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CASE # 3083

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

3655

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

Before:

-against-

HON. CHARLES C. NOTT, J.,

JOSEPH J. KRAUSE.

and a jury.

-----X
Indictment filed September 29, 1921.

Indicted for grand larceny in the first degree.

New York, January 11, 1922.

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

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY THOMAS J. WHALEN.

FOR THE DEFENDANT: MR. LOUIS I. ISQUITA.

Peter P. McLoughlin,
Official Stenographer.

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Mr. Whalen, Assistant District Attorney opens the case on behalf of the people as follows:

May it please the Court, Mr. Foreman and gentlemen of the jury. The defendant in this case Joseph J. Krause was indicted by the Grand Jury of the County of New York by an indictment filed September 29th, 1921, charged with the crime of grand larceny in the first degree in a common law count and in a count, as it is called as bailee and trustee of one Edward P. Cullen. The defendant is charged with having on the 10th of March, 1921 stolen a certificate of stock belonging to one Edward P. Cullen representing 27 shares of the stock of the Middle States Oil Corporation of the value of ten dollars each and a certain sum of money which was the property of Edward P. Cullen.

In this case we will show that Edward P. Cullen had certain stock transactions, purchases and sales, with a concern known as Callaghan & Company down in broad street; that this defendant, Krause, was at that time in the employ of the Callaghan Company. Around the first of August, the defendant Krause, opened an office for himself up at 503 5th avenue. He went to Mr. Cullen who was in the employ of Saks & Company at 34th street and 6th avenue and he stated to Cullen that he was now in business for himself and wished to do business for him. We will

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show that Mr. Cullen delivered to him certain shares of stock, 350 shares of the stock of the Acme Coal Company and also 336 shares of the stock of the Meridian Oil Co., with instructions to sell the first -- and to take back the stock for safekeeping and hold it for Mr. Cullen's account. Mr. Cullen asked him to return the stock to him. He did not return it. Mr. Cullen told him to sell the stock and with the proceeds to purchase 27 shares of the stock of the Middle States Oil Co. We will show that the defendant never delivered the stock to Mr. Cullen on demand and never delivered any money. We will show also that the defendant had a similar transaction just about the same time, about March 7th with another man named Dr. Leo Brown.

MR. ISQUITA: I object to counsel making any statement about any other case except the indictment in issue here.

THE COURT: It has been held that in cases of this sort on the question of intent, the District Attorney may show similar transactions if connected in point of time and method. I will take the statement.

Exception.

MR. WHALEN: (Continuing) We will show you that the defendant had met Dr. Leo Brown, a dentist, he went up to Dr. Brown's office and received from Dr. Brown also certain shares of stock of the Acme Oil Co for the pur-

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pose of selling them and buying shares of stock of a concern known as the Fay Oil Co. We will show that the defendant never delivered any stock to Dr. Brown and did not deliver any money to Dr. Brown.

The People claim the defendant converted this stock and the proceeds of this stock to his own use and kept this money for himself unlawfully, that is feloniously, and that he had no right to use that money.

EDWARD P. CULLEN, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he lives at 29 Central Avenue, Bogota, New Jersey.)

DIRECT EXAMINATION BY MR. WHALEN:

Q What is your business? A Advertising.

Q By whom are you employed? A Saks & Co.

Q 34th street and 6th avenue in the county of New York?

A Yes, sir.

Q How long have you been employed there? A About ten years.

Q Do you know the defendant Joseph J. Krause? A Yes.

Q Where did you first meet him? A In Saks & Company.

Q The first time you ever saw him? A Yes, sir.

Q Do you remember when that was? A I believe it was in either June or July, 1920.

Q Now, do you know where the defendant was employed

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at that time? A Yes, sir.

Q Where? A Eugene Callaghan & Co.

Q They are stockbrokers? A Yes, sir.

Q Some place in Broad street, New York? A Yes, sir, some place downtown, I believe it was in Broad street.

Q Now on or about the first of August, 1920, did you deliver any shares of stock to the defendant? A Yes, sir.

Q What did you deliver to him? A 150 shares of Acme Coal.

Q Do you remember when that was? A It was around August 4th, I believe it was, 1920.

Q Did you get a receive from Mr. Krause at that time? A Yes, sir.

Q I show you a paper and ask you if that is the receipt ? A Yes, sir; that is the receipt.

Q Is that signed by the defendant? A Yes, sir, J. J. Krause.

Q J. J. Krause? A Yes, sir.

Q In your presence? A This was forwarded to me.

Q Are you familiar with this man's handwriting? A Yes, sir.

Q Have you seen him write? A Yes, sir.

Q Is that his signature at the bottom of that paper?

A Yes, sir, I believe it is.

THE COURT: What is the name of that stock?

MR. WHALEN: The Acme Coal Company.

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I offer the receipt in evidence.

(Admitted and marked People's Exhibit 1.)

BY MR. WHALEN:

Q What conversation did you have with Mr. Krause at that time? A Well, I turned that stock certificate over to Mr. Krause with the direct specification that I could get that stock certificate back any moment I requested it.

Q What did he say to you? A Certainly Mr. Cullen every thing will be all right, I will take just as good care of you as my own brother.

Q How did he come to give you that, what was the entire conversation? A Why, he said, "I want to handle your account, I am going into business for myself, I would like to handle your account." I turned the certificates over to him with the direct specification that he was to return them to me any time I would request them.

BY THE COURT:

Q What did you turn them over to him for? A I thought they were safe in his possession.

Q Merely for safe keeping? A Yes, sir.

Q Not as collateral? A No, sir.

BY MR. WHALEN:

Q Now did you subsequently have any other conversation with the defendant, or any other transactions with the defendant? A I don't know of any others.

Q Didn't you deliver other shares of stock? A Well,

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later on.

Q When? A Not at that time, I believe it was in September and November; I bought some more Acme Coal stock.

Q You bought some more? A I don't exactly know the date.

BY THE COURT:

Q You bought it through him? A Yes, sir.

BY MR. WHALEN:

Q I show you a paper and ask you to state whether that will refresh your recollection as to the date? A Yes, sir, October 20th.

Q October 20th you bought what? A 100 shares of Acme Coal.

Q From the defendant? A Yes, sir.

Q Did you pay for these shares? A In cash.

Q Personally? A Yes, sir.

Q Did he give you a receipt? A Yes, sir.

Q I show you a paper and ask you if that is the receipt? A That is the receipt.

Q Was that signed by the defendant in your presence? A Yes, sir.

MR. WHALEN: I offer it in evidence.

(Admitted and marked People's Exhibit 2.)

BY MR. WHALEN:

Q Did you afterwards buy any more Acme Coal from the defendant? A Yes, sir.

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Q Do you remember when that was? A I believe that was in November, sometime early in November.

Q Did you pay him for it? A Yes, sir.

Q How many shares? A 100 shares.

Q I show you a paper and ask you if that is the receipt you got from the defendant at that time? A Yes, sir, I received that.

Q Can you tell me the date on which you bought the last 100 shares? A I believe that was around November 20th I bought those.

Q Can you refresh your recollection as to the exact date by that paper? A Well, I didn't get this receipt personally; this came through the mail; it was not received until about November 23rd.

Q It was about November 20th, 1920? A Yes, sir, around that time.

Q Is that the defendant's signature at the bottom of that paper? A Yes, sir.

MR. WHALEN: I offer this in evidence.

(Admitted and marked People's Exhibit 3.)

MR. WHALEN: I also offer in evidence the bought memorandum of October 20th.

(Admitted and marked People's Exhibit 4.)

Q Did you receive this from the defendant. Is that the defendant's signature at the bottom there? A yes, sir.

Q Did you receive that from him? A yes, sir, through

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the mail.

Q Now, did you purchase any shares of stock of the Meridian Oil Company from the defendant? A Yes, sir.

Q Did you receive the shares of stock personally? A I did not receive that stock at all.

Q When did you buy the Meridian Oil Company? A I believe that was in September, if I recollect.

Q In September, 1920? A Yes, sir.

Q How many shares of the Meridian Oil stock did you buy?
A 160.

Q 160 shares; did you pay for them? A Yes, sir, cash.

Q You didn't buy any of those stocks on margin? A No

Q They were all paid for in full? A Yes, sir; all paid for.

Q Now did you have any further conversation with the defendant? A None other than--

Q After this time? A In reference to the return of the certificates.

Q When was that? A From then on until the middle of March I wrote him constantly asking the return of my certificates, and always got evasive replies.

Q What certificates? A The Acme Coal.

BY THE COURT:

Q All of them you gave him for safe keeping or do you mean the first lot you turned over to him for safe keeping? A Yes, your Honor,-- the Acme Coal and the Meridian.

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Q You bought two lots of Acme Coal? A Yes, sir.

