. This witness does not know what the operations of the mind of the defendant were.

MR. McMANUS: Question withdrawn.

Q As a matter of fact, didn't Vacheron tell you that he could not locate that Bay State Gas stock, and didn't he as a matter of fact pay the market value in cash to you? A He did.

Q And that was when? A The following year.

Q In the following year. And that was on May 6th, 1909, wasn't it? A I don't remember the date, but it must have been in May.

Q Now, to come back again to the circumstances surrounding the delivery of the stock on January 31st; you say that you had this conversation that you have narrated here in answer to the questions put by the District Attorney, is that right? A Yes, sir.

Q You sued Mr. Vacheron civilly, is that right? A Yes.

Q And it was not until after that action, that you got judgment in that action, that you brought this criminal charge, is that right? A Yes, sir.

Q Of course, if he had paid this money to you that you claim he owed you, you would not have instituted this criminal

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charge, would you? A Why, no.

Q What, you don't know? A I say why, no.

Q You heard the District Attorney say very ingenuously in his opening, that you were a Sullivan County farmer? A And boardinghouse keeper, yes, sir.

Q Are you a farmer? A I know all about farming.

Q You have learned it since you gave up being cashier to the French Line? A Oh, before I was cashier.

Q When were you? A I was seven years on a farm when I was a young man -- from twenty to twenty-seven.

Q Are you engaged in practical farming now? A No, not to any extent; boardinghouse keeper.

Q Your business up there is keeping a boarding house?
A Yes, sir; that is the principal thing.

Q You don't want this jury to form the impression that you are a poor, ignorant farmer?

MR. WASSERVOGEL: Some farmers are wealthy.

Q You don't want the jury to form the impression that you are a poor farmer? A I don't know what the impression is.

Q How many acres have you under cultivation up there?
A Well, I cleared some land; that is, I cut down the brush of several acres there that have been there; it had all grown into brush.

Q That is the extent of the cultivation -- cutting down

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the brush, is that right? A Well, there were several crops raised there since.

Q How many acres have you under cultivation, raising crops on now, if you are a Sullivan County farmer? A About nine acres.

Q What do you raise? A Why, we raise rye and grass -- pasture; and buckwheat.

Q Hay? A Besides the garden; yes, I have sown grass seed.

Q But your main interest is the boarding house? A Exactly.

Q You have given us your version of what transpired on the 23rd, or, at least, the 31st of January, when you delivered this stock to Mr. Vacheron? A Yes, sir.

Q As a matter of fact, didn't you say to Mr. Vacheron words to this effect, that you appreciated very much what he had done for you, and couldn't you do something for him?

A No, sir.

Q Didn't you say that you appreciated what he had done for you? A Yes.

Q Didn't you say that in addition to the payment of his bill that you wanted to do something else for him and would be glad if you could? A No, sir.

Q Positive about it? A Positive.

Q And wasn't it then, and for the first time, that

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this stock was mentioned? A No, sir.

Q Isn't it a fact that Mr. Vacheron said, "If you wanted to you could let me have a thousand dollars"? A No, sir.

Q And wasn't it the fact that you then said that you didn't have a thousand dollars in cash to spare without losing interest on it, or words to that effect? A No, sir.

Q And didn't you then state to him that he could sell-- you would give him this stock and he could sell it at the market and pay you back at his pleasure? A No, sir; not that way. I told him to sell the stock at the figure I told him, 23.

Q Why, you could have sold that stock at 23 just as well as he could, couldn't you? A Why, of course I could.

Q You knew he was a lawyer and not a stock broker, didn't you? A Yes.

Q You didn't go to a lawyer to buy this stock for you when you wanted to buy it? A No, sir.

Q You went to a stock broker to buy it for you? A But I supposed he was doing it as a friend.

MR. McMANUS: I ask to strike that out.

THE COURT: Strike it out.

Q You went to a stock broker to buy the stock, didn't you, when you bought it? A Certainly.

Q And if you could keep in touch with the market when you were up at the sanitorium -- you could? A I wasn't

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in touch.

Q Well, you ^{know} when you came back where the stock was selling? A Because I had papers in the hotel.

Q That was the only reason you knew it was around 10 to 12? A Certainly.

Q And you didn't think it was a good time to sell it then? A Of course not.

Q So you waited and kept watching the market for months after that, didn't you? A It was only occasionally.

Q How often would you look? A Why, we got the French paper, and there was only a few stocks mentioned in there. I had no other paper.

Q Did they give you stocks? A No, sir.

Q Then you didn't bother much with it? A No, sir; I didn't bother my head about the stocks.

Q Did you notice that the stock was going up? A Occasionally I would get a paper with the whole list, then I saw it was going up.

Q As a matter of fact, the stock didn't go up for several months afterwards, did it? A Yes.

Q It was several months, then, before it went up? A Yes, sir.

Q And what was the next time, following January 31st, that you communicated with Mr. Vacheron? A I wrote him two or three letters at that time.

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Q When was the first letter? A I don't remember the date; it was before July.

Q Do you remember about what was the market price of the stock when he wrote that? A Yes, it was going up, it was nearing somewhere about 19 or 20, 21, something like that.

Q You had not written Mr. Vacheron before the stock had gone away up that time? A No.

BY THE COURT:

Q Did the stock ever reach 25? A Oh, yes. It went as far as 32 and a fraction.

Q I mean during this period? A In what year?

Q In 1909? A Well, that is the year it went up to over 32 and a fraction.

BY MR. McMANUS:

Q About what time in 1909? A I don't remember just the time.

Q What was it around January, 1909, do you remember?

A It must have been around 27 or 28; I can't remember those figures; about 27 or 28, more or less.

Q Well, now, you communicated with him first in July?

A Yes, sir.

Q Did you come to New York? A Just about the middle of the month.

Q And met him where? A At the hotel.

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Q You didn't go to his office? A Not right away.

Q He was stopping at that hotel, then, wasn't he?

A Yes.

Q What was the conversation you had with him then at the hotel on the occasion of the first visit in July, 1908?

A Well, I asked him, "What about my stock? I would like to get it." He says, "Well, I have mislaid it somewhere, I can't find it, but don't worry, you will have it, don't worry."

Q As a matter of fact, didn't you refer at that time to this Bay State Gas which you knew had been mislaid and which he had told you had been mislaid? A Not at that time, no, sir.

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

Q The Bay State Gas was mislaid, though, is that right?

A Yes. At least -- I am trying to think -- at that time I was not worrying about the Bay State --

MR. McMANUS: I move to strike out what you were not worrying about.

MR. WASSERVOGEL: Consented to.

THE COURT: Motion granted.

Q So he told you the stock had been mislaid, is that right? A I think it was at that time, or later on, in one of his letters.

Q When was the next time that you talked with him? A Well, when I got back home I wrote him several letters.

Q And they covered what period? A Well, from this July, and I think there were two or three letters, September and October -- I don't remember the days I wrote those.

Q You wrote several letters? A Yes, sir.

Q And then you came down to New York again when? A In January, 1909, January 21st.

Q Did you go to see him as soon as you came to New York?

A I saw him one or two mornings after I got down.

Q When did you first see him, following your visit to New York in January, 1909? A I think it was the morning after, or the day after that --

Q What was that, February 3rd? A No, sir; that was in January; it was either January 22nd or 23rd, as near as I can remember.

Q What happened on that occasion, on the first visit you made to his office after coming to New York in January, 1909? A Well, I asked him for my stock again, and he says, "Don't worry, it is mislaid but it will be all right; I can't find it now." And we were eating breakfast -- he says -- we were talking about other matters -- he said, "You had better come up to my house;" and he invited me to come up, so we went up on a Friday.

Q This was in January? A This was in January.

Q You went up to his house and had breakfast? A Yes, sir; he invited me there. He said, "I want to introduce you to my

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wife and boys, and I will show you my place".

Q Oh, this was up in the country? A Yes, sir. His place is up at Berkshire Pass.

Q He is a farmer, too, and hotelkeeper too, is that right? A Yes, sir.

Q As well as a lawyer? A Yes, sir.

Q He has got a pretty nice place up there, is that right? A He has.

Q A hotel up in Columbia County? A That's it.

Q Berkshire Pass, is it? A I believe that is what they call the station now.

Q It is a summer hotel? A Yes, sir.

Q And he invited you up in January, 1909, to this place in Columbia County? A Yes, sir.

Q And you went up there with him? A Yes, sir.

Q And you saw it was a pretty nice place? A I did.

Q And after you came back to New York, whom did you go to see? A Well, I saw various people.

Q Didn't you go to see Mr. Vieu? A I don't know just when I did see Mr. Vieu, but I saw him the first trip.

Q Didn't you go to see Mr. Vieu, who is an attorney, prior to your going to this man on February 3rd, 1909?

A No, it was after.

Q You are sure about that? A Yes, sir.

Q Well, of course when he told you that he didn't have

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this stock in January, 1909, you were surprised; is that right? A He told me he didn't have it -- he had waylaid it somewhere else.

Q Mislaid it? A Mislaid it.

Q And couldn't find it at all? A And couldn't find it.

Q And of course didn't say anything else? A But that he would hunt for it and eventually I would get it -- not to worry.

Q He didn't say he had sold it at all? A Not then.

Q And you didn't know he had sold it? A Not then; no, sir.

Q Didn't you know in January, 1909, that this stock had been sold by him in February, 1908? A I didn't know it was sold then.

Q Didn't you know on February 3rd, 1909, that this stock had been sold in February, 1908? A I had my suspicions before that, but I was positive --

THE COURT: Strike it out. Did you know?

THE WITNESS: Not at that time. In the afternoon I did.

Q February 3rd, 1908? A Yes, sir.

Q I mean 1909? A 1909.

Q That was the first time that you knew that this stock had been sold by him prior to that time, is that right? A Yes, sir.

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Q How did you know it? A Well, it would take me some time to explain.

Q Go ahead? A I had seen several of my friends and I had spoken about this affair of mine; amongst others, Mr. Moquin, Mr. R. E. Moquin, and he told me, he says, "Well, my boy" --

MR. McMANUS: Now, I object to that conversation.

(Question withdrawn.)

Q Well, you had conversations with several people; is that right? A Yes, sir.

Q And then you say in the afternoon of February 3rd, 1909, and not until then, did you know that this stock had been disposed of a year before; is that right? A No, sir; not until then.

Q Why, as a matter of fact, hadn't you gone down in January, 1909, to the office of J. Pierpont Morgan and found out that it had been? A It was in February I went down.

Q The same day, February 3rd? A February 3rd that I got --

Q Positive on that score? A Well, I had been there a few days previous to leave a memorandum, but I had not seen the stock then.

Q As a matter of fact, haven't you said prior to this that you had been to Morgan's office in January and found out that the stock had been disposed of? A I didn't know it then.

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Q Didn't you say in the presence of this defendant that you knew that this stock had been disposed of in January, 1909? A I may be mistaken about the question, but I didn't know it then.

Q Didn't you know before February 3rd, 1909? A No, sir.

Q That was the next day. You are positive on that score? A Yes, sir.

Q That you ever knew that that stock had been transferred after you delivered it to Mr. Vacheron? A That is the first day.

Q As a matter of fact, prior to the 3rd of February, 1909, hadn't you had a conversation with Mr. Vieu, and after that conversation you went down to Morgan's office and were told that the stock had been transferred; is that right?

A At what date?

Q Prior to February 3rd, 1909? A I had been down, but I didn't get the information before.

Q How many days before had you been down? A It took me several days to get this information. If you let me explain I will explain it.

Q No, you just take it the way my question is. You can answer my questions just as well as explaining. Then we will assume now that you did not know until the afternoon of February 3rd, 1909, that this stock had been disposed of in February, 1908? A Yes, sometime in the afternoon.

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Q Now, that is what we assume. But you went back to Vacheron's office on February 3rd, 1909, with this knowledge, is that right? A I had already got the receipt from him in the morning.

Q In the morning? A Yes, sir.

Q Did you go to his office again on that day? A No, sir; I did not.

Q So now, then, we have it that at the time on February 3rd, 1909, you met Vacheron and got this receipt, Exhibit 3, you did not know that that stock had been transferred?

A I was not positive that it was sold.

Q That is true, you did not know? A No, sir.

Q So you asked for a receipt for the stock? A Yes.

Q And he gave you this receipt showing a loan to him of 100 shares of stock, is that right? A He gave me that; yes, sir.

Q You knew the transaction had not been a loan, didn't you? A I knew it was not a loan; I knew that.

Q It was not a loan? A I know it.

Q You knew that under no circumstances had you made any loan of that stock certificate to Vacheron? A I knew that.

Q And yet you accepted a receipt in that form? A He said, "That is the only thing I can give you".

Q He said, it is the only thing he could give you?
A Yes.

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Q What did he say when he gave it to you in that form?

A He said, "I haven't found the stock yet, I don't know where I have mislaid it;" he said, "That is the only thing I can do."

Q That was the only thing he could do? A That is the only kind of a receipt he could give me.

Q What did you say when he said that? A Well, I was glad to get that -- it was better than nothing.

MR. McMANUS: I move to strike that out.

THE COURT: Motion granted.

Q What did you say? A I asked him, I said, "When can" -- "When do you think you can pay me back this stock or the amount?" He said he would perhaps pay it back the first of June. "I have some gold bonds I am going to sell, and I will have the money for that date, if not before, and I will either refund you or get you the same stock."

Q But did you say that you wanted a receipt in the other form, showing exactly what the facts were? A I told him I wanted a receipt so as to put amongst my papers.

Q As a matter of fact, didn't you say this to him, "Now, I have been talking over my affairs with my father, and I don't want him to know about this loan I made to you"? A No, sir.

Q "Give me a receipt so that I can show him that I have got that stock under my control, or where I can get it"? A No, sir.

Q Haven't you been talking over the matter with your

father at all? A With my step-mother. My father was too old to worry about those things, but he saw I was worried.

Q You had never spoken to your father about it at all?

A He was too old to understand.

Q All right, we will take it that way. And you French people are as a rule very methodical in matters of business, aren't you? A Generally.

Q And it is always the custom to have full and complete and authentic records of all your financial transactions?

A I suppose so.

Q As a matter of fact, up to this time you had no form of document showing the situation as to this stock certificate?

A No, sir.

Q Is that right? A No, sir.

Q And you wanted one, didn't you? A Exactly.

Q And it was after you consulted counsel that you went and asked for this receipt, didn't you? A I had seen Mr. Vieu as a friend, and he had advised me to try to get a receipt from him.

Q Mr. Vieu has been your attorney, too, for a number of years, hasn't he? A He has.

Q For how many years? A Oh, I have known him for over thirty years.

Q But you went to see him at this time, not as your attorney, but as your friend? A Every time I came to New York

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I would go and see and dine with him.

Q But you talked business with him? A I don't remember just the day that I talked business with him in this case.

Q Did you talk over the Bay State Gas on this occasion of February 3rd, 1909? A With Mr. Vacheron?

Q Yes, sir. A On February 3rd?

Q Yes. A Why, yes, I gave him both stocks at once.

Q I am asking you if, on February 3rd, 1909, you talked it over with Mr. Vacheron, -- the matter of the Bay State Gas? A As I handed the stock to him to sell at 3, I told him, "This is a little stock" --

Q I ask you if there was any talk on February 3rd, 1909? You and I are a year apart? A Oh, 1909? Pardon me.

Q As to the Bay State Gas? A I don't remember if there was a talk about the Bay State then.

Q You had not received a certificate at that time for the Bay State Gas, is that right? A No, I had not.

Q And you never did receive it? A No, I did not.

Q And as a matter of fact it was subsequent to that time when you got the money value of the Bay State Gas certificate from Mr. Vacheron? A That's right.

Q Now, following February 3rd, 1909, what was the next communication you had with Mr. Vacheron, by letter or orally?

A You mean after February 3rd?

Q 1909; that is what I said? A I think it was the

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next morning I saw him.

Q Where was it you saw him there? A I saw him down at breakfast.

Q In the Brevoort? A Brevoort. And I told him about this, how he had dealt with me.

Q Just tell us, not how he dealt with you, but I want every word said? A I said, "I am amazed at your cheek in selling this stock," and he says, "Well, I have got a wife and children and I was speculating myself in stocks, and I got caught in the slump, and I knew that when I sold it" -- I think he said "sold" or "transferred", I am not sure --

Q This was February? A Well, I was staggered at the time. I said, "Well, what am I going to do? I need money, I have got many things -- I came down here to make purchases, there is many repairs to be made," and so on. He says, "I am very sorry, but I will promise to pay you. If I do not return this stock, either the stock, I will pay you at the rate of \$2700", because I told him the stock had gone at 27. So he said he would pay me -- if he could not return the stock that he would refund me \$2700.

Q This was on February 4th, is that right? A The morning after; yes, sir.

Q And you told him at that time that you were amazed, is that right? A Yes, sir.

Q And you had learned that the afternoon before that he

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had disposed of this stock? A The afternoon before; yes.

Q And he, you say, admitted that he had disposed of this stock? A Yes.

Q And he told you that he had been speculating at that time and used the money, is that right? A Yes, sir.

Q Now, to go back again, then, to January 31st, 1908, didn't you know, and didn't he tell you at that time, that he was going to Europe right following January 31st, 1908, on the business of the French paper, "Courier des Etats Unis"? A Yes, sir; he told me that.

Q So you knew he needed money in January, 1908, to go to Europe with? A I didn't know he needed money.

Q Didn't he tell you he needed money? A No, sir; he told me about his trip, about the "Courier".

Q He told you he was going to Europe? A Yes.

Q Now, you say he told you he disposed of the stock because of the fact that he had been speculating himself, is that right? A That's it.

Q And needed the money; is that right? A That's it.