Q You are not referring to all those lots only to the first amount that was turned over? A Yes, your Honor, all of them.

MR. ISQUITA: It has not been shown that those two lots of Acme Coal were not delivered.

THE COURT: No, it does not appear what happened so far.

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

THE COURT: Yes.

Q Did you receive certificates for the 100 shares of stock you bought in October from the defendant? A I did not.

Q You did not receive them? A No, sir.

Q Did you receive a certificate for the shares of stock you bought in November? A I did not.

Q From the defendant? A No, sir, I did not.

Q About August 1st, you delivered 160 shares of Acme Coal to the defendant? A Yes, sir, the certificates.

Q Did you receive the Meridian Oil stock? A No, sir.

Q Now you say from New Years until March you made demands for the return of the stock? A Yes, sir.

Q Did you have any conversation with the defendant personally? A I did not.

Q Did you talk to him over the telephone? A Why, yes I had one talk with him over the phone, when I spoke to him

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once over the phone.

Q When was that? A I believe that was late in January.

Q Did you recognize his voice? A Yes, sir, I recognized his voice.

Q What did you say to him at that time?

MR. ISQUITA: I object to that.

THE COURT: Yes, what has that got to do with the transaction set out in the indictment?

MR. WHALEN: I was coming to that right now.

BY MR. WHALEN:

Q Now did you have any conversation with him in March?

A Why I believe I did.

Q Where and when was that? A At the Marlborough Hotel at luncheon; I don't know whether that was late in February or early in March.

Q Did you ask him to sell this Acme Coal and Meridian Oil stock for you? A Yes, sir.

Q I show you a paper and ask you if you can recognize the signature at the bottom? A Yes, sir, that is the defendant's signature.

Q Did you receive that? A Yes, sir.

Q Through the mail? A Yes, sir.

MR. WHALEN: I offer it in evidence.

THE COURT: Show it to the defendant's counsel.

MR. ISQUITA: I object to that going into evidence on the ground that it is not connected with the

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defendant.

THE COURT: Sustained. It has not been shown that the paper is, who signed it or anything about

BY MR. WHALEN:

Q Do you recognize the signature at the bottom of that paper? A Yes, sir, that is his signature.

Q Have you ever seen him write his name? A Yes, sir.

Q You recognize that as his signature? A Yes, sir.

THE COURT: Very well I will receive it.

(Admitted and marked People's Exhibit 5.)

Q Now, I show you another paper and ask you if you know the signature at the bottom of that paper? A Yes, sir.

Q That is the defendant's signature? A Yes, sir.

Q You received that through the mail at the same time?

A No, sir, this is a few days later.

MR. WHALEN: I offer it in evidence.

(Admitted and marked People's Exhibit 6.)

Q Did you have any conversation with the defendant relating to this transaction shown in People's Exhibit 5 and 6?

THE COURT: What is the date of that memorandum of the purchase of the Middle States Oil.

MR. WHALEN: That is March 10th, 1921.

THE WITNESS: I had no personal conversation with him.

Q Did you talk with him over the telephone? A No, sir, I wrote to him.

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Q You wrote to him? A Yes, sir.

Q Have you got a copy of the letter? A Yes, sir.

Q I show you a letter and ask you if you can state in whose handwriting that letter is? A That is the defendant's handwriting.

MR. WHALEN: I offer it in evidence.

(Admitted and marked People's Exhibit 7.)

Q Now what conversation did you have with the defendant after March 10th, 1921, after those transactions shown in People's Exhibit 5 and 6? A After I wrote to Mr. Krause I did not have any conversation with Mr. Krause personally.

Q Did you meet personally after that? A No, sir.

Q Talk to him over the telephone after that? A No, sir.

Q Did you write letters to him? A Yes, sir, I wrote letters to him, I wrote everything in black and white.

Q I show you a letter and ask you if you know in whose handwriting that letter is? A In the defendant's handwriting.

Q Did you receive that through the mail? A Yes, sir.

MR. WHALEN: I offer this in evidence.

THE COURT: What date is that?

MR. WHALEN: April 2nd, 1921.

MR. ISQUITA: I object to this letter going in evidence on the ground that nowhere in the entire letter are any of the transactions referred to here mentioned-- that this letter contains an entirely new proposition and does

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not relate to the 27 shares of Middle States or Acme Coal or Meridian Oil.

THE COURT: Let me see it.

THE COURT:(After inspecting the letter) I think the correspondence before this ought to go in evidence-- the letters leading up to it.

MR. ISQUITA: I object to it on the ground that it is of a confidential nature and should not be read before the jury.

THE COURT: I don't know of any confidential communications between a broker and his customers.

MR. ISQUITA: I object to it on the ground that it is entirely irrelevant and immaterial.

THE COURT: I sustain the objection for the present. The other letters preceding that ought to go in in order that we may understand the matter.

Q Did you write any letters before that, prior to April 2nd, 1921? A Yes, sir.

Q Have you copies of those letters? A I believe I have.

Q Did you have any conversation with the defendant between March 1,th and April 2nd, 1921? A I had no conversations outside of the mail. I wrote to him all the time requesting the certificates, the 27 shares of Middle State Oil and that is the reply I got to my letter.

Q Did you buy any other shares of Middle States Oil

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in addition to the 27 shares mentioned in People's Exhibit

6? A Yes.

Q Is that all you bought? A Yes, sir.

THE COURT: On his statement that this is in reply to a letter demanding the 27 shares I will let it in.

(Admitted and marked people's Exhibit 8.)

MR. ISQUITA: I further object on the ground the witness testified this is in reply to a letter which he wrote and that letter either the copy or the original has not been introduced in evidence, and therefore the reply should not be placed in evidence.

Objection overruled. Exception.

(Mr. Whalen reads People's Exhibit 8 to the jury)

Q Did you write a reply to that letter? A Yes, sir; the reply is there.

Q Did you see the defendant personally in reply to that letter? A No, sir, I did not.

Q I show you a copy of the letter and ask you if that is a copy of the letter you sent in reply to Mr. Krause? A yes, sir; that is a copy of the letter.

MR. WHALEN: I ask for the production of the original or else I will offer this copy in evidence.

MR. ISQUITA: I will ask that this letter be held until tomorrow until I can go over my papers in the meantime. I object to it now.

(The letter just referred to is marked People's

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Exhibit 9 for identification.)

Q Did you write to the defendant again? A Later on.

Q Are these copies of the letters you wrote to the defendant? A Yes, sir.

MR. WHALEN: I ask that they be marked for identification.

THE COURT: I will make the same disposition.

(Marked for identification people's Exhibit 10 and 11)

Q Did you see the defendant on June 1, 1921? A No, sir, I phoned.

Q Did you have a talk with him over the phone?

A No, sir, I did not; he was out of town.

Q Did you have a talk with him over the phone after that? A No, sir, not after that.

Q Did you ever get any shares of the Middle States Oil Co.? A No, sir.

Q Did you ever get back any shares of stock of the Acme Coal Co.? A No, sir.

Q Did you? A No, sir.

Q Did you ever get back any shares of stock of the Meridian Oil Co.? A No, sir.

Q Did you ever get any money from the defendant?
A No, sir.

Q You had no conversation with him after that? A No.

Q Either in person or over the telephone? A No.

MR. ISQUITA: I ask that the cross examination of

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this witness go over until tomorrow morning..

THE COURT: You say that you have left the papers in connection with this indictment at your office?

MR. ISQUITA: I think there are a lot more papers than I have here. I did not come prepared to try this issue at all.

THE COURT: I think in view of the fact that it was sprung on you that that is a reasonable request.

MR. ISQUITA: I don't want to cross examine this witness without being properly prepared for it.

THE COURT: There are one or two things that I do not understand. This Acme Coal and Meridian Oil you ordered him to sell for you?

A Yes, sir.

Q He did sell? A yes, sir.

Q Then you ordered him to buy the Middle states Oil?

A Yes, sir.

Q Did you furnish any funds for the purchase of them?

A No, sir, he had the funds through the sale of the Acme and Meridian. He was supposed to purchase the Middle States Oil with the moneys that he got.

Q That he reported to you in a memorandum of sale?

A Yes, sir.

Q The amounts as I have them down are about the same?

A Yes, sir.

Q Is he used the Acme Coal and the Meridian receipts

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that would leave about \$8 to your credit? A Yes, sir.

(At this point the Court admonished the jury calling their attention to Section 415 of the Code of Criminal procedure and adjourned the further trial of the case until tomorrow, Thursday morning, January 12, 1922 at 10.30 o'clock .)

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New York, January 12, 1922.

(TRIAL RESUMED.)

EDWARD P. CULLEN, a witness for the People, resumes the stand.

DIRECT EXAMINATION CONTINUED BY MR. WHALEN:

Q Do you remember when you sent the first letter to the defendant Krause? A After the last purchase of Acme Coalstock.