THE COURT: Do not discuss this case among yourselves, gentlemen, nor permit anyone to talk with you about it, nor form nor express any opinion as to the guilt or the innocence of the defendant until the case is finally submitted to you. We will take a recess now till ten minutes after two.

(Recess till 2:10 P. M.)

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AFTER RECESS

Trial resumed.

HENRY BODIN, resumes the stand and further testifies:

CROSS-EXAMINATION BY MR. McMANUS: (Continued)

Q Now, as I recall it, just before recess was announced, you said that you had been to Mr. Vacheron's office on the morning of February 3rd, 1909, and that it was that afternoon that you went to Morgan's office and found out that the stock had been sold; is that right? A Yes, sir.

Q And that you saw Mr. Vacheron again then the following morning, February 4th; is that right? A Yes, I think so.

Q Well, don't you know what you testified to only an hour ago? A Yes.

Q Didn't you say that only an hour ago, that on February 4th, in the morning at breakfast, you had told Mr. Vacheron that you had found out about the stock having been disposed of? A Yes.

Q And wasn't it then that you say he said he had disposed of it? A Yes, sir.

Q And that was the first time that he admitted having disposed of the stock? A Yes, sir.

Q On February 4th? A Yes, sir.

Q And that of course is as true as any other statement you have made here? A Yes, sir.

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Q You remember testifying in the civil trial in this action, don't you (page 83)? A Yes, sir.

Q As a witness in the civil suit? A Yes, sir.

Q And you were asked about the receipt that has been offered here in evidence, this receipt for the stock? A Yes, sir.

Q Do you remember this question being put to you: "See if I remember correctly. I understand you to say it was in February, 1908, that you called on them and got this information? A. I believe so." You meant by that, February, 1909, of course? A 1909.

Q Then do you remember this question being put to you, "This was then after you got this receipt, this Exhibit Q" --

THE COURT: You mean the receipt?

MR. McMANUS: The receipt for the stock.

A Yes, sir.

Q "Q. This was then after you got this receipt, this Exhibit Q? A. No, I got this receipt after." A I don't understand the question.

MR. McMANUS: I am referring to the receipt for the stock; it is Exhibit 2 or Q.

THE COURT: There ought to be some understanding about that, Mr. District Attorney.

MR. WASSERVOGEL: We were not in that trial and know nothing about it.

Q Will you look at Exhibit 2 and say what that is?

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THE COURT: I think it is Exhibit 2, because it is marked above "Exhibit 2" in longhand.

Q So that there may be no misunderstanding about this, I want you to examine this very receipt, the receipt for the \$260, and see if that is not marked People's Exhibit O? A In the stamp; yes, sir.

Q So then you know, then, as a matter of fact, that when you were being questioned about the receipt Exhibit Q it referred to this receipt for the stock certificate, don't you?

A Yes, sir.

Q Now, then, you remember, to get it correctly, the question was put to you then, "This was then after you got this receipt, this Exhibit Q? A. No, I got this receipt after." Now, you testified this morning that you got this receipt for the stock before you went to Morgan's and got the information, did you not? A I don't remember. If I did, I probably made a mistake.

Q Well, is your entire evidence honeycombed with mistakes of this kind?

MR. WASSERVOGEL: I object to that question; it is improper.

THE COURT: Objection sustained.

Q I don't want you to make mistakes; this man's liberty is involved here.

MR. WASSERVOGEL: I object to the speeches. If he

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has questions he should ask them.

THE COURT: Yes.

MR. McMANUS: Well, I ask your Honor to instruct the witness to be careful in his responses.

THE COURT: Yes. Mr. Witness, if you do not remember, state so. It is very important for this jury to obtain the facts as they actually occurred. This defendant is on trial for a criminal offence, and you must bear in mind that in giving testimony, if you have any doubt, you must resolve the doubt in favor of the defendant.

Q. And then do you remember these further questions being put to you, "Q. Well, it was just after you had been to Mr. Vacheron's place in the country? A. Yes, sir;" you gave that answer to that question, didn't you? A. What was the question?

Q. Well, it was just after you had been to Mr. Vacheron's place in the country?" And didn't you give the answer, "Yes, sir"? A. Yes, if it is there.

Q. Then you were asked this question: "When you came down from Bish Bash you went and saw Morgan & Company? A. Yes, sir." Did you give that answer? A. Yes, sir.

Q. "And got this information," was the next question; did you get that? A. Yes, afterwards.

Q. "Q. And got this information? A. Yes, sir." Did you

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give that answer to that question? A Yes, sir.

Q And then was this question put to you, "Then, in other words, after you got this information you went to Mr. Vacheron and got this receipt? A. Yes, sir. I believe I got it at that time. I got that at my second trip to New York." Did you give that answer to that question? A. If it is there, I did, but I didn't understand the question properly.

THE COURT: The date of the receipt is February 3rd, 1909, is it?

MR. McMANUS: Yes, sir.

Q So, then, now you want the jury to understand that you were mistaken this morning?

MR. WASSERVOGEL: He doesn't want the jury to understand anything -- he is simply giving testimony.

MR. McMANUS: Question withdrawn.

Q Is it the fact, then, that when you saw Mr. Vacheron in the morning of February 3rd, 1909, you did know that the stock had been sold in February, 1908 or not? A I didn't know it then; no, sir.

Q So then when you testified to this under oath in the other action you were mistaken, is that right? A Will you allow me to explain?

Q No, I am asking for an answer to my question. A I didn't know it was sold then, until later, after I had received the receipt.

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Q So you said in answer to this question, "This was then after you got this receipt, this Exhibit Q? A. No, I got this receipt after" -- A Well, it is a mistake.

Q And you were mistaken when you so testified, is that right? A Yes, sir; that is a mistake.

BY THE COURT:

Q Was your recollection as to that particular event better at the time of the trial on March 7th, 1911, than it is to-day? A It is better now.

BY MR. McMANUS:

Q In other words, the further away you get from it the better your memory gets, is that right? A Because I have been thinking over these things.

Q Yes, and talking it over, too, I suppose, haven't you? A I have.

Q Whom have you talked with about it? A I talked to different people about it.

Q How many different people? A Why, several friends of mine.

Q And your talk has strengthened your recollection as to what happened in February, 1908 and 1909, is that right? A Yes.

Q And it is what these friends have suggested to you that has strengthened your recollection? A No.

Q See whether your recollection was correct when this

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civil suit was tried, or whether it is correct now, as to this (pp. 22 and 23), "Well, now, when you were here in May, 1909, did you see Mr. Vacheron then? A. Yes." Did you give that answer to that question? A. Yes.

Q And do you remember this question being put to you, "And did you have any talk with him then about the stock? A. Yes." Did you give that answer to that question? A I suppose so.

Q And do you remember if this was then put to you, "What did you say to him then and what did he say to you? A. Practically the same thing." Did you say that? A Yes.

Q That is, you asked him for the stock? A Yes.

Q Is that right? A Yes.

Q ^{you,} Mark this is May, 1909. "And he said he had mislaid it and couldn't give it to you then, is that it? A. Yes." Did you give that answer to that question? A I suppose I did if it is there.

Q Were you mistaken then when you gave that testimony under oath? A I must have been mistaken about the question.

Now, we will go over to page 57, and do you remember this question being put to you, "When was the first time that Mr. Vacheron told you that he had sold this stock? A. I think it was in May, 1909, sometime in May." Do you remember giving that answer to that question? A. I think I corrected myself at the time, that I said either February or May; I think further on I made that statement.

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Q Well, let us see if you did. "Do you remember the time of the month? A. The time of the month. Q. The month or the time of the month? A. Well, by reference to my memorandum you will see. Q. No, can you recollect? A. No, I cannot. I think it was in May. Q. Whether it was the beginning or end of the month? A. I think it was the beginning of the month." Was that testimony true when you gave it? A Well, I notice that I made several mistakes, in reading over those minutes.

Q The same as you notice here to-day, you made several mistakes?

MR. WASSERVOGEL: I object to that.

THE COURT: Objection sustained; it is a matter of comment.

Q And no matter what you testified to before, you know now that on February 4th you told ~~you~~ Mr. Vacheron that you knew he had disposed of the stock; is that right? A Yes.

Q As a matter of fact, didn't you know from February, 1908, that Mr. Vacheron had disposed of the stock? A No, sir.

Q You didn't know anything about it at all? A No, sir.

Q And wasn't it simply because of the fact that the stock had gone away up in value that you made this demand on him, beginning with July, 1909, and continuing on after that?

A No, sir.

Q That had nothing to do with it? A No, sir.

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Q. Didn't Mr. Vacheron repeatedly, following February, 1909, offer to pay you the sum of \$1037.50 and say to you that that was all that was coming to you? A. Not to me he did not.

Q. Didn't he to your attorney, with your knowledge? A. I think he said something about that to my attorney, but not to me; never offered me anything.

Q. But your attorney told you that Mr. Vacheron had made that offer? A. I think so. I know that he made that statement to several of my friends.

Q. Now, at another point here, on later in your examination at page 83, you were again asked about this receipt. See if this question was not put to you and if you did not give this answer: "Q. See if I remember correctly. I understand you to say it was in February, 1908, that you called on them and got this information? A. I believe so." Is that right? A. Yes.

Q. "This was then after you got this receipt, this Exhibit Q? A. No, I got this receipt after." Do you remember that being put to you and do you remember giving that answer at this point of the trial? A. Probably I didn't understand the question.

Q. You didn't understand the question? Is that the best answer you can give to this now, that you did not understand the question? A. Will you repeat the question, please?

Q. "This was then after you got this receipt, this Exhibit Q? A. No, I got this receipt after." A. After

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what?

Q After you called on Morgan and got the information?

A Well, I have been trying to explain this morning, but you wouldn't allow me.

Q Well, now, I will let you explain? A Well, I had had my suspicions aroused long before, and when I first came down, I came down on the 21st of January --

BY THE COURT:

Q What year? A 1908.

BY MR. McMANUS:

Q 1908? or 1909? A 1909; I came down and I saw my friend, Mr. Moquin -- and they told me --

THE COURT: Do not state the conversation.

A (Witness continues) Well, from the conversation, from information I had heard from different people, I began to get scared about my stocks, and I thought I would find out something.

Q Well, now, you have told us all this before? A Yes.

Q That does not explain this situation? A Well, allow me. I have been to the stockbrokers to try and get some information of the stock. I had to get the date that I had purchased, and so forth, and it took me some time to get that, and it took four or five days before I got the information from DeCoppet & Co., the stock brokers, 43 Exchange Place; and with that information I went to Morgan's office,

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and there also they had no time to hunt this up. So I went there before the 3rd of February and I left this memorandum; I went afterwards, after I got this receipt, to Morgan & Co., and they had the information then for me. In other words, I saw the stock -- they produced the stock for me.

Q Well, in other words, now, you say you didn't get the information as to the disposition of it until after you got the receipt from Vacheron? A I was only positive then that it was sold or transferred.

Q But you went to Morgan & Company a year before the trial of this action? A No, sir. This was in 1909.

Q But this action was not tried until 1911 -- the civil suit of yours? A Well, I don't know about that, but I went to get the information about the stock in 1909.

Q Don't you even know when the civil suit was brought? A Yes, sir; 1910.

Q 1910? A Yes, sir.

Q Well, that was over a year, then, after you had been to Morgan's office? A Yes.

Q Well, that does not explain this situation. You say now that you got the information from Morgan's office after Mr. Vacheron gave you that receipt on February 3rd, 1909?

A Yes, sir.

Q But three different times in the civil action you testified that you got a receipt after you got the information;

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now, which is true? A Well, that is where I made a mistake. I got it after.

Q Did anybody tell you to say that on this occasion, on this trial? A No, sir.

Q Did anybody tell you to change your testimony? A No.

Q That it would make your case stronger? A No, sir.

Q Do you remember this being put to you (at page 83).

THE COURT: Pardon me. These questions should be asked by the defendant's counsel; they may be objectionable if asked by the Court.

BY THE COURT:

Q Were these certificates of stock signed by anybody?

A They were signed by me in blank.

MR. McMANUS: I was going to get to that just as soon as I got through with this.

BY MR. McMANUS:

Q You remember these questions: "When were you there at the Bish Bash Inn? A. In the latter part of January. Q What year? A. 1909. Q. And this bears date of February 3rd, 1909? A. That may. I don't remember the date. Q. Between those two dates you had been to Morgan & Company and made inquiries? A. Yes, sir." That is right, isn't it? "Did you, when you were there and saw Mr. Vacheron and got this receipt, tell him that you had been to Morgan & Company and got this information? A. I told him also that. Q. He was not your lawyer,

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was he? A. No. Q. Never was? A. No, sir." Did you give those answers to those questions? A I believe so, yes.

Q Now, to come back again to the question of the delivery of the stock --

MR. McMANUS: I ask for Exhibit 2 for Identification, the stock certificate. I will offer it in evidence.

Q This is the certificate of stock for the 100 shares that you have referred to, isn't it (indicating People's Exhibit 2 for Identification)? A Yes, sir.

MR. McMANUS: I offer it in evidence.

(No objection.)

(Received in evidence and marked Defendant's Exhibit

A.)

Q Your signature is endorsed on the back of it, isn't it? A Yes, sir.

Q You have seen that signature? A Yes, sir.

Q And there is no question of it being yours? A It is mine.

Q And it is signed to a power of attorney, authorizing the disposition of that stock, isn't it?

MR. WASSERVOGEL: It speaks for itself, it is in evidence.

THE COURT: Objection sustained.

Q This power of attorney on the back reads as follows:

"For value received, I hereby sell, assign and transfer to

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Halle & Stieglitz the within stock trust certificate for (blank) shares of the capital stock of Southern Railway Company, and all interest therein; and do hereby irrevocably constitute and appoint E. B. Willets, Jr., attorney to transfer such interest on the books of the voting trustees within mentioned, with full power of substitution in the premises. Dated February 3rd, 1908. Henry W. Bodin. In presence of: C. P. Peuquet, or J. W. Peuquet." Now, at the time that you delivered this certificate of stock to Mr. Vacheron, was your name signed to it?

A My name was signed onto it alone.

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Q Signed to this power of attorney authorizing the sale?

A My signature was the only one on there.

Q Henry H. Bodin? A Yes, sir.

Q Now, you delivered that certificate to him in the Brevoort Hotel? A Yes, sir.

Q Did you sign it, or was it produced before that in the presence of Mr. Peuguet? A No, sir; it was already signed previously.

Q Did you deliver that certificate to Mr. Vacheron in Mr. Peuguet's presence? A No, sir.

Q Did Mr. Peuguet sign as a witness? A No, sir.

Q In your presence? A No, sir.

BY THE COURT:

Q Do you know Mr. Peuguet? A I know him, yes.

BY MR. McMANUS:

Q Do you know Mr. Peuguet? A I know him.

Q You know him to be a clerk of the Hotel Brevoort at that time? A He was until he was fired out.

MR. McMANUS: I move to strike that out.

THE COURT: Motion granted.

Q You know he was a clerk there when you were stopping there in February, 1908; is that right? A Yes, sir?

Q Didn't you as a matter of fact have him go down to the desk and witness that signature? A No, sir.

Q And you mean to say that that signature of his on that

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paper is not authorized by you? A Exactly.

Q you knew, however, that to deliver the stock effectually you would have to be witnessed, didn't you? A I had had my signature witnessed long ago by a teller of the National City Bank.

Q Is the name of the teller on that paper? A No, sir, but he witnessed my signature on it.

Q A teller on the National City Bank? A Yes, sir, the receiving teller.

Q Witnessed your signature? A Yes, sir.

Q In other words, you mean he simply saw you sign your name on it.

Q Exactly. I used to consult him about stocks.

Q But he did not sign "In the presence of" on this paper?
A No, sir, that was in blank.

Q Why did you fill it in at the National City Bank? A Because I had made my will at that time, and I had filled all these things out in case anything happened to me.

Q Did you think that was necessary, to have these papers endorsed in making your will? A Why, it was necessary to have my signature, yes, sir.

Q You thought so? A Yes, sir, I still think so, yes, sir.

Q But you are positive that Peuquet did not sign that paper in your presence? A No, sir.

Q You knew, however, that in order to make a sale

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effective, or a transfer of that stock effective, it would have to be witnessed, didn't you? A I thought my signature was sufficient to make it legally transferrable.

Q Then what did you think it was necessary to have the clerk of the bank witness it for? A I wanted somebody to identify me and identify my signature.

Q You didn't think it was necessary to identify you when you were disposing of the stock; is that right? A No. As long as it was already signed, I thought that sufficient.

BY THE COURT:

Q What evidence would there be as to the party who witnessed your signature, if his name was not subscribed to the certificate of stock? A I don't know what evidence, I don't know what other evidence ---

Q You say this cashier at the bank witnessed your signature? A The receiving teller.

Q The receiving teller; and that it was witnessed by him for the purpose of identifying your signature. What evidence was there on the certificate of stock that this particular individual witnessed your signature? A There is nothing on the stock.

Q Did you have a bank account there? A No, sir.

Q When you went to the office of Morgan & Company on February 3rd, or at any time, did you observe whether the signature of the defendant was on the certificate of stock? A You

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mean Mr. Vacheron's signature?

Q Yes. A It was on, yes, sir.

BY MR. McMANUS:

Q You know his handwriting, don't you? A Yes, sir.

Q You have received a number of letters from him? A Yes, sir.

Q And there can be no question to your mind that that is Mr. Vacheron's signature on this certificate? A It is.

Q And there are other signatures following that? A Yes.

Q Halle & Stieglitz are on there, are they not? A Yes, but I had nothing to do with this signature.

Q I am not saying you had, sir ---

BY THE FOREMAN:

Q This cashier of the National City Bank, is he familiar with your writing? Is that the reason you went to him to identify your handwriting? A The receiving teller.