Q On November 23rd, 1920, what was the first letter you sent to him after that? A About the last week in December.

Q Have you got a copy of that letter? A No, sir, I did not keep a copy of that letter.

Q When did you write to him again? A I believe January 11th.

Q I show you a copy of a letter and ask you if that is a copy of the letter you sent to him January 11th? A Yes.

MR. WHALEN: I ask for the production of the original of January 11th.

(No response.)

MR. WHALEN: I offer this letter in evidence, that is the copy.

MR. ISQUITA: I object to that on the ground that it is not the best evidence and it is not binding upon the defendant.

THE COURT: Lay the foundation first, by showing it is an accurate copy and so forth.

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BY MR. WHALEN:

Q Did you write that letter yourself on the typewriting machine? A Yes, sir, I did write that myself.

Q You signed it yourself? A Yes, sir.

Q You mailed it? A yes, sir.

Q Where did you mail it? A 34th street and 6th avenue.

Q In one of the United States post Office mail boxes?

A Yes, sir.

Q When you say you mailed that letter you mean the original of that? A Yes, sir.

BY THE COURT:

Q Did you compare the copy or make carbons? A This is a carbon copy.

Q You made it yourself? A Yer, sir.

Q Made simultaneously with the letter? A Yes, sir.

Q How did you direct the letter? A Mr. Joseph Krause, 503 5th avenue, New York City.

Q That is the same address that appears on this notice, isn't it? A Yes, sir.

Q Sent to you by him? A Yes, sir.

Q Did you place the ordinary and proper postage on it? A yes, sir.

THE COURT: I will allow it.
and
(Admitted Marked People's Exhibit 12.)

BY MR. WHALEN:

Q You signed the original? A Yes, sir.

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Q Edward P. Cullen? A Yes, sir.

Q Did you receive any reply to that letter of January 11th from Mr. Krause? A No, sir, I did not.

Q Did he call to see you after you wrote him that letter? A Yes, sir, I think he called at the office.

Q Did you have any conversation with him at that time?
A About the return of my certificates?

Q What did he say? A He said, "Mr. Cullen -- I told Mr. Krause to get those back in a couple of days", and he said, "Mr. Cullen I will see that you get them right away." I never heard from Mr. Krause.

MR. ISQUITA: Will the District Attorney fix the time.

BY MR. WHALEN:

Q Do you remember when that conversation was? A Following the letter of January 11th; that was shortly before I wrote that letter -- about two days after.

Q How shortly? A About two days after.

Q Did you write to him again? A Yes, sir.

Q Do you remember when you wrote to him again? A I don't know the exact date.

Q I show you a copy, a carbon copy of the letter and ask you if this is a copy of the letter you wrote to Mr. Krause on that day? A Yes, sir.

THE COURT: What is the date?

MR. WHALEN: February 9th.

THE COURT: 1921.

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MR. WHALEN: Yes, sir.

BY MR. WHALEN:

Q Did you write that letter yourself? A Yes, sir.

Q Sign it yourself? A Yes, sir.

Q Did you mail it yourself? A Yes, sir.

Q To whom did you address it? A J. J. Krause, 1145
Longfellow avenue, Bronx;

Q You put postage on the letter? A yes, sir.

Q You posted it in the mail box of the United States?

A Yes, sir.

MR. WHALEN: I call for the production of the
original of this letter dated February 9th?

(No response.)

MR. WHALEN: I offer the copy in evidence.

THE COURT: Is that a correct copy of the original
letter you sent to Mr. Krause on that day?
correct

THE WITNESS: Yes, sir; that is a copy, a carbon
copy.

BY THE COURT:

Q Made by you simultaneously with the letter? A Yes,
your Honor.

(Admitted in evidence and marked people's Ex-
hibit 13.)

MR. ISQUITA: I object to that letter as not being
the best evidence.

Objection overruled. Exception.

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Q Do you recall whether you received any letter from Mr. Krause in reply to that letter of February 9th? A I did not.

Q Did you write to him again? A Later on.

Q I show you a carbon copy of the letter and I ask you if that is a copy of the original letter you sent to Mr. Krause? A That is a carbon copy?

MR. WHALEN: I call for the production of the original of this letter,

(No response.)

THE COURT: What is the date of that?

MR. WHALEN: February 23rd.

Q I show you a letter and ask if this is the original letter that you sent to Mr. Krause on February 23rd, 1921?

A Yes, sir, this is the original letter.

MR. WHALEN: I offer this letter in evidence.

(Admitted and marked People's Exhibit 14.)

Q Did you receive these in 1920 or 1921? A 1921.

Q Did you know Mr. Krause in February, 1920? A No, sir.

Q Is that a mistake for 1921? A Yes, sir.

Q Did you receive a reply to that letter from Mr. Krause? A Yes, sir.

Q I show you a letter and ask you if that is the letter you received in reply? A That is the letter.

Q Is that Mr. Krause's signature at the bottom?

A Yes, sir, it is.

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MR. WHALEN: I offer this letter in evidence.

(Admitted and marked people's Exhibit 15.)

Q Did you receive a letter from Mr. Krause dated February 18th? A Yes, sir.

Q You received that letter from Mr. Krause? A Yes, sir.

MR. WHALEN: I offer this letter in evidence.

THE COURT: What is the date of that?

MR. WHALEN: February 18th.

(Admitted and marked people's Exhibit 15.)

Q Did you receive a letter from Mr. Krause dated February 18th? A Yes, sir.

Q You received that letter from Mr. Krause? A Yes.

MR. WHALEN: I offer this letter in evidence.

THE COURT: What is the date of that?

MR. WHALEN: February 18th.

(Admitted and marked People's Exhibit 16.)

Q I show you a letter dated March 1, and ask you if you received that letter through the mail? A Yes, sir.

Q Is that the defendant's signature at the bottom?

A Yes, sir, it is.

MR. WHALEN: I offer this letter in evidence.

(Admitted and marked people's Exhibit 17.)

THE COURT: What is the date of that?

MR. WHALEN: March 1st, 1921.

Q Did you on March 14th, 1921 write another letter to the defendant? A Yes, sir.

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Q Is that a carbon copy of the letter you wrote to him at that time? A That is a carbon copy.

MR. WHALEN: I call for the production of the original of this letter.

(No response.)

MR. ISQUITA: I object to that letter on the ground that it is not the best evidence.

BY MR. WHALEN:

Q Did you write that letter yourself? A Yes, sir.

Q Did you sign it yourself? A Yes, sir.

Q Did you make it simultaneously with the original?

A Yes, sir.

Q Is that a true copy of the original? A Yes, sir.

Q To whom did you direct the letter? A Mr. J. J. Krause, 47 West 42nd street, New York City.

Q Did you mail it personally? A Yes, sir.

Q Put the proper postage on? A Yes, sir.

MR. WHALEN: I offer the carbon copy in evidence.

(Admitted and marked People's Exhibit 18.)

MR. WHALEN: (Reading Exhibit 18 to the jury.)

I wish to refer in reading this letter to people's Exhibits 5 and 6 in evidence, the confirmations.

Q Now did you thereafter receive from the defendant this letter of April 2nd, people's Exhibit 8 in evidence?

A Yes, sir.

MR. WHALEN: That letter has already been read and

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I won't read it again.

Q Did you write to the defendant on April 4th, 1921?

A Yes, sir.

Q Is that a copy of the letter you sent to him on that day? A That is a carbon copy.

MR. WHALEN: I ask for the production of the original of this letter.

(No response.)

Q Did you make this copy yourself? A Yes, sir.

Q Simultaneously with the original? A Yes, sir.

Q Did you sign it personally? A Yes, sir.

Q Did you address the envelope? A Yes, sir.

Q Who is directed to? A J. J. Krause, 47 West 42nd street, New York City.

Q Did you mail it personally? A Yes, sir.

Q Put the proper postage on it? A Yes, sir.

MR. WHALEN: I offer the carbon copy in evidence.

Objected to. Objection overruled. Exception;

(People's Exhibit 9 for identification is marked People's Exhibit 9 in evidence.)

Q Did you subsequently receive this letter through the mail dated April 5th, 1921? A Yes, sir.

Q Is that the defendant's signature at the bottom of that letter? A Yes, sir.

MR. WHALEN: I offer it in evidence.

(Admitted and marked people's Exhibit 19.)

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Q Did you subsequently write the defendant on May 4th, 1921? A Yes, sir.

Q Is that a copy of the letter you sent him on that date? A Yes, sir, a carbon copy.

MR. WHALEN: I ask for the production of the original of this letter?

(No response;)

Q Did you make this copy yourself, Mr. Cullen?
A Yes, sir.

Q Simultaneously with the original? A Yes, sir.

Q Did you sign the letter yourself, the original?
A Yes, sir.

Q Did you address the envelope? A Yes, sir.

Q Put the proper postage on it? A Yes, sir.

Q Did you mail the letter personally? A Yes, sir.

Q The original letter? A Yes, sir.

MR. WHALEN: I offer this in evidence.

Objected to. Objection overruled. Exception.

(People's Exhibit 10 for identification is marked
People's Exhibit 10 in evidence.)

Q Did you receive any letter in reply to that letter?
A No, sir, I don't believe I did.

Q Did you subsequently write to the defendant on May 23rd, 1921? A Yes, sir.

MR. WHALEN: I ask for the production of the original letter of May 23rd,

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(No response;)

Q Did you make this copy yourself, Mr. Cullen?

A Yes, sir, I did.

Q At the same time that you made the original? A Yes, sir.

Q Did you sign the original personally? A Yes, sir.

Q To whom did you direct the original? A To Mr. J.J. Krause, 299 Broadway, New York City.

Q Did you mail it personally? A Yes, sir.

Q You put the proper postage on? A Yes, sir.

MR. WHALEN: I offer the carbon copy in evidence.

Same objection; same ruling; exception.

(People's Exhibit 11 for identification is marked people's Exhibit 11 in evidence.)

Q Now what happened on June 1st? A On June 1st I called Mr. Krause's office up, the downtown office.

Q 299 Broadway? A I believe the address was 299 Broadway.

Q Had a talk with Mr. Krause? A No, sir.

Q Did you talk to him at all on June 1st? A No, sir, I did not.

Q Did you talk with him after June 1st? A Mr. Krause called me up after that.

Q When was that? A I believe a week afterwards.

Q About a week afterwards? A Yes, sir.

Q You talked with him over the telephone? A Yes.

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Q Did you recognize his voice? A Yes, sir.

Q What did he say to you at that time?

Objected to. Objection overruled. Exception.

A He said, "Mr. Cullen I will positively deliver those certificates to you in a few days," and I said, "Mr. Krause this proposition is out of my hands now; it is already in the hands of my lawyer; you got to do business with him", and that ended the situation.

Q Did you talk with him after that? A Not after that.
The next time I saw Mr. ^{was} Krause in the Jefferson Market Court.

CROSS EXAMINATION BY MR. ISQUITA:

Q When was the first time you met the defendant?

A I believe June or July, 1920.

Q When for the first time did you have any business dealings with him? A Around the middle of July.

Q The middle of July? A Yes, sir.

Q What was that transaction? A 50 shares of Acme Coal I bought from him.

Q Was it delivered to you? A No, sir.

Q They were not delivered to you? A No, sir.

Q Did you pay for them? A No, sir.

Q What was the next transaction you had and when?

A I should say about three weeks afterwards I bought 100 shares of Acme Coal from Mr. Krause.

Q Were those delivered to you? A No, sir, those were

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left in the possession of Eugene J. Callaghan, both of them.

Q The entire 150 shares? A Yes, sir.

Q Were those transactions or either of them, conducted with Mr. Krause personally or as salesman for Eugene Callaghan? A With Mr. Krause as salesman for Eugene Callaghan.

Q How did you come to know Mr. Krause? A I believe Mr. Krause had various accounts in the concern of Saks & Co. and he happened to come to do business with Mr. Redmond.

Q That is the chief of your department? A Yes, sir.

Q Were you introduced to Mr. Krause by Mr. Redmond?

A Yes, sir.

Q Was the introduction of such a nature that you thought you could trust Mr. Krause.

MR. WHALEN: I object to that.

THE COURT: I will allow it.

A I thought he was all right, yes.

Q Now both of these transactions for 150 shares of Acme Coal took place in July and August, you say? A Yes, sir.

Q You never got the stock? A Afterwards Mr. Krause went into business for himself.

Q I mean you did not get the stock at the time you bought it? A No, sir, I did not get the stock.

Q The stock remained with Callaghan? A Yes, sir.

Q When did you receive this stock? A I believe it was the end of August I am not sure of the date, I am not sure

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of the exact date, but it may have been around the end of August.

Q Around the end of August you received the stock from Callaghan? A Yes, sir.

Q 150 shares of Acme Coal? A Yes, sir.

Q Did you receive any letter when you received the stock? A No, sir, I did not.

Q How was the stock delivered to you? A The certificates.

Q I mean by mail or by messenger? A By Mr. Krause.

Q The next transaction between you and Mr. Krause?
A I believe the middle of October.

Q Around the middle of October? A I am not positive of the exact date, but I give it to you as good as I can; it is sometime back.

Q These two transactions were in July and August, 1920, weren't they? A Yes, sir.

Q You say you bought that stock from Callaghan & Co.?
A Through Mr. Krause.

Q I show you people's Exhibit 1 which is a receipt from Mr. Krause for the purpose of 150 shares of Acme Coal, and ask you whether that is correct and was received by you? A Yes, sir. In receipt for the certificate that I returned to Mr. Krause when he went into business.

Q That was in August? A Yes, sir, around that time.

Q You say that you received the stock from Callaghan

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after August, didn't you? A No, sir, I did not.

Q When did you receive the stock from Callaghan?

A Sometime in August.

Q You withdrew the stock from Callaghan? A Mr. Krause came to me and said "I am going in business for myself," he says, "I want you to give me your business, I will handle that the same for you as if you were my brother, I will keep the certificates and everything will be all right." I says, "All right, Mr. Krause, I will withdraw the certificates from Callaghan, and let you take care of the whole thing." I gave him an order to get the certificates from Callaghan which he did, brought the certificates to me and gave me that receipt for the certificates, 150 shares.

Q Was there any conversation between you and Krause at the time that you received those certificates with regard to your having possession of those certificates? A Yes, sir, I gave Mr. Krause to understand that any time I needed those certificates I should get them, the moment I requested them.

Q Did you tell him to hold those certificates? A Yes, sir, I told him --

Q To do with them what he wanted? A I didn't say he could do what he wanted with them; I just said he could hold them for me.

Q Did you at any time tell him you were loaning those certificates to him? A No, sir, I did not.

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Q Did you at that time open a regular account with Mr. Krause? A Not at that time.

Q You merely gave him the certificates for safe keeping?
A Yes, sir.

Q Had you prior to this time had any difficulty with Callaghan & Co.? A No, sir, everything was all right.

Q They had always held your stock safely? A Yes, sir, absolutely.

Q Well, you withdrew those stock certificates as soon as Krause went into business? A Yes, sir.

Q You told him he could take better care of them than Callaghan could? A I thought he could handle my promised to account; he handle my account properly.

Q You just told me you didn't have any account?
A What is that?

Q (Repeated) A You probably ^{mis}understood me there. I gave him those certificates and that opened up an account naturally, but I didn't buy any more at that time, not till a later date.

Q On October 19th you purchased 100 shares of Acme Coal, is that right? A Yes, sir.

Q On October 23rd, you purchased an additional 100 shares of Acme Coal? A Yes, sir.

Q Is that right? A Yes, sir.

MR. ISQUITA: I withdraw both questions.

Q You say that Krause told you that he severed his re-

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lations with Callaghan? A Yes, sir.

Q In August? A Yes, sir, around that time.

Q But it was in August when you bought the last block of stock? A Yes, sir.

Q It was after that he severed his relations with Callaghan? A Yes, sir.

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

Q Now I show you this letter from Eugene J. Callaghan & Company to Joseph Krause and ask you whether you ever saw this letter? A No, sir, I have not seen it.

Q You never saw that? A No, sir.

Q Did you know that Krause had severed his relations with Callaghan & Company in July, 1920? A No, sir, I did not.

Q When you bought your stock in August from Callaghan & Co. did you receive confirmations from Callaghan & Company? A Yes, sir.

Q Have you got it here? A No, sir, I probably have lost it.

Q Can you show me any? A Yes, sir.

Q You say you bought this stock in July and August 150 in July and 150 in August? A I am not sure of the dates.

Q positive about the month? A Yes, sir, around those months.

Q I would not have been in February, would it? A No.

Q Or in March? A No, sir, either July or August.

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Q But it would be in July or August, positive about that? A Yes, sir.

Q Now I show you this letter dated June 11th, 1920, the early part of June, from Callaghan & Company to you, and ask you whether that is a letter received by you from Callaghan & Company in regard to stock bought by you?

A Yes, sir.

MR. ISQUITA: I offer it in evidence.

MR. WHALEN: No objection.

(Admitted and marked Defendant's Exhibit A.)

THE COURT: He has already testified to that.

MR. ISQUITA: He testified he bought it in the end of July and in August.

THE WITNESS: I got the dates mixed up.

BY MR. ISQUITA:

Q That was the first transaction you had with Callaghan?

A Yes, sir the first 50 shares I bought.

Q I show you another letter dated June 12th from Callaghan & Company to you and ask you whether that is one received by you after the purchase of stock? A Yes, sir.