Q Was he familiar with your handwriting? A Yes, I used to go there every day. I know him pretty well.

BY MR. McMANUS:

Q When did you bring your civil action? A Sometime in June.

BY THE COURT:

Q What year? A 1909. I brought the action immediately after I couldn't get paid.

BY MR. McMANUS:

Q That was in June, 1909, wasn't it? A Yes, sir.

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Q Was that following or before your visit to the District Attorney's office? A Well, that was before.

Q Did you go to the District Attorney's office before you sued? A Oh, no; I went after.

Q Which was after? A I went to my lawyer's office.

Q And he took you to the District Attorney's office, is that right? A Yes, but that was only in July that I went there.

Q That was after you started your civil suit, is that right? A Yes.

Q And saw Mr. O'Neill, in the District Attorney's office? A Yes, sir.

Q So as a matter of fact you went to the District Attorney's office in the summer of 1909, didn't you? A Well, that is what I said, 1909.

Q This suit was not brought? A Oh, pardon me; this was in the first of June, 1909, that he was to pay me, and when he didn't pay I went to see my lawyer, so it must have been in 1909.

Q That you went to the District Attorney's office? A That's it.

Q And you saw Mr. O'Neill, is that right? A Yes, sir.

Q You also then saw Mr. Vieu? A Yes.

Q And Mr. Vieu and Mr. O'Neill have offices together, haven't they? A They have now, they didn't then.

Q They didn't at that time? A They did not, no, sir.

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Q Mr. O'Neill was a Deputy Assistant District Attorney of this County under Mr. Jerome? A I believe so.

Q Mr. O'Neill at that time refused to lay the case before the Grand Jury, didn't he?

MR. WASSERVOGEL: I object to it, unless the whole thing can come out.

MR. McMANUS: Question withdrawn.

RE-DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Part of the package that was delivered to you by Mr. Nolan, of the French Steamship Line was \$33.95 in cash, wasn't it? A Yes, sir -- \$31 or \$33, I forget which.

Q And that \$33.95 was mentioned in the receipt which is offered in evidence as People's Exhibit 3? A Yes, sir.

Q Mr. McManus examined you regarding some stock of the Hercules Electric Drill Company mentioned in this receipt. What was that? A Well, it was some stock that I had been roped in to buy there when the office of the company was ---

MR. McMANUS: I object to that.

THE COURT: Objection sustained. Strike it out.

Q Had it any value at that time? A No, sir, no value.

Q Mr. McManus also questioned you relative to some bonds of the Securities Realty company. Did they have any value at that time?

MR. McMANUS: Objected to as incompetent, irrelevant

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and immaterial.

(Question withdrawn.)

THE COURT: Confine yourself to the issue raised.

MR. WASSERVOGEL: I am going to show that Mr. McManus had reason for asking the questions; I know the reason, and I want it straightened out now.

Q Did you have any talk with this defendant Vacheron, relative to the Hercules stock and the Securities Realty Company bonds? A Yes, sir.

Q What did you say to him? A At the time he asked me for those two, the Bay State and the Southern Railway, he said "How about these two stocks", and showed me the other stocks. I said, "Oh, they are about worthless; they don't amount to anything."

Q Mr. McManus asked you, isn't it a fact that the value of the Bay State Gas stock was paid by this defendant to you, but he did not ask you how much was paid to you. I ask you that now, how much did he pay you? A \$37.50.

MR. McMANUS: I object; it is unintentionally a misstatement. I asked him what was the price of that stock.

MR. WASSERVOGEL: He asked him, was the value of the Bay State Gas stock repaid to you? I want to know how much was paid to him.

MR. McMANUS: I object to it as not proper in form.

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THE COURT: My recollection is that you asked him and that the witness testified that he reimbursed for the Bay state Gas stock. He said he paid to me the market value in cash on May 6, 1909.

MR. WASSERVOGEL: The question is simply what was the amount paid.

THE COURT: I will allow that.

Q What was paid? A \$37.50.

Q Was anything paid to you on the 100 shares of Southern Railway stock? A Nothing.

Q They were worth at that time ---

MR. McMANUS: I object.

Q What you said? A I never received anything.

Q On your examination this morning you told the defendant, you said that they were worth \$21 a share to you when you bought them? A When I bought them, yes, sir.

Q That is \$2100? A Yes, sir.

Q No part of that was paid to you? A No, sir.

Q The \$37.50 is all that you got from him? A For the Bay State, that was all.

Q You were also asked whether you had any talk with your father about this matter; you said your father was a very old man; how old was he at that time? A He was about eighty-two or eighty-three.

Q Is your father living now? A No, sir.

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Q When did he die? A He died March 29, 1909.

Objected to. Objection overruled.

Q When was it that you first presented this matter to the district Attorney of the County of New York?

THE COURT: He said, 1909.

Q July 1909? A Yes.

Q When this certificate of stock, (Defendant's Exhibit A) was in your possession last, did it bear any names upon it, such as Halle & Stieglitz? A No, sir.

Q Do you know any member of the firm of Halle & Stieglitz?

A No, sir.

Q Did you ever have any dealings with that firm? A No.

BY THE COURT:

Q Did you endorse it in blank? A Yes.

BY MR. WASSERVOGEL:

Q And you don't know who put those other signatures in there? A No, sir.

RE-CROSS EXAMINATION BY MR. McMANUS:

Q As a matter of fact, you have had stock transactions enough to know that it is customary to endorse certificates in blank so that you can dispose of them, don't you? A Yes, sir.

Q And if this stock had sold, as you say, for 23, as you wanted it sold for 23 a share, you had no objection to the name of Halle & Stieglitz, or anybody else being there, had

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you? A Why, no.

Q The simple proposition here between you and this defendant is that instead of selling this for 23 he sold it for 10-3/8, isn't it?

MR. WASSERVOGEL: That is not the simple proposition here. This defendant is charged with the larceny of certain stock; that is the issue.

THE COURT: The issue is a very simple one, as I understand it. If the complaining witness parted with the possession and title to the 100 shares of stock on the agreement or understanding that the transfer was in the nature of a loan ---

MR. WASSERVOGEL: No doubt about that at all. Then there is no crime.

THE COURT: (Continuing) Then there is absolutely no crime. If on the other hand, this defendant received the 100 shares of stock upon an agreement to the effect that the defendant was to sell the stock for a certain price and to turn over the proceeds to the complaining witness, that instead of doing so he sold the stock and appropriated the proceeds to his own use, with intent to steal it, with intent to appropriate it, with the criminal intent of appropriating it, and he did appropriate it, that is a matter for the jury to pass upon.

MR. WASSERVOGEL: That is our contention.

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MR. McMANUS: Yes, sir, that is the issue.

MR. WASSERVOGEL: That is our contention, correct.

Go right on.

BY MR. McMANUS:

Q You know you have been told by your attorney repeatedly that Mr. Vacheron offered to pay the \$1037.50? A I have heard something about that.

Q From your own attorney? A I believe so. I think it was through him.

Q Didn't your own attorney tell you that and didn't you refuse to accept it? A I am not sure whether it was to my attorney, but I know it was offered when we got to court on the civil suit.

And before that? A I am not positive whether he spoke to me about that.

THE COURT: What was the quotation price at the time the stock was sold?

MR. WASSERVOGEL: 10-3/8 at that time.

MR. McMANUS: 10-3/8.

THE COURT: Then there would be another issue; that if the defendant was to sell the stock at no specified time, but when the conditions of the market were favorable, then all that the defendant would be obligated to return to the complaining witness would be the amount for which the stock was sold?

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MR. WASSERVOGEL: No, no, according to the testimony your Honor is mistaken.

THE COURT: According to the defendant's theory.

MR. WASSERVOGEL: Oh, yes; that is for the jury to determine. We have not heard anything about their theory yet; we have the People's case alone to deal with.

J O S E P H P. N O L A N, called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q You are a lawyer, are you not? A I am.

Q And a member of what firm? A Nolan Brothers.

Q Is your firm attorney for the French Line? A It is.

Q The --- A Compagnia Generale Transatlantique.

Q And your firm was the attorney for this concern in the month of ---

MR. McMANUS: I will concede that they were attorneys for the French Line, and that they delivered over these papers.

MR. WASSERVOGEL: I am always afraid of Greeks bearing gifts. I will prove this case very quickly if I am left alone.

THE COURT: Proceed.

Q You were the attorney for this company in the month of

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January 1908, were you not? A No; Edward K. Jones was the attorney, and I was associated with him. After his death I became the attorney -- or my firm did.

Q On the 31st of January, 1908, did you see this defendant, Vacheron? A I did.

Q Where? A At the Hotel Brevoort.

Q Was Mr. Bodin there, Henry Bodin? A He was.

Q Do you remember having any conversation with Mr. Bodin in the presence of Vacheron on that occasion? A Yes, I do.

Q What was said and done? A I attended there with Mr. Paul Fouget, the General Agent of the French Line, and a Mr. Piperoux, the Chief of the Accounting Department of the Company; and I had previously prepared a receipt for certain papers which were in possession of the French Line.

Q Is this the receipt, People's Exhibit 1? A Yes, this is the receipt.

Q And this is a duplicate of the receipt? A Yes. They were all made in my office at the time.

Q What did you do? A I presented the receipt to Mr. Bodin, and Mr. Vacheron. Mr. Piperoux brought with him the papers from the French Line which are mentioned in the receipt.

Q What was done with the paper? A What was done?

MR. McMANUS: Objected to as already gone into, no dispute as to the fact.

MR. WASSERVOGEL: It won't do you any harm. We will

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be through in a minute.

THE COURT: objection overruled.

A The package was opened, and the contents was checked by Mr. Bodin and Mr. Piperoux, and Mr. Vacheron and I stood as witnesses to the examination of the contents. Afterwards Mr. Bodin signed it, and I requested Mr. Vacheron to sign as a witness to Mr. Bodin's signature, and that was done.

Q And Mr. Bodin's signature appears here and also Mr. Vacheron's? A Yes, sir, in my presence, and then I left.

MR. McMANUS: No cross examination.

A D E L E F. B O D I N, called as a witness in behalf of the People, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A Yulan, Sullivan County.

Q You are the step-mother of Henry Bodin, are you not?

A Yes, sir.

Q And you know this defendant Eugene Vacheron? A Yes, sir.

Q He is related to you, isn't he? A Yes, sir.

Q On the 29th of January, 1908, did you see Vacheron?

A Yes, sir.

Q Where? A At the Brevoort Hotel.

Q No, I mean on the 29th of January, 1908, - you were at the Bloomingdale Sanatorium on that day? A Yes, sir.

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Q Was Henry Bodin there? A Yes, sir.

Q Was Mr. Vacheron there? A Yes, sir.

Q Did you see any one give any money to Henry Bodin on that occasion? A At Bloomingdale?

Q Yes. A Yes, sir.

Q Who gave him some money? A Dr. Doran.

Q You know what the amount was that was paid to him on that occasion, do you? A About \$70.

Q Did you come to New York with Henry Bodin and with Vacheron? A Yes, sir.

Q And were you present when a package of papers was delivered to Mr. Bodin by a representative of the French Line?
A Yes, sir.

Q Was Mr. Vacheron present on that day? A Yes, sir.

Q Were you present at any other time when some papers were delivered by Mr. Bodin to Mr. Vacheron? A Yes, sir.

Q Do you remember when that was? A That was the 30th.

Q Are you sure about the day? A Yes, sir, or the 31st.

Q The 31st? A Yes, sir.

Q Which do you say it was, the 30th or the 31st? A 31st.

Q Did you hear any talk between Vacheron and Bodin at the time when these papers were delivered to Vacheron? A No, no talk.

Q What was said? A Mr. Bodin gave him two papers.

Q By "him" whom do you mean? A Mr. Vacheron.

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Q What was said when he gave him the two papers so far as you remember? A "Sell one at 3, and the other one at 23."

Q How many rooms did you occupy at the Brevoort Hotel at that time? A The same one.

Q Did you take part in the conversation at all? A No; there was no conversation.

Q You didn't take part in the conversation? A No, sir.

Q All that you remember hearing of that conversation was what you testified to here, is that correct? A Yes, sir.

Q That is all you heard? A Yes, sir.

Q You don't know what papers were delivered to Vacheron by Bodin at that time? A No, sir.

Q You didn't see the papers? A No.

CROSS EXAMINATION BY MR. McMANUS:

Q You, as a matter of fact, had retained Mr. Vacheron to try to get your step-son out of Bloomingdale? A Yes, sir.

Q And it was through his efforts that your son-in-law was taken out of Bloomingdale? A Yes, sir.

Q And there was some difference or dispute between your husband and your step-son at that time, wasn't there? A Oh, many years ago.

Q And hadn't Mr. Vacheron straightened that out, too?
A Yes, sir.

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Q In other words, he had been, as well as your attorney, a good friend of the family, right at this time, hadn't he?

A Yes, sir.

Q And had settled all the differences between you, is that right? A Yes, sir.

Q And everybody was happy and contented? A Yes, sir.

Q Around this time, on the 31st of January, 1908. As a matter of fact, if it wasn't for Mr. Vacheron urging, the father didn't want him to come up there again, did he? A Well, of course ---

Q The father didn't want him up there? A Well, the father was very sick at that time.

Q But the father had a good deal of feeling against the son at that time, isn't that right? A That's right.

Q You got down from Bloomingdale on the 29th, is that right? A The 30th.

Q You say it was the 30th? A Yes, sir.

Q And if Mr. Bodin said it was the 29th he is mistaken, is that right? A Well, it was the 30th, I am sure.

Q You are sure it was the 30th? A Yes.

Q What day was it that he got the money out of the Emigrant's Bank? A The 31st.

THE COURT: How is that at issue here?

MR. McMANUS: Except as a circumstance going to test the credibility and the memory of the witnesses, that's

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all.

Q These papers were brought up from the French line some time on the 31st, is that right? A Yes, sir.

Q And there was quite a pile of them, is that right?

A Yes, sir.

Q And they were delivered there to Mr. Bodin while Mr. Vacheron was there? A Yes, sir.

Q And there was a lot of conversation that you heard no part of? A No.

Q What particular papers he delivered to him, you don't know just what they were? A No, sir, I don't know.

Q And as a matter of fact you were living with your stepson at the time the civil suit was on trial, weren't you?

A Yes, sir.

Q And you were living then up at Yulan? A Yes, sir.

Q And he came down to New York, for that trial, isn't that right? A Yes, sir.

Q And you didn't testify as a witness in his behalf in that suit, did you? A Because I was sick in bed.

Q Well, there wasn't any deposition taken of you? A (No answer).

Q I mean they never sent up ---

BY THE COURT:

Q You were never examined up in the country? A No, sir.

BY MR. McMANUS: Q They never took your statement up in the

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country for use on the trial, and you were never asked to give any testimony up there? A No, sir.

Q And no notary or commissioner came up there? A No, sir.

Q To ask you what you knew about that transaction? A No.

Q Even though you were sick in bed? A No, sir.

MR. McMANUS: And I take it there is no dispute, Mr. District Attorney, that a deposition could have been taken as a matter of law.

MR. WASSERVOGEL: That is a matter of law; of course it could. It depends on whether they knew in advance that this lady was going to be sick upon that trial; they may have expected to have her down there, and at the last moment couldn't get her there.

MR. McMANUS: And I will hand you the record and ask you to point out any place in that record where they say that she is sick.

MR. WASSERVOGEL: That is unnecessary; that is not the issue here; we are not responsible for what happened there.

THE COURT: I will allow it. It is a circumstance which the jury may consider.

MR. WASSERVOGEL: Together with all the evidence in the case, I take it.

THE COURT: Yes.

Q You knew that prior to going up there to Bloomingdale

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in January that the Bloomingdale authorities had demanded that money be paid, did you not, for his keep? A No.

Q Didn't Mr. Vacheron tell you? A No.

Q Did he tell you in December that the French Line refused to pay any more money for his keep up there? A No, no, sir.

Q Didn't you hear from the French Line that they wouldn't pay any more money for his keep in Bloomingdale? A After January, yes.

Q Didn't you get a letter from the French Line? A Yes.

Q About a month before he got out? A Yes, sir.

Q Saying that they would not pay any more money for him?

A Yes.

Q And didn't they write from the Asylum, demanding that money be paid for his keep? A No, they never wrote from the Asylum.

Q Didn't they write to Mr. Vacheron, and didn't he so tell you? Look at this letter and tell us if he didn't show that letter to you? A I can't see without my glasses.

Q Haven't you your glasses with you? A No.

Q Did he show you any letter from the Bloomingdale Asylum?

A Well, maybe, but I don't remember.

L A W R E N C E M E Y E R S, called as a witness in behalf of the People, being first duly sworn, testifies as follows:

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DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q What is your business? A In the stock business, - stock broker.

Q Connected with what firm? A Halle & Stieglitz, 30 Broad street.

Q Were you connected with that firm in the month of January and the month of February, 1908? A Yes.

Q Did you ever see this paper defendant's Exhibit A that I now show you? A Yes, sir.

Q When did you receive it, do you recall? A I couldn't tell you exactly. My signature is on it.

Q Look at the paper, refresh your recollection, if you can, and then tell us when or about when it was that you first saw that paper, Defendant's Exhibit A? A About February, 1908.

Q Who showed it to you? A Mr. Vacheron.

Q The defendant in this case? A Yes, sir.

Q Do you remember the conversation you had with him?

MR. McMANUS: I am willing to concede that this paper was delivered by the defendant to Halle & Stieglitz and that he instructed them to sell the stock, and that he delivered it to Mr. Meyer. Now, I make that concession, I offer it.

MR. WASSERVOGEL: Thank you.

THE COURT: Do you accept the concession?

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MR. WASSERVOGEL: I accept nothing in this case.

I want to try it out.