MR. ISQUITA: I offer it in evidence.

(Admitted and marked Defendant's Exhibit B.)

Q I show you another letter dated June 18th from Eugene J. Callaghan. State whether that was received by you with reference to the purchase of stock? A Yes, sir. This is a part payment of that other transaction.

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(Admitted and marked Defendant's Exhibit C.)

THE COURT: I do not see the materiality of all these transactions with Callaghan.)

MR. ISQUITA: It shows a variance in the date.

THE COURT: He said it was all done in July and August. You have amply demonstrated that fact.
BY MR. ISQUITA:

Q So when you said before you bought this stock from Callaghan, the first one, through Mr. Krause in July and in August, you were mistaken, weren't you? A Yes, sir, when I got the dates mixed up.

Q You want to change it now-- that you first met him in June? A The early part of June, yes, sir.

Q You bought this stock from Callaghan in the early part of June? A Around that time.

Q So that you had purchased your stock before the 28th of July, 1920, is that right? A Yes, sir.

Q Now I again show you this letter, dated July 28th from Eugene Callaghan to Joseph Krause and ask you whether you saw that letter? A No, sir, I never saw that letter.

Q Is your memory now refreshed as to the time when you first saw or learned that Krause had severed his relations with Callaghan & Co.? A I believe it was sometime in August when Mr. Krause went into business for himself.

Q It was not in July? A I don't think it was.

Q So that if I show you this receipt from Joseph J. Krause & Co., People's Exhibit 1, dated August 1st, you

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will change your testimony that this was received the first of August and not in the middle of August, is that right? A Yes, sir.

Q And that you were incorrect before? A I was probably mistaken as to my dates.

Q You say Mr. Krause personally delivered this stock to you? A The 150 shares, yes, sir.

Q Was there any transaction at all between the time in August, the first of August, as evidenced by this receipt and October, 1920, two and a half months later, between you and Krause? A I don't know that there was.

Q Was there any conversation between you and the defendant, with regard to the 150 shares of Acme Coal which he held in his possession? A No, sir.

Q Did you make any inquiry whatever with regard to the stock? A No, sir.

Q That you left in his possession? A No, sir; I did not think it was necessary; I trusted him.

Q You were not at all interested? A I trusted Mr. Krause; I thought he was all right.

Q Did you see Mr. Krause between August and October, 1920? A Yes, sir, Mr. Krause came in occasionally into the office.

Q In all these times that he came in the office you never had any conversation with him? A No, sir, I was too busy.

Q Never had any other conversation? A Yes, "How do you

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do Mr. Krause", that is the only time I talked with him.

Q Never asked him whether the stock was going up or down? A No, sir, I did not; I bought it as an investment.

Q You bought it as an investment? A Yes, sir; to hold on to him.

Q You never asked him how the market was going or anything like that, as he came in? A No, sir.

Q Just said helow and let him go? A Yes, sir.

Q He was your broker, wasn't he? A Yes, sir.

Q Do you mean to tell the Court and jury that in two and a half months you did not ask him, did not make one inquiry as to how your stock stood? A I put my faith in Mr. Krause; I certainly did not.

19,
Q In October, 1920, you say you purchased 100 shares of Acme Coal? A Yes, sir, around that time.

Q Was that stock delivered to you? A No, sir, I never saw those certificates.

Q You never saw those certificates? A No, sir.

Q Did you see Krause on that day? A I don't think so, no, sir.

Q You don't think so? A No, sir.

Q Did you have any conversation with Krause that day relative to your stock? A I did not.

Q Do you know know Mr. Cullen whether those 100 shares of Acme Coa that you purchased on October 19th were made out to your name or not? A Well, later on when I

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purchased the other.

Q At that time? A No, sir, not at that time.

Q You did not know? A No, sir.

Q Isn't it a fact that Mr. Krause brought this stock to your office and had you endorse it in blank on the back of the certificate? A The first 250 shares -- not that second purchase.

Q Did you ever endorse 100 shares of Acme Coal you purchased on October 19th in blank? A Not that I know of.

Q You never endorsed it? A No, sir.

Q Did you ever see the stock? A No, sir.

Q Between October 19th and November 23rd, 1920, a period of about 45 days, did you ever have any conversation relative to Acme Coal with Krause? A Mr. Krause came into the office occasionally, yes, sir.

Q Did you have any conversation with him? A Yes, sir, regarding the certificates.

Q Tell the Court and jury what that conversation was? A Mr. Krause I said, everything is all right on that order of 100 shares, and he said, "Yes, Mr. Cullen the certificates are all right. They are in my possession."

Q He never showed them to you? A I had never seen them.

Q Ever ask him for them? A No, sir.

Q Did you ever endorse those 100 shares of Acme Coal in blank? A Not that I remember.

Q Bought on November 23rd? A No, sir, never seen the

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certificate.

Q You never saw the certificate? A No, sir.

Q You say you endorsed the 150 shares originally delivered to him in blank? A Yes, sir.

Q When did you first endorse them? A I should say that was in August.

Q In August? A Yes, sir, I turned them back to Mr. Krause.

Q At the same time? A Yes, sir, around that time.

Q It was not the same day was it? A Well, the day I gave them to Mr. Krause.

Q The day you gave them to Mr. Krause? A Yes, sir.

Q Are you positive? A Yes, sir.

Q It may have been the next day, may it not? A No, sir, I think around that same day, the day I gave Mr. Krause the certificates I signed them.

Q You are not quite certain about that? A I can say I am positive, yes, sir.

Q You of that? A Certain.

Q That on the same day you got the certificates of stock from the defendant you endorsed them in blank? A Yes,

Q Was there any conversation between you and Krause at the time you endorsed those certificates in blank? A None that I know of.

Q Did he tell you why he wanted you to endorse them

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in blank? A No, sir, he did not. It was my first experience in the stock market.

Q You have been in business a long time? A Yes, sir, in business all right.

Q You know when you endorse certificates of stock in blank they become negotiable, don't you? A I did not know at that time.

Q You did not know that at that time? A No, sir.

Q Did you find out they were between the time you first endorsed them in August and sometime in October or November? A No, sir, I did not.

Q You never found out that when you endorsed certificates of stock in blank they become negotiable? A No.

Q You hold a responsible position in one of the largest firms in the city? A Yes, sir, I turned those stock certificates over to Mr. Krause with the specification on my request he would return them to me.

Q Did he ever request you to endorse the 200 shares of Acme Coal in blank? A No, sir.

Q You are intimately connected with Mr. Redmond, the chief of the advertising department of Saks & Co., are you? A Yes, sir.

Q You knew of that transaction which Mr. Redmond had with Mr. Krause, didn't you? A No, sir, I did not know his business, no, sir.

Q You saw Mr. Krause every time he came to Redmond?

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A Yes, sir, I knew he had business with Mr. Redmond.

Q You saw Redmond have dealings with the defendant?

A Yes, sir.

Q Did you know that he had Redmond endorse his certificates of stock in blank?

MR. WHALEN: I object to that.

THE COURT: Objection sustained.

Q Did you purchase Meridian Oil stock from the defendant and more Acme Coal from the defendant? A From the defendant, yes, sir.

Q When was the first time you purchased Meridian Oil stock and how many shares? A Well, I only approximate or guess at the date, in September, I believe, 160 shares.

Q In September you purchased how many? A 160.

Q Shares of Meridian Oil? A Yes, sir, and Dun Petroleum at that time, 100% dividend declared, and it was merged.

Q You are quite positive the first time you purchased Dun Petroleum was in September, 1920? A I made a previous purchase of that.

Q You bought Dun Petroleum in September? A Yes, sir.

Q So when you said you first purchased it you were not telling the truth? A The first purchase -- I did not purchase it from Krause; that was the first from Krause.

Q You bought it from somebody else? A Yes, sir.
September

Q How many shares did you have before of Dun Petroleum? A 150.

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Q When you bought 160 more, as you say, in September, you had 310 all told. Now when did you first buy 150 shares of Dun Petroleum? A I believe that was in May from Fay & Co.

Q So you are not quite as innocent, as you want the Court to believe when you say you never had any stock transactions before June, 1920? A Not with Mr. Krause.

Q You had stock transactions with other people? A Yes, sir, the Dun Petroleum.

Q You knew what the stock market was and what stock dealings were? A I just bought as an investment.

Q You knew something about the stock business? A Yes.

Q Did you ever endorse in blank those Dun Petroleum certificates which you had bought before September? A Why, yes I turned those over as collateral to Mr. Krause.

Q You endorsed them in blank? A Yes, sir.

Q When did you do that? A When Mr. Krause -- when I bought the first Acme Coal from Eugene J. Callaghan.

Q When you bought the first Acme Coal from Eugene J. Callaghan? A Yes, sir.

Q You delivered those certificates to Mr. Krause?
A The Acme Coal, yes, sir.

Q I am asking about the Dun Petroleum? A Yes, sir, the Dun Petroleum.

Q You delivered those to Mr. Krause? A Yes, sir.

Q Not to hold? A No, sir, collateral in payment for

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the Acme Coal.

Q So that when you gave him the Dun Petroleum as collateral for the payment of Acme Coal -- A Yes, sir.

Q Didn't you testify yesterday in the direct examination, that you paid for all the Acme Coal in cash? A Not in the first transactions; the other transactions were all in cash.

Q You bought this Acme Coal in June? A Yes, sir, in June.

Q When did you pay for it? A Well, I gave Mr. Krause on the first Acme Coal --

Q This is the first 150 shares? A I gave Mr. Krause 150 shares, and told him to hold that as collateral; that I did not want to sell it.

Q How much was that? A 150 shares of Dun.

Q At the time you bought the 150 shares of Acme?

A That was \$178.

Q Something around that? A Yes, sir.

Q How much was the Acme Coal worth? A \$300.

Q You mean to say you gave him \$178 as collateral for \$300? A I gave him a check besides.

Q When did you pay him that \$178? A When Krause gave me back the stock I gave him the money and collateral the Dun Petroleum, to hold as collateral but not to sell it.

BY THE COURT:

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Q When did you pay the \$178? A When I wanted to buy the Acme Coal.

Q When did you get the collateral back? A I didn't get the collateral back.

BY MR. ISQUITA:

Q You paid him \$178? A Yes, and Krause still had the Dun petroleum.

Q When? A Why, I believe it was around June or July.

Q June? A Around that time.

Q Did you order him to sell that 150 shares? A No, sir; I told him to hold that as collateral not to sell it.

Q You told us before that Krause did not go into business until August. Now you tell us that you gave Krause 150 shares of Dun Petroleum as collateral? A Yes, sir.

Q You knew all the time that you were purchasing this Acme Coal from Callaghan & Company? A Yes, sir.

Q Do you know whether Krause gave this collateral to Callaghan & Company as a part payment on the Acme Coal? A Yes, I believe he did.

Q Do you know? A Well that is what Mr. Krause told me.

Q Do you know of your own knowledge? A I believe so, those receipts, those last I handed you a little while ago.

Q Did you order the sale of 150 shares of Dun Petroleum? A When I found out that Mr. Krause --

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Q Did you yes or no? A Yes, sir.

Q Who did you order to sell that 150 shares of Dun?

A Mr. Krause.

Q Mr. Krause? A Yes, sir, I didn't order it; I gave it to him as collateral.

Q Did you ask somebody to sell ^{the} 150 shares of Dun-- whom did you tell to sell it? A I didn't want it sold.

BY THE COURT:

Q The question was did you order it sold or not?

A No, sir, I did not.

BY MR. ISQUITA:

Q You never ordered it sold? A No, sir.

Q Now did you ever after June 12th, 1920 make inquiries from Callaghan & Co. with regard to the sale of Dun Petroleum of which sale you were advised according to Defendant's Exhibit B? A No, sir, I did not.

Q You never made any inquiry about the sale of that Dun Petroleum? A No, sir; that is the first I knew it was sold.

Q You did know it was sold on June 12th didn't you?

A I gave it to him as collateral that day, not to sell.

Q You do know that the Dun Petroleum was sold June 12th, 1920 by Callaghan & Company? A Yes, sir, it was sold.

Q You knew about it at that time? A Yes, sir.

Q You also knew at that time that Krause did not sell it, is that right? A Callaghan sold it.

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Q You say you never asked Callaghan to sell it? A No.

THE COURT: How is this material? to the dealings between the complainant and this defendant?

MR. ISQUITA: I want to show if your Honor please, before I put the defendant on the stand that this was an entire civil and friendly relationship, and that this entire testimony by the complainant is not the truth.

THE COURT: It is not a question of what happened between him and Callaghan and Company. The question is what happened after that in his relations with the defendant.

MR. ISQUITA: This all relates to the same stock.

BY MR. ISQUITA:

Q Now after November 23rd, how were your relations with Krause all this time? A Friendly.

Q They were friendly? A Yes, sir.

Q Did you ever have any other financial transactions with Krause? A Mr. Krause bought 150 shares of Dun for me.

Q Did you ever lend him any money? A No, sir.

Q Did he ever lend you money? A No, sir.

Q Positive about that? A Yes, sir.

Q Now I show you a check dated November 15th, made by Joseph J. Krause & Co. to the order of Edward P. Cullen, \$25, and I ask you whether you recognize that, and whether it was deposited in your bank? A I received that check, that

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was a stock dividend declared by Acme Coal.

MR. ISQUITA: I offer it in evidence.

(Admitted and marked defendant's Exhibit D.)

BY MR. ISQUITA:

Q You say you got this check as a stock dividend for Acme Coal? A Yes, sir, that is what I got it for.

Q Do you know what the price of Acme Coal was on November 15th, 1920? A I believe it was about \$1.25 or something like that or 5/8.

Q You paid in October 17/8? A yes, sir, in October.

Q Your full subscription for Acme-- you paid three dollars? A Yes, sir.

Q So that the price for Acme Coal was continually dropping from the time you purchased it to the date of this check, is that right? A Yes, sir.

Q Will you explain to us how you came to get \$25 as a stock dividend on this stock? A That is something I cannot explain; I got a check from Mr. Krause as a cash dividend.

Q But you are quite positive and you testify under oath that this was not a loan to you? A No, sir, it was not a loan to me.

Q When for the first time did you begin to doubt the defendant? A I should say about the end of November.

Q What if any steps did you take during the month of November to find out what was the position of your account

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with the defendant? A I didn't take any steps in November.

Q Did you take any in December? A About the end of December.

Q The date of the month? A I should say the last week in December I wrote to the defendant for the return of my certificates.

Q The last week in December? A Yes, sir.

Q Have you got a copy of the letter? A No, sir, I haven't got a copy of it.

Q You are a pretty good typist, aren't you, Mr. Cullen?
A Yes, sir.

Q You are a pretty busy man, aren't you? A Yes, sir, pretty busy.

Q Do your duties as advertisement man for Saks & Co. take up your entire time from 9 in the morning until 6 in the evening? A Yes, sir, and later than that.

Q When do you find time to do the typewriting? A After hours.

Q Are you in the habit of typewriting extensively after hours? A No, sir, not extensively.

Q We have about 13 exhibits here of which about 14 or 15 are alleged to have been typewritten by yourself?
A Yes, sir.

Q And each one of them lengthy. Do you mean to tell this Court and jury that you typewrote all of those after hours? A Yes, sir.

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Q At your leisure time? A Yes, sir, at intervals, I didn't have to typewrite them one night.

Q Did you do that at home or at the office? A At the office.

Q Have you got a stenographer? A yes, sir, there is a stenographer there, yes, sir.

Q Does she do a lot of your work? A For Saks & Co. not my personal work.

Q Nothing personal? A No, sir.

Q Does your stenographer ever write a personal letter for you? A Business letters, yes, sir, no personal letters

Q All of these letters are sent from 29 Central avenue, Bogota, New Jersey? A I addressed them there.

Q Do you receive mail at Saks & Company? A Occasionally.

Q You do receive mail at Saks & Co.? A Yes, sir, occasionally, business letters.

Q Personal mail? A Yes, sir, personal letters too.

Q You do? A Yes, sir.

Q This defendant had an office in New York City? A Yes, sir.

Q You were in New York City from morning till night?
A Yes, sir.

Q You sent all these letters from your home, and had the replies returned to your home? A yes, sir, I did not send them to my home; I wanted them returned to my home.

Q Have you a typewriter at home? A No, sir.

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Q Can your wife typewrite? A No, sir, I haven't got a wife.

Q You say you wanted your mail sent from your home address? A Yes, sir.

Q Why is it that several letters were sent by you to the defendant from Saks & Co. on their stationery as evidenced by people's Exhibit 14? A Well it was immaterial to me where they were sent.

Q It is immaterial? A Whether sent to Saks & Co. or to my home.

Q Explain to the Court and jury why most of these letters are sent from Bogota, New Jersey and addressed on the top, "Bogota, New Jersey?"

THE COURT: What difference does it make?

I think we ought to get down to this transaction. The point is whether the defendant took this money and stock and what he did with it.

MR. ISQUITA: I am trying to break down the witness's story.

THE COURT: What point is there in the fact whether he sent this letter from his home or his office?

MR. ISQUITA: personally, I don't think he ever wrote these letters. There were several letters put in evidence here that were never received by the defendant all of them written on this yellow paper.

THE WITNESS: That is carbon paper we used-- the

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original was given to you or to the defendant.