Q Just tell us the conversation you had with Mr. Vacheron? A As I remember, Mr. Vacheron came down, the defendant came down and asked me to sell the stock as he wanted ---

Q Was the stock sold? A The stock was sold.

Q And you have a record of it in the books produced here?

A Yes, sir.

Q Was any money paid to Mr. Vacheron after the stock was sold? A He received a check for the amount.

Q What was the amount paid? A About a thousand and thirty dollars.

Q A thousand and thirty-seven dollars and fifty cents?

A Yes, sir.

H E N R Y A. V I E U, called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q How long have you been practicing law in this county?

A Thirty years.

Q Do you know this defendant? A I do.

Q Do you know Henry Bodin? A I do.

Q How long have you known him? A I have known Mr. Bodin since 1876 -- over thirty years.

Q Did you at any time have a conversation with the defend-

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ant? A I did.

Q When and where? A In the month of July, 1909.

Q Where? A At my office, 320 Broadway, New York City.

Q Did the defendant call at your office? A He did.

Q In pursuance to a letter you had written to him? A I had written him a letter and he called.

Q When he came to your office you say you had a conversation? A Yes.

Q What did you say and what did he say? A Mr. Vacheron called at my office in the middle of July, 1909, in response to a letter I had written to him. I told him at that interview that Mr. Bodin had me written me in relation to a certificate of stock, Southern Railway, that he had confided to him some year previous, - a year and a half. Mr. Vacheron told me at that interview that that stock had been given to him by Mr. Bodin in addition to his \$260 that he had paid him for his services. That Mr. Bodin was so grateful for what he had done for him that he had felt he wanted to do something more and had given him the stock in payment in addition to his fees. I says, "Mr. Vacheron, if that is the fact, isn't it strange that on the 3rd of February, 1909, or a year subsequent you gave Mr. Bodin this receipt, saying that you had borrowed the stock? He said, "That is where I was - a damn fool," but he says, "I can show clearly that I am not a broker and therefore did not need to borrow this stock". We had some

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further conversation, such as my going up to his place in a couple of weeks, and so forth.

Q That is all the conversation you had bearing on this transaction? A Yes, sir, as near as I can remember it.

Q When was it, as near as you can recall, that you called on the District Attorney relative to this case the first time?

A The first time was probably a week or ten days after this interview with Mr. Vacheron?

Q At that time? A Yes, sir.

Q Was there any other conversation that you had? A Well, that is about the sum and substance of the conversation. We had a conversation of about half an hour's duration, in which he spoke to me; that he had several witnesses that were present at that interview when the stock was given to him, fortunately for him. That was in addition to the other.

Q Have you told us all that you can remember? A About all I can remember, at present.

CROSS EXAMINATION BY MR. McMANUS:

Q Are you sure about this interview being in July and not in July, 1909? A I think it was in June.

Q So you were mistaken a little while ago? A I think the month I was mistaken about. The month of June.

Q Of course you were not mistaken as to the scope of the conversation? A No, the scope of the conversation I remember

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very distinctly.

Q You were then, of course, and had been at different times during a number of years, the attorney for Mr. Bodin?

A I had.

Q And as well as that you had been his intimate friend?

A I had.

Q You were not instrumental at all in having him discharged from the Asylum, though? A No, sir.

Q As a matter of fact, didn't you state to Mr. Vacheron that you would not touch that proceeding with a forty foot pole?

A No, I can tell you about what I did say in relation to it. I told Mr. Vacheron at that interview that Mr. Bodin had been up in the Bloomingdale Asylum, that I had visited him up there and that subsequently the French Line -- Mr. Piperoux, I think it was, sent for me and wished me to take some proceedings to have Mr. Bodin committed. He stated that they had paid three months of his board, and had a balance of about \$70 left over, and that every three months they had to pay in advance, and they didn't feel like advancing the money for three months. I then told him that it was a delicate transaction ---

Q You told this to the defendant? A Yes, sir, and I thought as Mr. Bodin had his father living, it was only proper that the father should take the proceedings and that I refused to interfere in that matter as an outsider.

Q And you did not use that phrase then, that you would not

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touch it with a forty foot pole? A I never used that expression

Q You are sure of that? A Oh, there is no question about it.

Q After having this question with Mr. Vacheron you of course again conferred with your client? A I did.

Q And you called then at the District Attorney's office?
A I did.

Q And saw Mr. O'Neill? A Yes, sir.

Q By the way, Mr. O'Neill and you have offices together now? A We have now, yes.

Q As a matter of fact, in the course of that interview that you had with Mr. Vacheron, didn't you threaten him that if he did not offer to pay on the basis of 23 or 25 that Bodin would take the matter up with the District Attorney? A I don't think I made any threat.

Q Didn't you make the statement that if Mr. Vacheron didn't pay over on the basis of 23 or 25 dollars a share that Bodin would go in the District Attorney's office about it? A I don't remember any such conversation.

Q Will you say that that was not said? A I won't say, no, sir.

Q You won't say that that was not said? A No, sir, I will not.

Q Isn't it a matter of fact that you also asked him to pay on the basis of \$27 a share? A I told Mr. Vacheron in

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addition, if I remember all right, that Mr. Bodin claimed that he had promised to pay him 27 no matter how the stock went, whether up or down.

Q As a matter of fact at that interview didn't Mr. Vacheron tell you that he was willing to pay on the basis of the amount that the stock had been sold for, a thousand and thirty-seven dollars and fifty cents? A No, sir.

Q Didn't he tell you that that was the price that he got for the stock? A That he told me was the price.

Q And didn't he tell you that he was ready to pay that price? A No, sir.

Q He didn't say anything about that? A No, sir; he said he would pay the amount that he had received for the stock, didn't say he was ready to pay anything.

Q He said he was willing to pay the amount he received from the stock, but did not mention the stock? A No, you said didn't he offer to pay the amount, and he didn't; he simply said he would be ready to pay the amount he realized on the stock.

Q He said he would be ready to pay the amount he realized on the stock? A Yes, sir.

Q And you refused to accept that? A I wasn't in a position to accept or refuse.

Q Did you accept it? A I didn't refuse it or accept it.

Q Then after that wasn't it that you said, "If you don't

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pay on the basis of 23 to 27 --" whichever it was, -- "Mr. Bodin will go to the District Attorney's office in regard to the matter? A I don't remember that part of the conversation.

Q You won't say that that was not said? A No, sir, I will not swear.

Q As a matter of fact within a month after that you did come up to the District Attorney's office and saw Mr. O'Neill and Mr. O'Neill is the same Mr. O'Neill who now has an office with you? A Yes, sir.

Q And he was then an Assistant District Attorney? A He was.

Q But after conference with Mr. O'Neill no criminal proceedings were instituted, were they? A No, sir.

Q And then it was that you instituted your civil suit, is that right? A Civil suit was commenced in the fall or spring following.

Q Of the following year? A Yes, sir.

Q And then after that you came back to the District Attorney's office? A No, sir.

Q When was it? A I never returned ---

Q Well, the plaintiff did? A No, but the plaintiff here was drawn in through another attorney.

Q Then he came to the District Attorney's office? A Naturally he had to come down and explain the matter.

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Q How long have you known Mr. O'Neill? A I have known Mr. O'Neill about fifteen years.

RE-DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q No amount was ever paid to you by this defendant, was there? A None was ever paid or offered.

RE-CROSS EXAMINATION BY MR. McMANUS:

Q Haven't you said already -- A He said he would be ready to pay it but never tendered any money.

Q Didn't you tell him you were ready to accept it? A He never offered any.

Q Did you ever tell him you were ready? A I wasn't in a position to accept or reject.

Q Did you ever tell him you were ready to accept the amount which he said he realized? A No, sir.

BY MR. WASSERVOGEL:

Q No money has ever been paid to you by the defendant, or by any one representing the defendant? A No, sir.

MR. WASSERVOGEL: We have proved the amount which was paid to the defendant, which brings the case within the provisions of grand larceny in the first degree. That is all we could prove and we have shown by the witness Bodin that he told the defendant that this stock was selling at 25.

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MR. McMANUS: If the Court pleases, I move that your Honor dismiss the indictment and take the case away from the jury upon the ground ---

THE COURT: You do not press the first count, do you?

MR. WASSERVOGEL: At the present time, I do, your Honor.

MR. McMANUS: I ask your Honor first to take away the first count from the jury on the ground that the jury have failed to offer any proof to support it.

THE COURT: Where is there any evidence of the common law larceny?

MR. WASSERVOGEL: Of course the case could be submitted to the jury upon the second count alone, but I think at the present time the people should not be asked to elect upon which count they want to go to the jury.

MR. McMANUS: It is not a question of election, it is a question as to whether they have made out a case under that count.

THE COURT: For the present I shall deny your motion as to the first count in the indictment.

MR. McMANUS: Exception. I move then to dismiss the second count on the ground that they have failed to make out a case; and I move that the whole indictment ---

THE COURT: Your second motion motion is denied, with an exception.

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MR. McMANUS: I will state the grounds, - upon the transaction as disclosed by the testimony of the witnesses for the prosecution shows clearly a breach of contract; that the defendant was instructed to dispose of this property at a certain price; and under the authority of Sargent against Blunt, this is the rule, that an action in trover would not lie, and an action in conversion would not lie where sold at a lower price than the price he was instructed to dispose of the goods for.

(Mr. McManus now reads from the case of Sargent against Blunt.)

He was instructed to sell but sold for a lower price that he was instructed to sell at -- a breach of instructions or a breach of contract; and all they have asked for is the amount that they claim we should have sold it for and not the amount that he sold it for, and which he offered to make good. Now, that was precisely the view in the civil case which the plaintiff took, and he so stated. At the opening of the case it was stated expressly, "This is not an action in conversion, but is expressly an action on the case." In other words, he disobeyed instructions. I will read then what the plaintiff's attorney said at that time ---

MR. WASSERVOGEL: I object. We are trying a criminal case here.

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THE COURT: Well, I would like to have argument on it.

MR. WASSERVOGEL: But not what some other attorney read in some other court.

THE COURT: No. It is important under the case of Shapiro against Levy, 101 Appellate Division which lays down this proposition. They have a right to show as bearing upon this case what attitude if any the complainant took in another forum.

MR. WASSERVOGEL: I know, but this is a prosecution by the People of the State; this complainant has nothing to do with this case. We have subpoenaed him here.

THE COURT: I should like to hear argument.

MR. McMANUS: Here is the attitude the plaintiff took. Mr. Cameron was the defendant's counsel:

"MR. CAMERON: This, I take it, Mr. Skidmore, is an action for the conversion of stock to the value of 43,000?

THE COURT: Gentlemen, this must not affect your judgment, it is argument for the Court.

"MR. SKIDMORE: (Counsel for plaintiff in Civil suit),

Well, it is not an action for conversion, as it is an action for stock that was delivered by the plaintiff for sale.

MR. CAMERON: Then it is not considered as conversion at all?

MR. SKIDMORE: I don't think it is conversion, no.

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"MR. CAMERON: I was reading the complaint, and I would like to have that on the record, that you say it is not an action in conversion.

"MR. SKIDMORE: I say I do not consider it conversion. It is an action on the case.

"MR. CAMERON: That is an action for an accounting."

THE COURT: Was there any tender made?

MR. McMANUS: There was an offer of judgment in the action.

THE COURT: There is no tender made here.

MR. WASSERVOGEL: No tender was ever made, your Honor.

MR. McMANUS: An offer of judgment.

THE COURT: That has a great bearing upon the question.

MR. McMANUS: It was an offer of judgment.

THE COURT: I understand, but there must be a tender made.

MR. McMANUS: I don't think the question of tender would affect the question of criminality of the act.

THE COURT: It will be a question for the jury to determine, whether or not whatever this defendant did he did with a corrupt and criminal intent.

MR. McMANUS: On the question of tender, that is met absolutely by the fact that they refused to accept

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anything but on the basis of 23 to 27; and it is well settled law that if the other party refused to accede to the proposition no tender is necessary, ~~and~~ so that meets that issue right there.

THE COURT: Yes.

MR. McMANUS: No question about that, I take it.

THE COURT: Have you any criminal case on this subject, Mr. Wasservogel?

MR. WASSERVOGEL: The facts themselves are sufficient. Oh, your Honor means any cases?

THE COURT: Yes.

MR. WASSERVOGEL: The case of the People vs. Guyer, 196 N. Y., is practically in point.

THE COURT: The Court of Appeals reversed that.

MR. WASSERVOGEL: Yes, but on other grounds.

THE COURT: There is no doubt that the evidence in this case shows conclusively this, that the complainant parted both with title and possession, so this defendant was in lawful custody of the title and the possession of the stock.

MR. WASSERVOGEL: That is correct.

THE COURT: He could dispose of that stock to any customer of his own selection under the terms of the arrangement, provided that he sold the stock at a price agreed upon. If he failed to live up to the instruc-

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tions and sold the stock for a less sum and he appropriated the proceeds, he did not appropriate the stock.

MR. WASSERVOGEL: Then there would be no criminal action here at all, if that were so, but that is not the case here at all. This lawyer received from his client certain stock, at his own request, ^{to} hold that stock until it reached a certain figure. He was told by the client, "You keep that stock until it reaches 23." Instead of doing that, he immediately, within two days after receiving the stock, sells it, pockets the proceeds, keeps the proceeds, and says not a word to his client about it, but a year later gives his client this receipt, promising to return to the complainant the same stock on the 1st of June, 1909, when he well knew that on February 3rd, 1909, the day when he signed the receipt, the stock was no longer in his possession. If that does not make out a criminal case I don't know what does.

MR. McMANUS: That paper is ineffective on the story of the complainant himself, that that was not the purpose for which the stock was delivered.

THE COURT: Have you examined the case of Hannigan vs. Clews, 77 N. Y.?

MR. McMANUS: No, sir. But at this point, there is another expression of plaintiff's counsel in the civil suit that I want to read -- "It is an action by

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the principal against the agent, in that when stock was given him for him to sell for a certain price, he sold it for a less price".

(The Court also cites to counsel the cases of Palmer vs. Hussey, 87 N. Y.; Tindale v. Burkett, 183 N. Y.; Crawford vs. Binker, 196 U. S.; People vs. Meadows.)

THE COURT: In ~~the~~ Hannigan vs. Clews, the Court of Appeals held that where a broker receives stock upon an understanding that he was to advance a loan, and he hypothecates the stock and appropriates it to his own use, the Court of Appeals reversed a finding in conversion. Then the Court of Appeals followed Hannigan vs. Clews and affirmed Palmer v. Hussey. But since those decisions the Appellate Division in Cavanagh vs. McIntyre rendered an opinion. I had one branch of the McIntyre case before me, and at the time I rendered my decision I didn't know of the existence of Cavanagh vs. McIntyre. I held that the conduct of McIntyre and some co-defendants -- William J. Whitman, I believe, was the name of the other co-defendant -- that their acts constituted larceny. On the very day that I filed my opinion Mr. Taylor called my attention to a decision in Cavanagh vs. McIntyre, which came down that Monday morning precisely upon the same subject.

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Since this the Court of Appeals held in 199 N. Y., People vs. Meadows, that where a broker receives money with which to purchase stocks, and mixes the money with his own money, and fails to purchase the stock, he is guilty.

The question which arises is this. If this defendant received title and possession to the stock and sold it in violation of his instructions -- that is, if the jury believe it -- and that he then offered to pay the amount of money involved, do you hold then there would be a crime?

MR. WASSERVOGEL: Your Honor assumes that because Mr. McManus frames his questions in a certain way.

THE COURT: No, I am asking you a question.

MR. WASSERVOGEL: But that would be an entirely different question, that is not the question at issue. There would not then be a crime, but that is not the question here.

THE COURT: Then the theory of the People is that this defendant was to sell at 23 and that he violated the instructions and he sold at 10-3/8 and appropriated the money and in doing so he did it with criminal intent?

MR. WASSERVOGEL: He did that with criminal intent.

THE COURT: All right. I shall deny your motion, Mr. McManus, and give you the benefit of an exception.

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Gentlemen of the Jury, in denying the motion made by the learned counsel for the defendant, you are not to construe the Court's remarks as indicating any opinion on the part of the Court as to the guilt or the innocence of the defendant. The Court in denying the motion merely holds as a matter of law that there is a question of fact for you gentlemen to determine. A Judge's opinion on a question of fact is valueless. Under our system of procedure a Judge cannot intimate to a jury how a case ought to be disposed of. You are the sole and exclusive Judges of all questions of fact and upon you rests the responsibility of determining the guilt or innocence of the defendant, and you will so understand the Court's ruling.

I will hear you now, Mr. McManus.

(Mr. McManus now opens to the Jury on behalf of the defendant.)

EUGENE F. VACHERON, the defendant herein, called in his own behalf, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. McMANUS:

Q How old are you? A Fifty.

Q Where do you reside? A At Copac Falls now, 105 miles from here.

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Q Columbia County? A Yes, sir.

Q You are in the hotel business up there? A In the summer, yes.

Q What do you do in the winter? A In the winter I was practicing law more or less. I was not making it an absolute business at all.

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

Q With a wife and how many children? A Three boys.

Q Living with you? A Yes, sir.

Q Is your wife living? A Yes.

Q And living up there now in Columbia County? A Yes.

Q When were you admitted to the Bar? A 1892.

Q So that you were admitted from the same law school and the same class? A Yes, sir.

Q You know the complainant in this case, Mr. Bodin?
A I do.

Q And you know his family? A I do.

Q You have been identified during all your years of practice with the law with the French Colony in the City of New York, have you not? A More or less.

Q Pretty largely? A Well, pretty much so.

Q And of course you used to live in the winter at the Hotel Brevoort? A I kept my rooms there all the year around.

Q And Mrs. Bodin is a relative of yours, is she not?

A She is a cousin of my mother's.

Q A distant relative? A A distant relative, yes.

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Q When did you hear anything as to Mr. Bodin's confinement? A Sometime in September, 1907.

Q Who conferred with you? A Mrs. Bodin sent me a letter enclosing a letter from the French Line people, the Compagnie Generale Transatlantique.

Q Following that did you confer with her and other members of the family? A Sometime in October I investigated the contents of the letter regarding the incarceration of Mr. Bodin.

Q And what did you do -- did you confer with his family? A I went to Yulan.

Q That was where they were then living? A That is where they live, in Sullivan County.

Q Had you known Mr. Bodin before that? A I had never seen him, I had never seen Mr. Bodin.

Q Was it at a conference with Mrs. Bodin that you went to Yulan? A No. I wrote to Mrs. Bodin and then she asked me to come to Yulan so as to talk with the father and her about the case, the matter of the son being in Bloomingdale.

Q Following that, then, what did you do? A Well, the father didn't want to have him home; they had had some difficulties. So I came back to New York. I think I went then and inquired from -- I wrote to Bloomingdale; I was referred to Dr. Samuel B. Lyon of the New York Hospital, who I think is Medical Superintendent of Bloomingdale. And he told me

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then that somebody ought to take care of Mr. Bodin, that they were going to institute proceedings for the appointment of a committee. I believe I conferred with Mr. Lyons sometime in December. I went to Yulan again and I told them what was going to happen, to the effect that Dr. Lyons had said that they would either have him discharged or returned to Ward's Island or Bellevue -- I forget which -- or else institute proceedings for the appointment of a committee. I asked Mrs. Bodin to act as a committee. She did not wish to, her husband did not wish her to. Then I told them I would inquire and see if an uncle would not act; he did not want to.

Q Well, you performed a number of services in that connection? A Yes.

Q And you could get no relative to act as a committee?
A No.

Q Did they then ask you to act? A They then asked me to act.

Q Did you have the papers prepared? A I employed Mr. Sabine, being that I was to act as committee, I employed Mr. Sabine, an attorney in my office, to prepare proceedings.

Q Then did you take up the matter with the Bloomingdale people and the family again? A During the preparation of the case I went up to Bloomingdale and I saw Mr. Bodin.

Q Was Mrs. Bodin with you? A Not at that time.

Q Did she go to Bloomingdale at any time before the end

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of January with you? A Yes.

Q Once before? A Sometime, the 15th or the 16th, we went up, but the time when I went up there I saw Mr. Bodin, he looked badly, but he talked intelligently and I didn't think he was a sick man, and I so wrote Mrs. Bodin, and at her request I again went to Yulan and talked to the father, asking him to take back his son, to forget any differences that there might be.

MR. WASSERVOGEL: / If your Honor please --

THE COURT: Yes, just confine it to the issue.

Q Well, on the 29th of January you procured his discharge from the Bloomingdale Asylum? A Yes.

Q And you went up there and brought him to New York with you? A Yes, sir.

Q And Mrs. Bodin was with you then? A Yes, sir.

Q And you went to the Hotel Brevoort? A Yes, sir.

Q Will you tell us what was done on the 29th of January?

A On the 29th of January, in the morning, we went to Bloomingdale. In the afternoon, about probably one o'clock or half-past one, we came down here and lunched, and I went with Mr. Bodin to the Emigrant Savings Bank, where he drew money there; from the Emigrant's Savings Bank we went to Rogers, Peet & Company, where he bought quite a lot of things to go up in the country with, to return home.

Q And after that did you go back to the Hotel Brevoort?

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A After that I went back to the Brevoort because I lived there, had my room there.

Q Was he living there then? A He stopped there, but not Mrs. Bodin.

Q Where did she go? A She went to an aunt's.

Q On the 30th what happened, if anything? A On the 30th in the morning I went down to the French Line. I am not clear on the 30th --

Q Well, did you arrange between the 29th and 31st for the delivery to him of the property that was at the French Line?

A Yes.

Q That is about all that was done on the 30th? A Yes.

Q Did you make a motion for discontinuance of the proceedings? A No, I think I have got a day wrong there, I think it is the 30th that we came down. I think it is the 30th that we came down from Bloomingdale, and the 31st I had made arrangements in the morning with this French Line and Mr. Nolan for the delivery of the goods.

Q And the papers were brought up in a package to the Brevoort by Mr. Nolan -- they were brought up and checked off?

A Received, checked off and I signed as a witness.

Q And you knew, of course, that all these papers were present? A Yes, sir.

Q And that was sometime in the afternoon, was it, that they were received there? A They were received there some-

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time between five and six o'clock.

Q Now after you got this man out what was his attitude, do you remember?

MR. WASSERVOGEL: I object.

THE COURT: Objection sustained, as to the form.

Q Will you tell us what he said to you, if anything, with relation to his appreciation of what you had done for him? A On the night of the 31st, on the evening of the 31st, at the desk, he asked me how much I owed him.

Q How much you owed him? A Or, how much he owed me. I produced a bill that I had made out in the name of Mrs. Bodin; I told him he owed me \$260, because I had spoken to Mrs. Bodin and told her that I thought that she ought to pay that bill but that he should pay it. I didn't give him a receipt at that time.

Q You had prepared a bill for Mrs. Bodin at that time?

A For Mrs. Bodin, yes. Then he paid me \$260 at the desk.

Q In cash? A In cash.

Q Then what was the next thing that was said? A He thanked me very much and told me he appreciated very much what I had done for him. That was all there was until the next morning at breakfast. In the mean time I had prepared in my room another bill for \$260, made in his name, which I handed to him while we were having breakfast. He told me he was very grateful, that no one while he was in Bloomingdale had paid any

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attention to him; if it had not been for me he would be there yet, and that anything that he could do for me at any time he would gladly do in question.

Q What was the next thing that was said? A Well, I told him, "If you want to do something for me lend me a thousand dollars."

Q Go right on and tell us? A He told me that he didn't have a thousand dollars in cash to spare, but that he would however, let me have some stock.

Q Was this before or after this receipt had been delivered?

A That was after the receipt had been delivered.

Q Had you seen the stock certificate then? A I had not seen the certificate then, no.

Q Had you seen the envelope which contained it? A No. I had no recollection of ever seeing the stock.

Q Did you check off the list? A I didn't check off the list, but I witnessed his signature. They checked off.

Q Who checked it off? A Mr. Bodin, and I think Mr. Piperoux; he was the clerk of the French Line.

Q And you witnessed the signature? A I witnessed the ---

Q Go on then with the conversation at breakfast on the morning of February 1st? A He told me then that he had no --- he didn't have cash to spare, he was going up to the country to make improvements, that he would let me have some stock, some Southern Railway stock which was then was selling, as

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we looked at the paper at between 10-1/2 and 10-5/8. He went upstairs, came down with the stock, came to the desk. It was signed by him and I at the desk, by Mr. ---

Q Was it signed at the time? A It was.

Q Did he sign his name then? A No, it was signed but he had his name witnessed, or signature witnessed, by Mr. Peuquet.

Q Was that done in your presence? A That was done in my presence.

Q Who was Mr. Peuquet? A He was the clerk of the Brevoort Hotel.

Q Just tell us what was done then after ^{he} witnessed the signature? A He had an envelope in his hand, took the stock, put it in that envelope. I had seen the stock previously, of course, on the signing, put it in that envelope and handed it to me.

Q What did you do with it then? A This was about half past eight in the morning, and his mother then came there; they took a carriage with an uncle of mine, and went to the ferry and went home. I took the stock -- either that -- I can't recall that at all, if it was on Saturday morning or Monday morning, yes, the Saturday morning after they left or on Monday morning, I took this stock down to Halle & Stieglitz; I handed it to Mr. Meyer, whom I knew, asked him to sell it. As I took the stock out of this envelope, the southern Railway stock, I found another paper which upon opening I found to

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be ---

Q As you took the stock from what? A From the envelope which it was in, I found the thirty shares of Bay State Gas.

Q Now, had you any conversation with him about this Bay State Gas stock at all on the 1st of February, or the 31st of January? A None at all.

Q Did he say that he would deliver that to you at that time? A No, no conversation about it at all.

Q And did you know when you got down to the office of Halle & Stieglitz, was that the first that you knew about that thirty shares of stock in that envelope? A That is the first time I saw it or knew anything about the Bay State Gas being there.

Q Now, following that what was done? A On the Tuesday I went down to Halle & Stieglitz, on the Tuesday I received \$1025 for the stock -- a check for \$1025 -- they had sold it for 10-3/8, giving me \$1025, less 12-1/2 for commission that they charged for selling. I took that check and deposited the check and drew immediately against it. In fact, I had told Mr. Bodin that I was going to go to Europe but as he stated for the French newspapers, that was not a fact. I was going there on a case of Roselle against Roselle.

Q You mean you told him you were going to Europe? A Yes.

Q But did you tell him you were going for the French newspaper? A No, I didn't tell him that.

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Q He is mistaken when he says that? A He is mistaken when he says that because I was engaged in the first part of --

THE COURT: State what you said, if anything to Mr. Bodin.

A (Witness continuing) I told Mr. Bodin that I was, -- well, I have got to refer to the other part because I told him I was going to Europe on a case, but I didn't tell him what case it was atnall.

Q Did you tell him why you needed this thousand dollars?

A He asked me that morning if I was going to Europe? I said, "No, I don't expect I will go." And it was after that conversation when he tells me that he would do anything for me when I asked him for the thousand dollars and told him if I got that thousand dollars I would go, because I didn't intend to go, having some bills that I wanted to pay before I went, and I had decided not to go to Europe for the lack of funds for that purpose as I didn't know what might happen to me if these bills were unpaid and something might happen to me.

Q But your trip to Europe was for business alone? A It was. I was being paid the expenses.

Q And you would not have taken that trip at that time but for the fact that this thousand dollars had been advanced?

A I would not, because I had Mr. Sabine of my office preparing to take it.

Q So you made a deposit of this thousand dollars? A Yes.

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Q And paid these bills? A Yes, sir.

Q And following that did you go to Europe? A Yes, sir;
I sailed on the 6th of February.

Q And remained away how long? A Just one month.

Q Did you have any communication with Mr. Bodin before you went to Europe? A I don't recollect if I notified him at that time before I went or after I came back of the fact that I had --- what I had sold the stock for, what I had received for it, and the fact that I had found the Bay State Gas, but it was either the Wednesday before I sailed that I did it, or the Tuesday --- the Wednesday before I sailed, because I went home, or it was right after I came back, that I notified him.

Q After you came back did you hear from Mr. Bodin at all?

A I didn't see Mr. Bodin --- it might have been May, June or July only.

Q Of the year 1908? A 1908. The only way that I can fix the time was that he was in town to buy an automobile.

Q You knew of him for a number of years, had you not? A Oh, I knew that Mr. Bodin had a son but I had never seen him until I seen him in Bloomingdale.

Q Did you know that he was a Sullivan County Farmer? A Well, no, he was not a farmer, I knew that, because they have not got the land to farm. I know the last pretty well.

Q Well, you knew who he was? A Yes, sir.

Q You knew he was connected with the French Colony and

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the French Steamship Company? A Yes, sir.

Q What was the first communication that you had with Bodin following your return from Europe? A He wrote me --- oh, it was, as I say, it was in July, May, June or July, as I say, the only time I can fix -- the only way I can fix the time.

Q Where did you see him? A At the Brevoort.

Q Were you stopping there then? A I was.

Q What happened on the occasion of that first visit? A We spoke about the Bay State Gas, and in the meantime I didn't know where I had left the Bay State Gas, whether at home or whether at my office, I didn't know where it was.

Q Did you have any letters from him before that? A No.

Q Do you remember when you got your first letter from him?

A Well, I think it is some time in ---

MR. WASSERVOGEL: May we have the letter? It is the best evidence.

MR. McMANUS: Well, I know, but cannot we say when we got it before we get it?

MR. WASSERVOGEL: No. I object. The letter will bear a date, if they have the letter we want it.

MR. McMANUS: If we have the letter we will produce it. If not, we will take the copies that you undoubtedly have.

THE COURT: You may state for the purpose of fixing the time when you received the letter.

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MR. WASSERVOGEL: I object. The letter is the best evidence.

Objection overruled.

Q Do you remember when you received it? A I think it was some time in September. He was asking me to buy something for him.

Q Have you got that letter? A I haven't a letter of any kind.

MR. McMANUS: If You have a letter dated in September, 1908, I would be glad to have to offer.

THE COURT: Do not discuss this case among yourselves, Gentlemen, nor permit any person to talk to you about it, nor form or express any opinion as to the guilt or innocence of the defendant until the case is finally submitted to you. 10:30 to-morrow morning.

(ADJOURNED to Wednesday, February 28th, 1912,
at 10:30 o'clock a. m.)

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New York, February 28th, 1912.

TRIAL RESUMED.

EUGENE F. VACHERON, the defendant, resumes the stand and further testifies:

DIRECT EXAMINATION BY MR. McMANUS, (Continued)

Q Do you recall, after further consideration, that there may have been other letters from him prior to September 1908?

A There may have been, yes.

MR. McMANUS: Now, will you let us have any copies of letters you have prior to that time?

MR. WASSERVOGEL: There may be such, but I haven't got them in this case. There is the only one I have. I have none prior to it in my possession, although there may be others.

Q You had other letters prior to this time? A I think there were letters requesting me to buy some things for him.

Q Louder? A Letters I got from him, asking me, I think, to buy something for him. I think it was at that time that he asked me for information about a ram and about duck eggs.

Q In any of these letters prior to August or September, 1908, up to August and September 1908, had he demanded, either in writing or personally that you return this stock, the Southern Railway stock, through him? A No, sir.

Q In September 1908 did you see him? A I don't recall

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seeing him.

Q You do recall seeing him in June or July, 1908? A It was May or July. I used to come down from the country most every other week and stay part of the day and a night in the City, and then go back to the country again.

Q You met him in either May or July? A Yes.

Q Did he make any demand on you then? A None at all.

Q Have you any idea now as to what was the market price of the Southern Railway stock about May or July? A I really have not.

Q When was it that he first demanded any accounting of either the stock or the proceeds of that stock? A About --- later, sometime in March.

Q 1909? A 1909.

Q Was there any demand prior to March 1909 for any specific sum? A No, sir.

Q Or for the return of the stock? A No, sir.

Q In September 1908 did you receive a letter from the complainant of which that is a copy? A I believe so, yes.

MR. McMANUS: I offer it in evidence.

MR. WASSERVOGEL: Consented to.

(Received in evidence and marked Defendant's Exhibit B)

(Letter B, dated September 14, 1908, now read to the jury.)

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Q Do you know to what stock that referred?

MR. WASSERVOGEL: I object, the letter speaks for itself.

THE COURT: Does the letter mention the stock?

MR. WASSERVOGEL: It refers to "my stock". How can this witness say without having any conversation with the complainant which stock is referred to? He said, "I had no conversation with him."

THE COURT: If the article, the stock, had referred and related to the mentioning of a particular stock you would be correct.

MR. WASSERVOGEL: The return of "my stock"; that is the language employed here, and I claim that the letter speaks for itself. Stock is plural; I may have stock in a dozen companies and the word "stock" is plural, and may be singular.

THE COURT: Well, of course he cannot state what stock the complaining witness meant.

MR. WASSERVOGEL: That is the very point.

MR. McMANUS: I will withdraw the question in that form.

Q Prior to this had you any discussion with the complainant or the plaintiff in relation to any particular stock, or the return of any particular stock? A Yes, sir.

Q To what stock did that conversation refer? A Bay State

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Gas stock that I had mislaid.

Q And did it refer to the return of any stock of the Southern Railway Company? A Absolutely not.

Q Had he up to this time demanded that you return any stock of the Southern Railway Company? A No, sir.

Q Did you answer that letter? A I believe I did.

MR. McMANUS: Will you let me have the answer, Mr. Wasservogel?

MR. WASSERVOGEL: Certainly (handing paper to counsel.)

MR. McMANUS: I offer it in evidence.

MR. WASSERVOGEL: Consented to.

(Received in evidence and marked defendant's Exhibit C.)

(Exhibit C, dated September 30th, 1908, is now read to the jury.)

MR. McMANUS: Will you let me have a letter of October 24th, 1908?

MR. WASSERVOGEL: I have no such letter, nor a copy of it.

Q Did you get other letters from him following that up to January, 1909? A Yes.

Q Did you see the complainant in January, 1909, and if so where? A I saw him at the Brevoort.

Q By the way, you were running your summer hotel during

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the summer months of 1908? A Yes, sir.

Q Up there at this Bishbash Inn? A Yes, sir.

Q And that took most of your time? A Yes, sir.

Q You were not devoting much time to the law business?

A Practically none.

Q You came back to New York when? A I came back some time in October, but I would always go back home on Friday nights.

Q Your voting home now is up in Columbia County? A Columbia County, yes.

Q You came down to New York in October? A In October, as I should judge and I didn't see --- I don't recall seeing Mr. Bodin until January, the last week of the month.

Q Of 1909? A 1909.

Q Where did you see him then? A At the hotel.

Q The Brevoort House? A Yes, sir.

Q That is where you were stopping? A Yes, sir.

Q And he, when he came to New York, usually stopped there?

A He usually stopped there, yes, sir.

Q Did he go to your office, or did you see him often at the hotel? A I saw him at the hotel.

Q Will you tell us what happened when you met him in January? A We talked generally and it was towards the end of the week that I asked him to come up to my place and spend the week with me, which he did.

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Q Did he demand the stock or the money at that time?

A Coming down.

Q I mean in New York? A No, not till we returned.

Q So that up to the time you left New York, the last week in January to go to your Home in Columbia County, accompanied by him, he had not demanded the stock or the money?

A Not the stock nor the money.

Q And when I say the stock I refer then to the stock of the Southern Railway Company? A Yes, sir.