BY MR. ISQUITA:

Q Do you mean to tell us the original was on paper like this? A I don't say that the original was, no, sir.

Q Some of them on yellow paper, weren't there? A Probably.

Q Now you haven't got this letter that you say you wrote in December? A I haven't got the copy, no, sir, not the first letter.

Q You haven't got the copy and haven't got the original?

A No, sir, not the first letter.

Q Was any mail ever returned to you that you sent to the defendant? A I don't remember that.

Q What address did you send that letter of December to the defendant at? A I believe it was at his home Longfellow avenue, Bronx.

Q That was the very first letter you wrote to the defendant? A Yes, sir, I think so.

Q Do you remember the contents of that letter? A Well in reference to the return of my certificate; I wanted them immediately.

Q What certificates were those? A The Acme Coal.

Q How many? A And the Meridian Oil, 350 shares of Acme and 336 shares of Meridian Oil.

Q You had some Petroleum, you didn't have Meridian Oil? A The Dun Petroleum was no longer known as that; it

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was merged and it was known as Meridian Petroleum, a 100% dividend declared, and I turned them over to Grause, the dividend, 8 shares of Dun Petroleum and that left me 16 cents.

Q When the Dun Petroleum was merged did you then sign an endorsement in blank? A No, sir.

Q Did you ever receive the Meridian Oil? A No, sir.

Q Do you know whether the Dun Petroleum was transferred? A No, sir, I do not.

Q Did you ever see the 150 shares of Dun Petroleum that you say you bought from Callaghan? A No, sir, I did not.

Q From Callaghan? A I didn't buy any Dun Petroleum from him; I bought it from Grause.

Q When did you buy 150 shares? A 160 shares in September; I am not sure of the date, around September.

Q Why did you write that letter in December to his home and not to his office? A Well, I thought it would reach him there.

Q After that when was the next time you got in touch with the defendant? A I believe two weeks after January 11th.

Q On the phone? A No, sir, I wrote him on January 11th.

to?

Q Where did you write that letter? A I don't know, to

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his home also, but I am not sure.

Q Was that January 11th? A Yes, sir.

Q Addressed Joseph Krause, 503 5th avenue? A Well, that is the address I sent it to.

Q You thought you could reach him better at 503 5th avenue than at his home? A I thought any of those addresses would reach him.

Q You knew all of the defendant's addresses? A Yes, sir, I knew them.

Q You were pretty friendly with Krause, weren't you? A Yes, sir, I knew him to do business with, that is all.

Q How did you happen to know his home address? A Mr. Krause gave it to me.

Q It isn't customary for brokers to give clients home addresses? A I don't know about that.

Q You had other brokers, didn't you? A Just one.

Q Did they ever give you their home address? A No.

Q Ever ask for it? A No, sir.

Q Ever ask Krause for his home address? A No, sir, I did not. He gave it to me.

Q He gave it to you voluntarily? A Yes, sir.
but

Q Not because you were a friend just because he wanted you to have it? A I don't know why he gave it to me; he gave it to me; that is all.

Q When was the next letter you wrote? A It was about three weeks afterwards.

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Q What date about? A January 21st or January 25th some where around there.

Q Have you got a copy of that letter? A Yes, sir, I believe a copy is there.

Q Have you got it with you? A No, sir.

Q It isn't here, you may have overlooked it? A No, sir, I am sure I saw the letter there.

Q The letter here is February 9th, is that the one you mean? A Probably it is February 9th.

Q About a month's difference? A Yes, sir.

Q That letter is again addressed to his home? A Yes.

Q Did you change your mind again? A No, sir, I did not except that I addressed him at his home; that is all.

Q Didn't you know Mr. Cullen, that Mr. Mr. Grause had moved his office from 503 5th avenue sometime in December, in 1920? A Yes, sir, I think he moved to 42nd street around that time.

Q You knew about that didn't you? A Well, I don't know as I did; it is hard to know I don't really know.

Q You did know, didn't you? A That he moved to that address I didn't that he moved to 42nd street.

Q You knew where he moved to, didn't you? A I may have, yes, I knew it later on, I knew his address in 42nd street later. He may have moved before he came in, he may have moved up there for a few weeks before I knew it.

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Q Well if you had known you would have sent his mail to his new address, wouldn't you? A Yes, sir.

Q If you hadn't know you would have sent it to his old address, is that right? A No, sir, sent it to his home, probably, if I did not know his address I would not send it to him.

Q You knew he didn't transact any business at home?
A I knew he would get the letter all the same.

Q That was only the second letter you addressed to him?
A The third letter, February 9th.

Q There had not been any difficulty about receiving mail before that, was there? A No, sir.

Q There was no special reason why you send mail to his home was there? A No, sir, no special reason.

Q Now in all this time between the time you say that you gave Krause the stock and the time when all these exhibits were written was there any conversation between you and the defendant with regard to this stock as being a loan? A No, sir, none whatever.

Q None whatever? A No, sir.

Q At any time at all, during the entire relationship between you and Krause was there any conversation with regard to this stock being a loan? A None whatever.

Q At any time during your entire relationship was there any conversation about you receiving a bonus or Krause being permitted to use this stock at will? A What?

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Q For you to receive a bonus from Krause because Krause should be able to use this stock at will? A No, sir.

Q Never? A No, sir.

Q You never agreed to accept a bonus so that Krause could use the stock if he wanted to? A I wouldn't call that a bonus; I don't know why he offered that stock.

Q You don't know why he offered it? A I don't call that any bonus.

Q You didn't take any bonus? A I don't know how you call that a bonus.

Q Did you at any time during your entire relationship between you and Krause agree to accept more than was due you cash stock or anything? A In stock, yes.

Q You did? A Yes, sir.

Q Wasn't the reason why you agreed to accept that additional stock the fact that Krause should be able to dispose of or use your stock any way he wanted to? A None whatever, no, sir.

Q How many shares, additional shares of stock were you to receive as such additional or whatever you want to call it? A 23 shares.

Q Was that to be a present to you? A I don't know why he offered that.

Q You took that? A I didn't get it.

Q You agreed to take it? A Yes, sir.

Q You agreed to take it not knowing what it was for?

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A I accepted that proposition.

Q You held at that time 127 shares of this Middle State Oil? A Yes, sir.

Q You agreed to take 50? A Yes, sir, it was offered me.

Q At that time Middle State Oil was valued at what?

A I should say 12.

Q 12 or 13? A yes, sir.

Q Quite a lot of money? A Yes, sir.

Q It may have been \$18? A No, sir.

Q You wrote a letter on April 4th, People's Exhibit 9 in which you agreed to accept this additional 23 shares of Middle State Oil stock? A Yes, sir.

Q At that time in that letter you say "I have read your letter with deep interest and I made up my mind to allow you the necessary time provided you also bring to me on June 1, 1921 50 shares of Middle State Oil." A Yes, sir.

Q So that on April 4th, 1921 you had changed your mind about all these previous transactions, and you were willing to accept 23 shares of Middle State Oil as a gratuity or as a bonus for Mr. Krause using your stock up to June 1st? A It was not because of that.

Q repeated. A yes, sir.

Q At that time there was a new relationship entered into between you and Krause with regard to the Middle State Oil? A Up to June 1st.

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The previous relationships were then abandoned, isn't that right? A Apparently.

Q And this was an entirely new transaction, is that right? A Well, yes.

Q From the moment on the Dun petroleum and the Meridian Oil and the Acme Coal and the 27 shares of Middle State Oil were all forgotten and no longer existed as the relationship between you and Krause? A Yes, sir.

Q Just answer the question? A Yes, sir.

Q You testified before the Grand Jury in this case, Mr. Cullen, didn't you? A Yes, sir.

Q You testified that Mr. Krause retained from your possession 27 shares of Middle State Oil stock, is that right, is that right? A Yes, sir, he bought them--

Q Just answer yes or no? (No answer.)

Q Now when you were testifying before the Grand Jury that Krause retained 27 shares of Middle State Oil stock illegally and unlawfully from you you were not telling the truth, is that right?

MR. WHALEN: I object to that question.

THE COURT: Objection sustained.

Exception.

Q When you testified before the Grand Jury that Krause had 27 shares of Middle State Oil stock of yours was that the truth or not? A That was the truth.

Q That was the truth? A Yes, sir.

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Q But that was not the entire truth, was it? A Well--

Q yes or no? A No, sir, it was not.

Q It was not? A No, sir.

Q So that if you were going to testify before the grand Jury all over again you would change you testimony, wouldn't you? A No, sir, none whatsoever. no, sir.

Q But you would add to it wouldn't you? A Yes, sir, I would tell them about it.

Q Would you ask for fifty instead of twenty seven shares of Middle State Oil? A No, sir, I do not want 50 shares.

Q You would testify to that? A Yes, sir, I would say that.