Q Now, what happened up there at Columbia County, if anything? A Well, nothing in particular, no more than entertained him; I was kept busy, I had some masons up there -- I had four masons working.

Q The place was not open? A No, it was a summer hotel and I had just finished a building and coming down on the train the only reference that was made to money or stock in any way was the statement -- he says, "I will need some money soon; this spring I am going to make improvements and build also."

Q Had he said anything about your returning this loan of a thousand dollars? A I told him I would be able to give him some money about --- his money, about May or June.

Q When was that? On the occasion of your trip down with him? A That was on the train coming down.

Q Then when you got to New York what happened, if any-

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thing? A The next afternoon he was down to my office.

Q What date was that, if you remember? A February the 3rd, I believe.

Q Was that the afternoon that he called? A It was in the afternoon.

THE COURT: When was that?

MR. McMANUS: February 3rd, 1909.

Q Will you tell us everything that happened on the occasion of this interview in your office between you and the complainant, on February 3rd, 1909? A That afternoon I got my papers out of my safe. I had quite a bunch of papers and we went over those papers looking for the Bay State Gas stock that I had not located.

Q Talking of the Bay State Gas stock have you since you made payment to him found that certificate? A Yes, sir.

Q And is this the certificate in question? A Yes, sir.

MR. McMANUS: I offer it in evidence.

MR. WASSERVOGEL: No objection.

(Received in evidence and marked Defendant's Exhibit D.)

Q Go back a minute to the expression as to the papers contained in the letter of September 1908. Did you have any papers in your possession in relation to any of the matters of the complainant, in addition to this stock? A The papers that I had that he asked me for was the papers that I had in the first instance gotten for the appointment of a committee,

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and they were the duplicate or certified copy of the commitment, which he wanted to see -- wanted to know why and for what he had been committed, as I thought myself first, as I thought I had mislaid them, but I found them afterwards in another -- they were in care of somebody else, and that is why I didn't find them.

Q In care of Mr. Molas? A No, in care of Mr. Rose.

Q Come back to February 3rd, 1909. Tell us everything that was said by either one of you? A It was after we got through looking for the Bay state Gas stock -- I couldn't find it anywheres -- and it was with as much an idea of pleasing him and to show him that I was looking for it that I had him help me; I even left him with my papers to go through, and it was after that he says, "By the way, I wish you would give me a receipt for my Southern Railway. You have never given me a receipt for it, and father is worrying; he has asked me if I had that stock, and I told him that I did not have the stock, but I had given it to you, and that I had no receipt for it, and he saw me worrying, and I would like to have a receipt."

Q What did you say to that? A Why, I said "Yes", and gave him the receipt to please him.

Q Well, now, let us have that. And that is the receipt People's Exhibit 3 in evidence? A Yes, sir.

Q Dated February 3rd, 1909, "Received from Henry Bodin Loan of 100 shares of Southern Railway Common, which I promise

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to return on or before June 1st, 1909. Eugene F. Vacheron." ?

A Yes, sir.

Q Now, did he tell you, or did he say anything to you at that time about the form in which the receipt was to be given and if so what? A Oh, I told him I would give him any receipt as long as it would stop his father from worrying -- anything to please him.

Q Did he say anything to you about not having told his father that he made this loan to you? A He told me -- he simply said ---

Q Had you borrowed the money from him? A He said simply he had not told his father he had given me the stock to sell.

Q That he had not told his father that he had given you the stock to sell? A Yes, sir.

Q And that is why the receipt was drawn in that form? A I drew it the way he wanted it.

Q As a matter of fact did you have that stock in your possession at that time? A No, sir.

Q Did he know that you did not have it in your possession?

Objected to. Objection sustained as to form.

Q Had you told him that you did not have the stock in your possession at that time? A Yes, sir.

Q Was there, at the time that you received the stock from him any conversation in which the word loan of the stock

by him to you was mentioned? A No, sir.

Q What else happened on the occasion of that interview on February 3rd? A I guess that was about all that happened.

Q You gave him the receipt? A I gave him the receipt, and at night we had dinner together at the hotel.

Q Did you see him the next morning, February 4th -- he testified you did, yesterday? A I don't recollect; I may have seen him.

Q At that time, or at any other time did he tell you that he had observed that you had, without his authority, sold this stock, this Southern Railway stock in February 1908, for about \$1037? A No, sir.

Q Did he ever at any time make any statement to that effect, that he had made that discovery? A No, sir.

Q As a matter of fact, had you told him before February 1908 the amount which you had realized from the sale of that stock? A Yes, sir.

Q And had you told him that you had sold it in February 1908 for a thousand and thirty-seven dollars? A That was written to him, that was positively written to him and it was at the same time I notified him that I had the Bay State Gas stock.

Q When was that that you wrote him? A That was either --

MR. WASSERVOGEL: If a letter of that kind was written I want to see the letter. We know nothing about any such

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letter. That is not the way to prove that.

THE COURT: You may show it by secondary evidence, but you will have to show first that the letter was written.

MR. McMANUS: I am going to.

MR. WASSERVOGEL: We never had any such letter.

Q When did you write him to that effect? A Either the day that I got the stock, the money for the stock from Halle Stieglitz.

Q In other words, about February 3rd or 4th, 1908?

A Or when I came back from Europe.

Q And that was when? A I am not clear on that at all. On March 6th. I sailed on February 6th and was back on March 6th.

Q And it was either immediately before your going to Europe or returning from Europe? A Yes, sir.

Q Or following your return from Europe? A Yes, sir. But I am pretty certain that it was before I sailed that I notified him of the ---

MR. WASSERVOGEL: I ask that this be stricken out.

THE COURT: Motion granted and the jury will disregard it. You have to prove the proper mailing of the letter.

MR. WASSERVOGEL: He asks him about the contents of the letter in advance; he gets all that before the

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jury without producing the letter or a copy of it.

MR. McMANUS: Have you got such a letter?

MR. WASSERVOGEL: No, sir, never saw it.

Q What did you do, if you recall, with the letter that you wrote? A I wrote him a letter and mailed it to Yulan. I have a copy.

BY THE COURT:

Q How did you seal it? A I wrote a letter, enclosed it in an envelope, sealed it, addressed it to him at Yulan, Sullivan County, New York, and mailed it.

BY MR. McMANUS:

Q Did you personally mail the letter? A I did.

Q Did you put a stamp on it? A I did.

Q Did you deposit it in the post box? A I did.

Q Where? A In the hotel.

MR. WASSERVOGEL: How does this witness know all these things if he is uncertain as to the time? He says it may have been on the day after I sold the stock; it may have been after I returned from Europe. The evidence is entirely too indefinite. Not only that, but there is no copy before the Court. We have nothing before the Court to show that such a letter was ever written.

THE COURT: Well, the probative value is for the jury.

MR. WASSERVOGEL: I understand it is, but his mere

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say so in such an indefinite manner cannot be even considered by the court, I take it under the rules.

THE COURT: If he shows he mailed the letter, that he is uncertain as to the time it was mailed, the weight to be given the testimony is for the jury.

A I have kept no letters at all, no copies of what I wrote and no letters.

THE COURT: You should have served notice to produce.

MR. WASSERVOGEL: I won't raise any question as to that.

THE COURT: The weight of the testimony is for the jury.

MR. WASSERVOGEL: All right.

Q In that matter what did you say? A I stated to him the amount that I had received for the Bay State Gas -- for the Southern Railway stock, because at the time it was given to me it was recorded in the paper 10-1/2 -- 10-5/8, and I got 10-3/8 for it.

Q Did you say anything about Bay State Gas? A The Bay State Gas, at that time I told him that I had found it in the envelope containing the Southern Railway stock.

Q At any time up to this date that you wrote him, had he said a word to you about selling the Bay State Gas at any price?

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A No, never.

Q Had you told him up to this time that you had the Bay State Gas certificate in your possession? A I told him.

Q Up to this time that you wrote? A No, I couldn't tell him.

Q That was the first information that you gave him as to the Bay State certificate being in your possession? A Yes, sir.

Q Now to come ahead again to this interview on February 3rd, did he say anything to you at that time about a receipt for your services, for the money you received for your services?

A No.

Q Did he, I ask? A Though I think I did speak at the time, speak about receipts. I said, "I will give you a receipt for it", because we talked about a receipt at another time. It may have been that time, February 3rd -- I won't say positively.

Q What did you tell him to do after such a time? A It is at that time I think probably I told him he would find a receipt among his papers; that I had given him a receipt.

Q Subsequently to that did you see him or hear from him?

A Subsequently to when?

Q February 3rd, 1909? A No, I didn't see him again, I think, until May.

Q Did you have any letter from him in March? A Yes, I

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had a letter from him in March.

Q And in March 1909, that was? A 1909, I think March 12th.

Q That was following this interview with you in February, of course, when he said that he told you he had discovered that you had disposed of this stock? A Yes, sir.

MR. McMANUS: Will you let me have that letter?

MR. WASSERVOGEL: Certainly.

A (Witness continuing) I would like to correct a statement which comes to my mind now. The answer to that letter of March that I kept a copy of because I was angry when I wrote it.

Q Well, let us have the original.

MR. WASSERVOGEL: We have the original, which will serve as well as a copy.

A It will serve better, because I can hardly decipher the other.

MR. McMANUS: I offer both letters in evidence.

MR. WASSERVOGEL: Consented to.

(Letters marked respectively Defendant's Exhibit E and F.)

(Exhibits E and F now read to the jury.)

Q Is this (Defendant's Exhibit F) your reply to that letter? A If it is on my letter head it is.

Q Did you receive a reply to that letter of yours? (De-

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fendant's Exhibit F.) A I have forgotten; I hardly think I did -- I am not sure.

MR. McMANUS: Will you let me have the letter of March 14th.

MR. WASSERVOGEL: Those are all that I have.

Q You don't recall then whether you did receive a reply to that letter? A I don't think I did. I didn't see him then until May.

Q Now, following this then in March 1909, did you see him again? A I saw him in May.

Q Where did you see him in May? A At the Brevoort Hotel.

Q What happened on the occasion of that? A Invited me to have dinner with him one night, at a place uptown where he took me, and the next day he asked me to go with him to buy some furniture that night, or one of the nights that he was there, I drew a check for \$37.50 for the Bay State Gas, for thirty shares of Bay State Gas, and cashed it at the hotel desk and gave him the proceeds. This was in front of him.

Q What was the next thing that you heard in the way of communication either from him or any one else? June 1st did you pay him anything? A No, I did not. He asked me at that time if I could let him have the money.

Q You had been making improvements up in that hotel of yours? A Yes, sir, and I was still making them.

Objected to as immaterial. Objection sustained.

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Q But you did not pay him then the money on the 1st of June, 1909? A No, sir, I did not.

Q And your hotel had not opened up then for business?

A No, sir.

Q It did not open until later in the summer? A Well, it opened about the 15th.

Q What was the next thing you heard following the first of June? A I got a letter from Mr. Vieu.

Q By the way, at the time that you got this stock from him in February 1908 was there anything said about the time you could have for the return of that money? A That was left at my convenience.

Q The next thing that you heard then, following June 1st, 1909 was the letter from Mr. Vieu? A Yes, sir.

Q And did you go to see Mr. Vieu? A I did.

Q Will you tell us what happened at that interview?

A I went down to Mr. Vieu, and he wanted to know what there was about this matter. I explained to Mr. Vieu that I had gotten Mr. Bodin out of Bloomingdale; that I had charged Mr. Bodin \$260, that I had borrowed a thousand dollars from Mr. Bodin and that I was willing to return Mr. Bodin \$1037.50 with interest and absolutely not one cent more at any time.

Q What else was said? A Mr. Vieu said that he would submit the matter to Mr. Bodin, but that Mr. Bodin was talking about going before the District Attorney.

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Q What did you say to that? A I didn't say anything to that, but I left. I did say something to that. I said, "Is that Bodin's doing?" He said, "That is the way he is talking." From Mr. Vieu's office I come right down here to the District Attorney's office, I asked to see Mr. Jerome, Mr. Jerome was not there; they referred me to his secretary -- I am not sure of the name, but it was, I think, a Mr. Lord.

Q Whom did you see? A I think it was Mr. Lord; I told Mr. Lord that I had been threatened that a case would be brought before ---

MR. WASSERVOGEL: It seems to me that this is improper.

MR. McMANUS: Well, as showing the honorable intent.

MR. WASSERVOGEL: Self-serving declarations.

THE COURT: Of course a defendant may testify as to his intent or lack of criminal intent, but in conversation with the District Attorney as to what he said, how is that admissible.

MR. McMANUS: I won't press it if the District Attorney objects.

Q Well, you called at the District Attorney's office? A I was called to the District Attorney's office.

Q And you left the District Attorney's office, is that right? A I saw Mr. O'Neil.

Q That is the same gentleman that is here now? A That is

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the gentleman -- the complaint clerk. That was on the occasion of when I come down.

Q And Mr. Vieu and Mr. O'Neil now have offices together, is that right? A That is what I understand.

Q Following that what was done? Anything? A Nothing was done at all. I explained to Mr. O'Neil just exactly what I have stated here to-day.

Q Well, following that what was the next thing that was done? A There was nothing. I didn't hear anything more.

Q Did you hear from Mr. Vieu following your offer to make that payment of \$1037.50? A No, sir.

Q Was the next thing the service of the summons and complaint in the civil action? A Yes, sir.

Q That was away on in March, 1910, wasn't it? A Yes, sir, in 1910, March or April.

Q In that civil action did you make an offer of judgment of \$1037.50? A Yes, sir.

Q And were you prepared to pay that if they accepted it?

Objected to. Objection sustained.

THE COURT: Does not the Civil Code provide for the deposit of the money in Court?

MR. WASSERVOGEL: In order to make the tender good, sir, the tender must be made in court.

Q Following the disposition of that civil suit, the proceedings in this criminal court were instituted? A Yes, sir.

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Q And it was not until after the trial of that civil action that the proceedings here were instituted, isn't that the fact? A I think the civil proceedings were terminated in March, 1911.

MR. WASSERVOGEL: Do not the dates speak for themselves? The dates are before the Court.

THE COURT: Objection sustained.

Q Now, to come back. On February 3rd, 1908 did you hear the complainant say to you, or did he say to you that he was giving you this stock for the purpose of selling it only at 23? A No; he never said that at all.

Q Or did he say that he was giving you this Bay State Gas stock for the purpose of selling it at 3? A No, sir, I didn't know it was in there.

Q Didn't you ask him to give you those stocks or either of them, as he has testified, for the purpose of having them here to sell them when the market got better? A No.

Q Did he say to you at that time, or at any time, that the stock was only to be sold when it reached the figure of 23? A No, sir.

Q Or the other stock when it reached the figure of 3? A No, sir.

Q Or did he make that statement to you either in writing or orally at any time subsequent to that time, and up to the time in June or July, 1909? A No, sir.

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Q Did he tell you what he had paid for that Southern Railway stock? A He did not.

Q Did you discuss with him the market price of Southern Railway stock at that time, February 1st, 1908? A Just looking at the papers on the morning to sell what it was selling at.

Q Now, at any time or at any place did he ever say to you that you were only to sell that stock at 23 or better?

A No.

Q Or to sell the other stock at only 3 or better? A No.

Q Did he ever up till February 3rd, 1909 discuss the question of the sale of that stock at any figure other than the figure you had told him you had sold it for? A No, no, no.

Q On February 3rd, 1909, or February 4th did he tell you that you had no authority or right to sell that stock at any figure lower than 23? A No.

Q Did you discuss the price of that stock that had been obtained in the market from February, 1908? A I don't get your question.

Q As a matter of fact, between February 3rd, 1908, and January 1st, 1909, the stock had gone up, in value, in the market? A Yes, sir, it was 26 on February 3rd.

Q On February 3rd, 1909, it was up to 26? A 26 or 27.

Q Somewhere thereabouts? A Yes, sir.

Q And did he say anything which led you to believe that

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he simply was trying to make the best of a bad sale in February 1908?

Objected to. Objection sustained.

Q Did he say anything to the effect ---

MR. WASSERVOGEL: I object to leading the witness?

THE COURT: Yes, do not answer until the District Attorney gets an opportunity to object.

Q Did he give you any instructions that if the stock went lower than ---

MR. WASSERVOGEL: Objected to.

THE COURT: Objection sustained. What instructions, if any, were given; what was said?

Q Did you say anything to Mr. Vieu with relation to the thousand dollars other than you have already stated? A No, sir.

Q Did this conversation occur between you and him to the effect that he had given you a thousand dollars in addition for your services? A No. I did tell him that ---

Q What did you say, if anything? A I told him that he would have given me anything that I wanted, and in fact I could have charged him \$1500 instead of \$260 if I wanted to.

Q Did you so state? A I didn't tell that to Mr. Vieu.

MR. WASSERVOGEL: I move to strike that out.

THE COURT: Motion granted.

Q What did you say as to that to Mr. Vieu? A I told Mr. Vieu that Mr. Bodin would have given me everything he had if I

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wanted it.

Q. Did you say to him that he had given you this stock or given you the thousand dollars, as he stated yesterday, as I recall? A Give it to me how?

Q. Did you say to Mr. Vieu, as he testified yesterday, that he, Bodin, had given you the thousand dollars or the stock certificate to sell for a thousand dollars? A I told him he had given it to me to sell and to use the proceeds; that I was to return him the proceeds at my convenience.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q You have been engaged in other business besides that of the profession of the law, have you not? A Hotel.

Q Also connected with a publication called the Chef, I believe, at one time? A Yes, that was in 1910.

Q Sometime in the month of January, 1908, you were retained by the step-mother of Henry Bodin to bring about his release from a sanitarium or hospital known as Bloomingdale; is that correct? A Some time in August.

Q August was it? A Or September, from September to October.

Q Well, in September he was not in there yet, was he? A Yes, sir.

Q He was suffering from a nervous breakdown, wasn't that it? A That I don't know. The papers showed different, I believe.

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Q At any rate you were retained by her? A Yes, sir.

Q You began no court proceedings to bring about his release? A Yes, sir.

Q To bring about his release? A Yes, sir.

Q What proceedings did you bring? A No proceedings to bring about ---

Q That is what I am asking. You brought proceedings to put him? A No.

Q You were engaged to get him out of that sanitarium, is that correct? A No. I was not retained to get him out of that sanitarium.

Q For what purpose were you retained by Mrs. Bodin, the step-mother of Mr. Bodin? A I was retained to have a committee appointed for Mr. Bodin's estate. They didn't want him at home at all, and it was after that I was retained ---

Q When were you retained?

MR. McMANUS: Let him finish.

MR. WASSERVOGEL: Wait, I am asking questions.

THE COURT: Give the defendant every opportunity.

MR. WASSERVOGEL: But if this man, who is a lawyer, is going to be permitted to digress ---

THE WITNESS: I have not finished my answer. I want a fair trial.

THE COURT: Disregard the remarks, Gentlemen.

Q Go on as fully as you please? A It was after I was

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retained to have a committee appointed. I engaged Mr. Sabine to draw the papers. In the meantime I was up to Bloomingdale. I wanted to see Mr. Bodin. When I saw him I made up my mind that that man was not crazy; I came back and I went to Yulan, to his mother's.

Q When was this that you made up your mind that the man was not crazy? A That was some time in June -- January.

Q What part of January was it? A I will say between the 4th and the 10th.

Q You were retained sometime in September, you say? A No, I was not retained in September.

Q Isn't that the date you gave me before? A That is the statement I gave you before.

Q You are mistaken, are you? A I am, because the first time I heard of the case at all of the mother's, was when Mrs. Bodin sent me a letter that they had received from the French Line of steamers, advising them of Mr. Bodin's predicament. I couldn't leave my place home at that time, and it was not until October that I went to the French line and inquired the circumstances.

Q That was in October? A In October. Then I wrote to Mrs. Bodin. She requested me to come then to Yulan, which I did. I saw his father and Mrs. Bodin. Do you want me to go into details about the conversation?

Q Let me get this from you? You say it was between the

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4th and the 10th of January that you were at the sanitarium; you had a talk with Bodin there and it was then for the first time that you saw him? A I never have seen him in my life before.

Q The first time? A The first time.

Q And then between the 4th of January 1908 and the 10th of January 1908, you came to the conclusion that he was not crazy?

A 4th of January.

Q This is January 10th? A But in between that I had seen him. It is not between 4th and 8th, but as soon as I saw him and had a conversation.

Q The first time you saw him was at the 4th or the 10th?

A I tell you between the 4th and 8th.

Q Some day between the 4th day of January and the 8th you saw this man at the sanitarium and conversed with him and came to the conclusion that Henry Bodin was not crazy, is that right? A That's right, absolutely right.

Q Nevertheless, on the 7th of January, 1908, you verified a petition asking for your own appointment as his committee? A Yes, sir.

Q On the 2nd of January, 1908, knowing that he was not crazy? A I knew it.

Q You knew he was not crazy, and you applied to the Court for your own appointment as his committee? A I had applied.

Q Yes or no? A I had replied at the request of the

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mother and the father.

Q You are a lawyer? A Yes, sir, I am.

Q But the mere fact that a client asks you to incarcerate a person as crazy does not bind you, does it? A Oh, no, it was not for that reason at all, because they were going to put him back into Ward's Island. That is why the French Line of steamers -- that was the only way to protect that man, from not getting him back into Ward's Island. I am no expert.

Q No; but you are a lawyer. Subsequently on the 23rd of January, 1908, you appeared before Justice Joseph E. Neuberger, of the Supreme Court -- on the 23rd of January -- and had yourself appointed his committee? A Yes, sir.

Q 21st of January, I assume? A I didn't appear. My counsel appeared.

Q And an order was entered? A Yes, sir.

Q And here is a copy of the petition and the order? A It is positively so. I don't need to look at it, I know what was done.

MR. WASSERVOGEL: I offer it in evidence.

THE COURT: You have the fact of the witness's admission. I do not see the necessity of admitting in evidence the petition; he admits that.

MR. WASSERVOGEL: Your Honor does not want the record burdened with these papers, I take it?

THE COURT: No.

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MR. WASSERVOGEL: The facts are in. Very well, I won't press it.

Q On the 31st of January, 1908, you brought this man down here from the sanitarium; and you were accompanied also by Mrs. Bodin; is that correct? A Yes, sir.

Q And on the very same day the petition theretofore filed by you in the supreme Court was withdrawn? A Yes, sir.

Q You were also paid \$70 for the services by Mrs. Bodin, were you not, at the same time? A No, sir.

Q Were you paid anything by her at all? A Some time in September.

Q And in addition to the \$70 paid by her --- A No, there was not \$70.

Q Well, what was it? Give me your own figures? A It was \$70 she gave me to put in the bank for each of my boys -- \$10 for each of my boys.

Q As a present? A Yes, sir.

Q How much did she pay you for services? A She paid me practically nothing for services, but \$20. That was when I came to Yulan in October.

Q In addition to that you were paid \$260? A \$260, of which I paid \$90 to Mr. Sabine.

Q For drawing up the papers asking for your appointment as his committee, was that correct? A At the request of Mrs. Bodin.

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Q Answer me, please. A I was going on the committee against my will.

MR. WASSERVOGEL: Won't your Honor direct him to answer.

Q (Question repeated by stenographer as follows:) For drawing up the papers asking for your appointment as his committee, is that correct? A Yes, sir.

Q And it was on the 30th of January, I believe, that this batch of papers was received from the French Line? A 31st.

Q This was received at the Brevoort Hotel? A Yes, sir.

Q Mr. Nolan came up there, I believe? A Yes, sir.

Q With Mr. Piperoux? A Mr. Piperoux, Mr. Nolan and Mr. Bodin, Mrs. Bodin and myself were in the room.

Q There was a small table in that room, wasn't there?

A I don't recollect.

Q Well, the package was opened there and the contents were checked up? A Yes, sir.

Q And the receipt was signed which is in evidence here?

A Yes, sir.

Q No question at all about that? A No.

Q When for the first time did you have any talk with Mr. Bodin relative to the Southern Railway stock? A That is on the morning of February 1st.

Q On the 1st of February -- that was for the first time?

A That was the first time.

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Q Did you then ask him to lend you the money? A That is the way the talk of the stock came. I asked him to lend me a thousand dollars.

Q When was that? When did you first ask him to lend you the money? A February 1st.

Q Didn't you ask him for a loan before that? A No, sir.

Q Sure? A Positive.

Q Didn't you ask him for a loan on the day before? A No, sir.

Q And you asked for a thousand dollars flat? A Yes, sir.

Q After you had received the \$260 for your services? A I had received this the night before, and I was handing him then a receipt, because the receipt was made out -- the way I had the bill drawn was for Mrs. Bodin. They were to leave on the 1st, so the settlement was made on the night before, and the receipt I had was for Mrs. Adele Bodin, and I didn't give him that one, but I made out another one for him in my room and gave it to him in the morning while we were at breakfast.

Q That is, the receipt for \$260-you claim you gave him a receipt for that? A Yes, sir.

Q But you received this certificate of 100 shares of Southern Railway stock from Bodin and gave no receipt for that at all? A None at all.

Q You gave a receipt for money but none for the certificate?

A No, sir.

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Q And at that time you took the certificate away, did you not? A I did, yes, sir.

Q How was it handed to you -- in an envelope or otherwise? A In an envelope.

Q Did he take it out and show it to you first? A He took it out -- it was at breakfast that I asked him for it, at the table, after I had given him the receipt. He came down-stairs -- he went up-stairs, got the stock, came down-stairs, had it in his hands with an envelope and we went to the desk. I was standing at the desk. He come right down at the desk, he has to pass the desk, and he didn't hand me the stock then. He says, "I want to have it witnessed." His signature was on the stock.

Q And you saw the certificate before it was handed to you in the envelope? A Yes, sir.

Q Did you have the envelope in your hand at the time the certificate was in the hand of Bodin? A No, sir.

Q You took it away with you? A I took it away.

Q And did you go to Halle & Stieglitz the very same day?

A That I can't recall, if I went that morning which was Saturday morning, or if I went on Monday morning.

Q You had told Bodin, I believe that you needed this money -- that you had some debts that you wanted to meet: Is that it? A Yes.

Q Had you been speculating at that time? A No.

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Q Not at all.

Q You do not speculate at all? A I did once.

Q When you looked at that certificate of Southern Railway stock in the office of Halle & Stieglitz, as I understand it, then for the first time you discovered there was also in that envelope a certificate of the Bay State Gas stock? A Yes.

Q Were you surprised? A Well, yes, naturally.

Q You did not expect to see that in there? A No.

Q That was also one certificate, was it not? A Yes, sir.

Q And this certificate of the Southern Railway stock and the certificate of the Bay State Gas stock were the only stocks that you received? A Yes, sir.

Q The only papers you received, I should say? A Yes, sir.

Q And you received from Halle & Stieglitz the sum of \$1037.50, less their commission, amounting to \$1025? A Yes, sir.

Q And when you found out that there was in this envelope the certificate of the Bay State Gas, did you immediately send it to Bodin? A No, I did not, because I was on my way home.

Q Well, when you got home did you mail it to Bodin and say, "Here, when I arrived at my broker's office I found that you by mistake placed this certificate of the Bay State Gas in there; you may have it, I don't want it;" did you do that?

A I did not.

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Q And you were a lawyer?

MR. McMANUS: Are lawyers supposed to use infallible judgment all the time?

MR. WASSERVOGEL: The witness is a lawyer -- there is no dispute about that.

THE WITNESS: So are you, sir.

MR. WASSERVOGEL: But I am not on trial.

Q When did you go to Europe? A I went on the 6th, two days after I had got the money for that stock.

Q When did you return from Europe? A On the 6th of March.

Q 1908? A Yes, one month.

Q In answer to questions put to you by your counsel, you said you had written a letter to Bodin notifying him of the sale of the Southern Railway stock? A Yes, sir.

Q I want you to search your memory and tell us more particularly if you can when that was that you wrote that letter?
A The reason I am not clear about writing that letter before I went or after I went was for this reason: I was not sure -- I had made up my mind that I could not go on this case, that I did not want to leave debts unpaid that I had, in case something happened to me; and when Mr. Bodin made this offer of doing anything for me, of course the inducement to go to Europe was great. I asked him for the loan of a thousand dollars.

Q Not to go to Europe? A Not to go to Europe, no. To pay off these debts. This was on a Tuesday that I got the

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money. I immediately went home then, 105 miles from here. I told my wife that I was going to Europe. I told her exactly what I had done, and I came back with my dress-suit case and that is why -- I used to travel with a handbag --

Q To Europe? A No, I used to travel with a handbag up and down from home, and I didn't have that Bay State Gas with me at the time, because I had evidently put it in my bag and where I found it probably about seven months after or six months after, at the bottom of my bag. In fact, I lost the stock four times, - four different times I mislaid that stock. That is since ---

Q When for the first time did you notify Bodin of the discovery by you of the Bay State Gas stock in the envelope?

A I am not clear if I notified him before I sailed, or immediately after I got back, but I know it was one of those times.

Q You wrote him a letter after your arrival from Europe, did you not, and this is the letter? A Yes, sir.

MR. WASSERVOGEL: I offer it in evidence.

MR. McMANUS: No objection.

(Received in evidence and marked People's Exhibit 5.)

(Letter, People's Exhibit 5 now read to the jury by Mr. Wasservogel.)

Q What requests are referred to in that letter? A I told you several times that he had written me for eggs and things like that. Now, I hope you have the letter.

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Q No requests there about stock in his letter? A Absolutely none, and I don't know if you have got the letter there or not.

Q What did you do with the letter that he sent to you? Where is that? A I haven't kept one letter in the whole transaction.

Q Where is a copy of the letter that you say you sent to him, notifying him of the sale of this stock? A I don't know.

Q You kept a copy of this letter, didn't you? A Yes, because I wrote that and I was angry -- I had a right to keep that copy.

Q You only keep copies of letters when you are angry? A Yes, when I am disgusted with people so I can be sure to read again what I said to them.

Q And that is the only time? A That is about the only time, with such people, yes.

Q But not when you sell property belonging to --- A I beg your pardon. I didn't sell any property belonging to them-- it was mine.

Q All right, I won't argue with you? A You are doing the arguing.

Q There was nothing said in this letter of April 20th, 1908 about stock, was there? The letter that you sent to Bodin?

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A No.

Q Made no mention of it? A No.

Q So it was not in a letter that you wrote to him upon your return from Europe that you referred to the sale of the stock? A What?

Q It must have been before you left for Europe? A I don't know. I told you what I do know. I am not going to ---

Q All right. There was no receipt given, as you said before, to Bodin at the time when the stock was delivered to you? A No, sir.

Q And the first receipt which you gave was this receipt which is offered in evidence as People's Exhibit 3, - is that correct? A Yes, sir.

Q And on that day you knew you did not have this stock in your possession? A Positive.

Q You knew that very well? A So did he.

Q You claim you had notified him of that long before?

A Yes, sir.

Q On February 3rd, 1909, when you say "I promise to return this stock before June 1st, 1909", that statement was untrue? A Yes, sir, - not the return because I had it in mind about returning him -- giving him this money.

Q You said nothing about returning money in the receipt, did you? A No, but that is what I had in mind, and so did he.

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Q But in spite of the fact that you had that in mind you placed this upon record? A I made that receipt to please him; given simply for his father's feelings, who was an old man.

Q It was only then to quieten the old gentleman, is that the idea? A Absolutely right.

Q That was your only reason? A That is the only reason.

Q The only reason you had for giving this receipt? A The only reason, yes.

Q Was to pacify the old man, as it were? A Not to pacify him, but if he were worried I wanted to give such a receipt as would please Mr. Bodin -- as he thought would satisfy him.

Q You had no intention at that time to return this stock to him? A Absolutely none.

Q Absolutely none? A Not for a minute.

Q Not for a minute? A Absolutely. Why should I want to return it.

Q Why didn't you simply give a receipt, received from Henry Bodin, loan of 100 shares of Southern Railway Common, without saying, "which I promise to return on June 1st, 1909"?

A If I had been treating with a stranger no doubt he would have gotten a receipt like that, but out of consideration and being a distant relative I thought probably I was more careless than I would be with a stranger. He got that from me on sympathy.

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Q. But you were not careless when you wrote this long letter of which you kept a copy? A. No.

Q. You were very careful on that occasion? A. Yes.

MR. MC MANUS: What is the date of that?

MR. WASSERVOGEL: March 12th, 1909.

Q. And in that letter you say "When you asked of a receipt for the loan of 100 shares of Southern Railway stock that may have probably given you cause to say I was an actor, but I gave it to you and do not now repudiate it." A. Right, and I don't repudiate it now at this minute either.

Q. How do you reconcile the two statements that you have made here upon this witness stand? A. I haven't made two statements.

MR. McMANUS: Objected to.

Q. You say in the first place that this receipt dated February 1st, 1909, People's Exhibit 3 was given simply as a blind, to deceive this man's father? A. Do not put it this way without ---

MR. McMANUS: Objected to on the ground it is a misleading statement of fact.

THE COURT: Objection sustained.

Q. You say that you gave this man Bodin the receipt, People's Exhibit 2 in order to quiet the old man, is that right? A. Yes.

Q. That you had no intention to pay or deliver this stock

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on the 1st of June, 1909? A None at all.

Q Nevertheless in your letter of March 12th, 1908, you say, "I do not now repudiate it"? A I do not now repudiate giving that receipt; I do not now.

Q All right. You asked for a thousand dollars in cash, did you not? A Yes, sir. I asked for a thousand dollars.

Q You didn't ask for stock to be turned into cash? A No sir.

Q You wanted money, you had to have money? A I didn't have to have it, no.

Q Well, you had to meet some debts and had to have some? A I wanted to go to Europe and if I could get the money to pay my debts before I went then I could go to Europe.

Q This money was not to be used for your trip to go to Europe? A Not at all.

Q You wanted a thousand dollars?

MR. McMANUS: I object to the side comment.

MR. WASSERVOGEL: If I have made a side comment I want to know it right now.

THE COURT: Do not do that, Gentlemen; go along quietly.

Q At the time when the package was opened in the Brevoort Hotel -- the package received from the French Line -- there were a number of bank books received by Bodin, were there not? A Yes, sir.

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Q There was a bank book of the East River Savings Institution, 96,573? A I do not recall them, but whatever bank books are checked off that I witnessed were there.

Q There was a bankbook of the New York Savings Institution, 54375; there was a bankbook of the Excelsior Savings Bank, No. 17,776; bankbook of the Seamen's Bank for Savings, 319,392 and 454,894; and also a bankbook No. 253,706 of the Union Dime Savings Bank, and another bank book of the Metropolitan Savings Bank, 82,295; you knew that he had all these bank books at that time, had accounts in these banks? A Yes, sir.

Q And also another account in the Emigrants Bank, which is not mentioned in this receipt, and you went to the Emigrants bank with him at the time he drew the five hundred dollars? A Oh, yes.

Q Oh, yes? A Yes, sir.

Q Did you know anybody by the name of Alice G. Spaner?

A Yes, sir.

Q She was a client of yours at one time, wasn't she?

A Yes, sir.

Q In the year 1907 you received from her, did you not, the sum of \$1450 with which to purchase some lots in Ozone Park? A No, sir.

Q You received some money from her for that purpose, did you?

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

THE COURT: He may answer the question. And, Gentlemen, the fact that the District Attorney puts the question does not warrant you in drawing any unfavorable inference against this defendant. The District Attorney has the right to question a defendant on the stand as to any vicious, criminal or immoral act committed by him. If the answer be given in the affirmative to a question it is matter which may be considered by the jury. If it be in the negative you have absolutely no right to draw any unfavorable inference. Have I the assurance of each and every member of the jury that they will obey the Court's instructions in that regard?

(Affirmative nods by the members of the jury.)

A Yes, sir.

Q How much? A \$450.

Q But you did not invest the money for that purpose, did you? A Yes, sir.

Q At that time? A At that time.

Q You bought a lot in Ozone Park for that woman? A That is what I answered you, yes.

Q Did you deliver a deed? A No, sir.

Q Where is the deed?

MR. McMANUS: I object to this threatening and

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dramatic manner.

THE COURT: Objection overruled on that ground.

A It was not delivered.

Q Not delivered? Was it ever recorded? A No, sir.

Q Do you know anybody by the name of Louise Belling?

A Yes, sir.

Q She was a client of yours? A No, sir.

Q She was not? A No, sir.

Q Did you at one time receive from her \$2,000 for the purpose of investing the same in the Cocaque Iron Works? A No, sir.

Q Did you receive any amount of money from her for that purpose? A No, sir.

Q Sure of that? A Positive.

Q Did you receive the money for that purpose from her?

A No, I got it from her brother.

Q Oh, from her brother. Pardon me. To be invested in the Cocaque Iron Works? A No.

Q For what purpose? A It was given to me personally by the brother as a loan?

Q As a loan? A Yes, we were childhood's friends, were weaned together.

Q Well, we are not interested in that.

THE COURT: No, I shall allow him to proceed.

A (Witness continuing) And the very day he died I was with him,

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gave him his last breath, and it was after he was dead that the question came up of the sister coming in and claiming \$2,000 which I had protected her with, through her brother, with a bond and mortgage that was never to be recorded except in case of my death, because Henry Belling would refuse to take any kind of a receipt from me for any money that he had loaned me.

Q He refused to take a receipt? A Yes.

Q As a loan? A Why, we would loan money with each other. My money was his money, his money was mine.

Q Well, at that time you gave Miss Belling a receipt, of which this is a copy, did you not? Look at it? A Yes.

MR. WASSERVOGEL: I offer that in evidence.

MR. McMANUS: No objection.

(Received in evidence and marked People's Exhibit 6.)

(People's Exhibit 6 now read to the jury by Mr. Wasservogel.)

THE COURT: While counsel consents, how is that material?

MR. WASSERVOGEL: Cross examination.

THE COURT: I will only allow this in on consent.

MR. McMANUS: I did consent.

THE COURT: You have to bring this within the Freeman case.

MR. WASSERVOGEL: I am strictly within the Freeman case, with which I am very familiar.

THE COURT: You have to show a vicious, criminal or immoral act. I say to you, Gentlemen, as to this evidence here that there is nothing that shows that this man committed any vicious, criminal or immoral act, unless he admits it.

MR. McMANUS: That is the reason I consented to the introduction of that paper.

THE COURT: That is how I understand the Freeman case to read. No atmosphere must be created. This man is to be convicted, if at all, if he is guilty, upon the specific charge laid in the indictment.

MR. WASSERVOGEL: The State asks for no more.

Q Did you in the month of March 1910 have a conversation with a man named Julius C. Briseau? A Yes, sir.

Q Where was that -- Fulton street or Fulton market?
A Barclay street somewhere.

Q Isn't it a fact that you told Mr. Briseau that this certificate of stock had been given to you by Bodin as a gift?
A No, that is what he stated.

Q And I suppose Mr. Vieu is also mistaken when he says that you told him this was given to you as a gift? A He is more than mistaken.

Q You were at one time a member of the State Legislature from Queens County, were you not? A Yes, sir.

Q And you served during the terms of 1894 and 1895?

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A Yes, sir.

Q Did you serve during the entire year? A The entire year, to the last day.

Q Isn't it a fact that during your last term you accepted a bribe of \$3,000 in connection with the defeat of the Hudson River Ice bill? A You know better than that.

MR. McMANUS: Objected to.

MR. WASSERVOGEL: I object to that and I ask for an answer.

MR. McMANUS: Objection withdrawn.

THE COURT: He may answer the question.

Q I want an answer to that. A No, and you know better than that.

MR. WASSERVOGEL: I object to that. This man, who is a lawyer, has no right to answer that way.

THE COURT: Answer the question. And the District Attorney is bound by the witness's answer, Gentlemen.

MR. WASSERVOGEL: I appreciate it.

THE COURT: The remarks are unnecessary. The remarks of the District Attorney should be entirely disregarded by you and given no weight or consideration whatsoever.

Q Isn't it a fact that you resigned as a member of the Legislature during your last term? A Why, no.

Q You are sure of that? A Sure about it.

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RE-DIRECT EXAMINATION BY MR. McMANUS:

Q Weren't you acquitted by a jury of the County of Albany upon this charge of bribery to which Mr. Wasservogel referred?

A Acquitted without going on the stand.

Q And acquitted by the jury? A Acquitted by the jury. I insisted on a trial. They were hanging it off.

Q And the records, and which is the statute, shows that the expenses of that trial were afterwards allowed by the Legislature? A Yes, sir, the laws of 1907, and I went back to the Legislature two years after -- three years after, -- I was elected from the same district.

Q From the same district from which you were a member during the year in which this charge was made? A Yes, sir.

Q Will you tell us just what the situation was with respect to the question of the appointment of a committee of the complainant in December and January, 1907 and 1908?

A I have tried to avoid going into the details of a family affair, now I regret that I have got to do it, and I do it unwillingly.

Q When I went down after getting ---

MR. WASSERVOGEL: Is this re-direct?

MR. McMANUS: It relates to the matter of the circumstances surrounding the application for and the appointment of the committee as brought up by Mr. Wasservogel.

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MR. WASSERVOGEL: Objection withdrawn.

Q Proceed. A I went down in October at the request of Mrs. Bodin. When I told them the circumstances under which Henry Bodin had been committed they sent for me. They said they did not want him, they did not want him around, and the old gentleman, while his age was eighty-two, he was a very bright man, he didn't want him around the place -- that if he would come around the place he would shoot him, he would kill him, that was his statement. And my cousin, Mrs. Bodin, had no use for him, because he had made it unpleasant for him and for the father some years before, or perhaps three or four years.

Q Come right down to the details of this. A Then I told them this, that it was up to them, if they didn't do something with him, why the Compagnie Generale Transatlantique Company would not bother with him. This was after receiving a letter December 12th or December 14th -- they had received at Yulan a letter from the Generale Transatlantique Company. After forwarding it to me, -- and I believe in that letter --

MR. WASSERVOGEL: May we have that letter?

THE WITNESS: Yes, I will give you the letter (producing a paper).

Q Let us have the letter? A That (indicating paper produced is from the Generale Transatlantique Company to Mr. Bodin, and which was sent to me by Mrs. Bodin.

Q December 12th, 1907 ---

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MR. McMANUS: I offer it in evidence.

MR. WASSERVOGEL: No objection.

(Received in evidence and marked defendant's Exhibit G.)

(Letter Defendant's Exhibit G now read to the jury.)

Q Following the receipt of that letter by you, what did you do? A I went down to Yulan, and I told them that they ought to do something for the son. That the only way I could see was the appointment of a committee. I wanted her to act as a committee. The father then didn't want to allow her to act as a committee. Then I told Mrs. Bodin that I would go and see an uncle. He refused to act, he didn't want to act. I come back to Yulan, and I told them that they ought to do something, that the man would be turned out and would be sent to the Manhattan State Hospital.

Q That is a public institution? A That is a public institution.

Q Then what followed that? A Then they asked me if I would not act.

Q And was it at their request that you acted? A It was at their request that I acted. I told them I didn't want to go, and that was as much what prompted me to go to the see the man as anything else. I had never seen the man at all, so far as knowing what he was. That letter indicated that he had money and shares and everything else. I knew that if a committee was appointed, no matter who it was, he had money

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enough to be kept there, if he was as bad as that letter stated.

I went then to Bloomingdale and I saw the man --

BY THE COURT:

Q You mean physically -- his mental condition? A Yes, sir, and I went to Bloomingdale and when I saw the man I made up my mind he was not crazy, but at the same time the proceedings started, I didn't know what the parents would do yet, and I kept the proceedings on until finally I got Mrs. Bodin to come to New York on February 15th.

BY MR. McMANUS:

Q January 15th? A January 15th. She even signed an affidavit to my petition, to my affidavit, and I asked her then the next day to please come up with me and see Henry Bodin. She came up with me. I talked to her to take him. She finally asked me to go back to Yulan, which I did, and I saw the old man and they finally consented to take Mr. Bodin, and on the 29th -- or in the meantime I had gone to Albany, I had seen some friends there in the Lunacy Commission's office, and asked them what proceedings I could take to get him out. I had written also to Samuel Lyon, and he had told me they were going to begin proceedings. That was for the appointment of the Committee and that was one of the levers that I used on the father and mother, saying "You are going to have some stranger appointed, you don't know what will become of him.", and so forth.

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RE-CROSS EXAMINATION BY MR. WASSERVOGEL:

Q This letter of the French Steamship Line, (Defendant's Exhibit G) you received on or about the 12th of December, 1907?

A I received that letter because that was sent by Mrs. Bodin.

Q Well, a few days after the 12th of December 1907?

A Yes, sir.

Q And it was in the early part of January 1908, between the 4th of January and the 10th of January, that you visited the sanitarium; that is correct, isn't it? A Between the 4th and the 8th, the first time.

Q And it was then that you found out the man was not crazy?

A That was the time I judged myself he was not crazy.

Q And it was on the 7th of January that your petition for the appointment of yourself as his committee was signed?

A It may probably be then.

Q And the order of Judge Newberger was made on the 1st of January? A Yes, sir.

Q And the proceedings were not withdrawn until the 31st of January, the day you came to New York, is that so? A Yes, sir.

BY MR. McMANUS:

Q Why was it the petition was presented on the 21st, following your visit to him in Bloomingdale? A The decision had not been made yet with the old gentleman. I didn't go right to Yulan, because I wanted to carry my proceedings by Mr. Sabine -- to carry the proceedings on until I was sure that the man was out and not have him thrown out and thrown to the

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Manhattan State Hospital.

Q Finally you got the consent of the parents? A I did.

Q And following that you went up and got the man out of the Asylum? A Yes, sir.

BY MR. WASSERVOGEL:

Q Just a question that I overlooked: This is in answer to the questions asked you by Mr. McManus on re-direct examination. You say you were tried on this bribery charge in Albany County and acquitted? A Yes, sir.

Q As a matter of fact there were two of you who were on trial -- a man named John N. Best and yourself? A No, sir.

Q George N. Best was indicted on the same charge, wasn't he? A No, sir, he was the complainant in the case. He stated he had given \$3,000 to a man introduced to him as Eugene F. Vacheron, and not to me.

Q On the trial he refused to identify you as the man? A He identified a man with whiskers, who was a man that was later ---

Q Well, you never wore a beard; is that the idea? A I never wore a beard.

BY MR. McMANUS:

Q I have known you for about twenty years, have I not? A I guess so.

MR. McMANUS: I will say that he never wore a beard in the years that I have known him.

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THE WITNESS: I couldn't if I wanted to.

J U S T I N W. P E U Q U E T, called as a witness in behalf of the defendant, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. McMANUS:

Q What is your business? A I am Chief Comptroller at the Fifth Avenue Restaurant.

Q At present? A At present.

Q How long have you been there? A Five months.

Q Before that what was your employment? A At the Hotel Brevoort, Fifth avenue and Eighth street.

Q How many years have you been at the Hotel Brevoort?

A Fifteen years.

Q In what capacity? A Chief Clerk.

Q Do you know Mr. Vacheron? A Yes.

Q Do you know Mr. Bodin? A Yes, sir, I do know of him; yes, sir, I do.

Q Do you remember seeing him in the hotel in the month of February, or the end of January, 1908? A I can't recall what month, but ---

Q You remember seeing him there on the occasion of his coming to the desk with any paper? A Yes, sir.

Q Will you look at this paper and say if you ever saw this paper before which I hand you? (Defendant's Exhibit A) A Yes, sir, that is my signature.

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Q Will you tell us the circumstances under which you signed that paper? A Mr. Bodin and Mr. Vacheron presented themselves at the desk while I was working, and Mr. Bodin asked me to witness his signature. I signed my name, which I did.

Q Was his name on the paper at the time he presented it for signature? A His name was on the paper.

Q Had you been in the habit of signing stock certificates? A No, sir; that was the first time in my life.

Q And you remember it because of that circumstance? A Not doing such things as that I recall that perfectly well.

Q And he was present at the time? A Mr. Bodin and Mr. Vacheron were present at the time.

Q Mr. Bodin made the request of you to witness his signature? A Yes, sir.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q You are no longer employed at the Brevoort Hotel? A Not just now, no, sir.

Q Were you discharged? A Discharged? No, sir; I went away of my own accord.

Q you were very friendly with Mr. Vacheron, were you not? A No, sir; that is the rules of the house, not to be friendly, not to be too friendly with any of the guests -- simply treat them as guests.

Q You knew him quite well? A I knew him as a guest of the

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hotel.

Q He had been a guest of the hotel for some years? A Yes, sir.

Q And you were chief clerk? A Yes, sir.

Q Have you any distinct recollection of the circumstances apart from seeing your name on this paper? A Nothing at all, no, sir.

Q You don't remember what else took place there? A Nothing at all. I went back to my work that I was doing. I can't recall just doing about that, but I went back to my work.

Q You don't recall whether they were there a long or a short time? A That I can't say.

Q All you know is that your name appears upon this paper, and because your name appears upon this paper you take it for granted that Mr. Bodin must have handed it to you to sign? A No, no; Mr. Bodin called me from outside and asked me to witness his signature, which I did, in front of Mr. Vacheron.

Q Mr. Bodin did not sign it in your presence? A He did not sign it in my presence, no, sir.

Q His name was on it when it was brought to you to be signed? A Yes, when he asked me to sign it.

Q Of course Mr. Vacheron never asked you to sign this? A No, sir, he did not -- Mr. Bodin personally himself.

MR. McMANUS: Defendant rests.

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THE COURT: Do not discuss this case among yourselves nor permit any person to talk with you about it, nor form nor express any opinion as to the guilt or innocence of the defendant until the case is formally submitted to you. Recess till five minutes after two.

After Recess, Trial Resumed.

MR. McMANUS: If the Court pleases, I ask your Honor to take away from the jury the consideration of the first count in the indictment charging the common law larceny; upon the ground that there has been an absolute failure to prove the commission of commonlaw larceny.

THE COURT: Any objection?

MR. WASSERVOGEL: The People will be satisfied to go to the jury on the second count, and that the first count be withdrawn, except in so far as its allegations are necessary to support the second count.

THE COURT: Yes, motion granted.

MR. McMANUS: As to the second count, I move that you direct the jury to acquit the defendant on the ground that there has been a failure to prove the allegations contained in that count of the indictment. The defendant is charged in the second count with misappropriating first 100 shares of stock of the value of \$1037.50; and;

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secondly, charged with misappropriating the sum of \$2300 in money. Now, the proof is conclusive and uncontradicted that the defendant had an absolute right to dispose of the stock; therefore, he cannot be guilty of misappropriating that which he had a right to dispose of.

Now, upon the question as to the misappropriation of the sum of twenty-three hundred odd dollars, there isn't a particle of proof from one end of the case to the other that he ever received the sum of \$2300. And I take it under the Fitzgerald case, 195 New York, that the necessity for proving the physical custody of the money, where he is charged with misappropriation, must be established. The Court of Appeals said: "The record presents only one serious question in this respect. That relates to the necessity of the actual appropriation of the money as an element of the crime charged, in addition to an intent to appropriate it to the defendant's own use." There isn't, as I say, any intent to prove any contention as far as the record goes, that the defendant ever received \$2300. And, again, it comes down to that narrow viewpoint that I presented to your Honor yesterday, namely, that all that this case presents is a question of breach of instructions. In other words, the authorities which I have submitted to your Honor support that contention. Suppose this man was a stockbroker in Wall Street, instead

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of a lawyer, and suppose the complainant had gone into his office and said "Here, here are 100 shares of Southern Railway stock which I want you to sell for me for 23"; suppose afterwards the stockbroker had sold the stock at 10-3/8, and ultimately reported to the complainant and customer that he had sold it for 10-3/8 and that he was ready to pay in the event that the complainant was ready to accept the amount, as is proved here. And suppose that the complainant, as is the case here, had refused to accept the amount. Would he in any aspect of the case have a right to present a criminal charge of misappropriation? I contend that it shows as plainly as day that the situation would not permit of a criminal charge in that instance, and likewise in this case the same situation is presented precisely. There was a breach of instructions and nothing more, - assuming the complainant's story to be true. I submit, your Honor, that the defendant is entitled to a direction of acquittal.

THE COURT: I shall deny your motion and submit this case to the jury for them to pass upon whether or not the defendant appropriated any money belonging to the complaining witness he did so with a criminal and corrupt intent, which the jury must find from the evidence beyond a reasonable doubt.

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MR. McMANUS: Exception.

(Counsel now close to the jury.)

(The Court now charges the jury.)

(The jury now retires and upon its return renders a verdict of guilty of grand larceny in the first degree, as charged in the second count of the indictment, recommending the defendant to the mercy of the Court.)

MR. McMANUS: I ask your Honor to remand the defendant till Friday for motions.

THE COURT: Motion granted. I will make it Tuesday next.

(March 5th in Part W; Mr. Kimball to investigate.)

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