Q Not during this entire transaction between you and Krause did you at any time suspect Krause of intending to defraud you of this stock? A No, sir, I did not expect him to defraud me; I had faith in him.

Q Well he had repeated conversations with you with regard to the return of this stock when he was able to do so? A Yes, sir, a conversation in regard to it.

Q After you had become insistent for the return of this stock you entered into negotiations with Krause, either by yourself or through your attorney for the return of 50 shares of Middle State Oil or its equivalent, is that right? A Yes, sir.

Q Now were some of those negotiations had personally

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between you and Krause? A No, sir.

Q Between your attorney and Krause? A I can't say that.

Q But you knew of transactions for the settlement of this matter? A Yes, sir those were transactions-- promises -- I will say promises.

Q They were transactions? A Yes, sir.

Q Either you or your attorney spoke to Krause and Krause spoke to you or your attorney? A Yes, sir.

Q And certain kind of details were entered into, is that right? (No answer.)

Q Do you recall the first time you were in the Magistrate Court, the Jefferson Market Court? A Yes, sir, I do

Q Do you remember Magistrate Simms dismissing this case?

MR. WHALEN: I object to that.

Q And saying it was a civil action?

MR. WHALEN: I object to that as immaterial.

Objection sustained. Exception.

Q Do you remember the time you were in the Magistrate's Court, having a conversation with me relation to straightening this matter out with the consent of the Court? A Yes, sir, I do.

Q At that time do you recall what figure you placed as the value of the Middle States Oil stock? A I believe 13 either 11 or 13.

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Q I mean the total amount? A Well, I can't recall.

Q Well was it a thousand dollars? A No, sir, it was not a thousand dollars.

Q Was it \$950? A No, sir, probably somewhere around \$360.

Q Well 50 shares of Middle States Oil stock at \$13 a share is more than \$360? A I think the figure on that agreement was that it should be \$366, the amount accrued from the selling of the Acme and the Meridian.

Q That is what you paid for it? A Well, I was coming to an agreement with him.

Q You originally insisted upon getting \$950, isn't that right? A No, sir, I did not; never insisted.

Q Didn't you tell me the stock was worth \$950, and you wanted that much as you would go to the Court to get the consent? A No, sir, I did not.

Q Do you know Mr. Miller of Saks & Co.? A Yes, sir.

Q He holds a very responsible position with Saks & Co.? A Yes, sir, he is a buyer.

Q You are in the advertising department? A Yes, sir.

Q You come in constant contact with Mr. Miller, don't you? A About once a week.

Q Once a week? A Yes, sir.

Q You knew that Miller and Krause had transactions, didn't you?

MR. WHALEN: I object to that.

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THE COURT: I will allow him to say yes or no.

A Yes, sir, they had some business.

Q Do you know or did you know at the time you first met Krause, or immediately thereafter, that Krause had made good a large amount of money to Miller through an alleged error? A I didn't know anything about the amount.

Q Did you learn of such a thing? A No, sir, I never bothered.

Q You never knew about it? A Oh, no, sir.

Q Now, isn't it a fact Mr. Cullen that the real reason you withdrew your stock from Callaghan & Co. and let Mr. Krause retain possession of it was because you sympathized with Mr. Krause after he had made good a large amount of money to Mr. Miller of your firm? A No, sir.

Q Your quite positive? A Yes, sir.

Q You had lunch with Mr. Krause at the Marlborough Hotel? A Yes, sir.

Q What date about was that? A I believe that was early in February?

Q That was after you had written him several letters?

A Yes, sir.

Q After you had begun to doubt Krause? A Yes, sir.

Q After you thought the account was not kept properly?

A Yes, sir.

Q Now will you tell the Court and jury what the tenor

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of his conversation was at the time you had lunch at the Marlborough? A He called me up "I want to meet you, I want to take those certificates up that you have been writing for." I appointed a time for him to meet me, 1.30. We went to the Marlborough Hotel. I said to Krause "Have you got the certificates?" he said, "No, Mr. Cullen, I have not, I am in trouble." I said, "I don't want to know anything about your trouble. It is time to get down to business now and return my certificates to me". He said, "You know about the Miller case, don't you." I said, "I don't want to hear anything about Miller's case. That is outside of my business. My business I can attend to myself." He said, "Mr. Cullen, you want your certificates and you must get them." Well that ended that.

Q That is all you said? A That is the general conversation.

Q How long a time did you spend with him? A I should say a half an hour.

Q Don't you recall at that luncheon saying to Krause "That he, Krause could use your certificates and keep them to make good Miller's claim"? A Absolutely not.

Q Don't you recollect saying that there were very few brokers that would make good on a claim of that kind with Miller? A No, sir, absolutely not; I dismissed Miller's case right then; I didn't want to hear anything of it.

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Q Don't you recall saying to Krause that Krause was one of many that would make good losses of that kind?

A No, sir, I did not.

Q Did you ever have a conversation with any other member of Saks & Company with regard to Krause and your transaction? A No, sir, I did not.

Q After you had doubted, and after you thought that your account was not kept properly, after a period of about four months up to April, 1921, then you entered into a new agreement giving him additional time up to June 1st?

A Yes, sir; to turn over the certificates, yes, sir.

Q So that your doubts ceased? A I had compassion on him.

Q Then you had confidence in him? A No, sir, if I did I would not have asked him for the return of my certificates.

Q You didn't have any confidence in him? A No, sir, not after that thing.

Q You thought he was good for more than what he owed you? A Well, I gave him an extension of time, yes, sir.

Q For a very valuable consideration, is that right? A No, sir, I didn't want his offer whatever.

Q You didn't want to take it? A Just what was coming to me was all I wanted.

Q You agreed to take it? A Yes, sir, I took his offer and I gave him an extension of time.

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Q When did you say you had lunch at the Marlborough?

A I think early in February.

Q At that time you say that you asked your certificates back again? A Yes, sir.

Q You didn't tell him you wanted to dispose of them at any time, did you? A No, sir, I did not.

Q After that you again changed your mind, and you asked him to sell them, is that right? A Yes, sir, I got so disgusted I wanted to get rid of it; I felt that was the only way to get them out of Mr. Krause.

Q Isn't it a fact that the reason why you asked him to sell was not because you were disgusted as you say, but because the market had gone up? A No, sir it is not a fact; I never wanted to sell them, I told him until the present date -- if I had my certificates.

Q You wanted to turn them into Middle states Oil? A I felt that was the only way I could get the certificates out of Krause, to have him sell those certificates and have him buy Middle states Oil.

Q You didn't get the Dun Petroleum and the Meridian Oil and the Middle states Oil as an investment, but rather as a speculation? A No, sir, as an investment.

Q Did you know that Krause had dealings with Mr. Redmond of the advertising department of Saks? A Yes, sir.

Q And with Mr. Barnard of the shoe department? A I

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believe so.

Q And with Mr. Townsend? A Yes, sir.

Q And with Mr. Josephs of the clothing department?

A I believe so, yes, sir.

Q And with Mr. Miller? A Yes, sir.

Q And with Mr. Buxbaum? A I don't know about Mr. Buxbaum.

Q And with Miss Weldon? A Yes, sir.

Q And with Miss McC... A Yes, sir.

Q All of these eight different people and others with whom the defendant had business -- you never had any conversation with relation to your transaction? A No, sir, I did not.

Q You are constantly in touch with all of these people aren't you? A Well, I see them occasionally.

Q They never complained to you? A No, sir, they never brought their business down to me.

Q You never asked them? A No, sir.

RE DIRECT EXAMINATION BY MR. WHALEN:

Q Now about this Dun Petroleum. I show you a paper and ask you if you got that from Krause? A Yes, sir.

Q Is that Krause's signature? A Yes, sir, I believe it is.

MR. WHALEN: I offer this in evidence.

(Admitted and marked people's Exhibit 20.)

Q Is that the time you bought the Dun petroleum from

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Krause? A Yes, sir.

Q Were the certificates for those shares delivered to you? A No, sir, never.

Q Did you at the time that you purchased the Dun Petroleum from Callaghan-- A No, sir, not from Callaghan, from Fay

Q 150 shares? A Yes, sir.

Q Did you receive that stock? A Yes, sir.

Q You delivered that to Callaghan? A Yes, sir, to Mr. Krause in payment of collateral for the first shares of Acme Coal.

Q Was that afterwards sold? A Yes, sir.

Q And the proceeds were used to pay for the Acme Coal?
A Yes, sir.

Q Now did you get any other shares of Dun Petroleum in addition to the 160 mentioned here? A And 18 shares of a dividend.

Q 18 shares of stock dividend? A Yes, sir.

Q Did you actually receive those shares? A Yes, sir, those shares I had in my possession and I delivered them to Krause.

it
Q That made 68 shares? A Yes, sir.

Q Was the Dun Petroleum stock afterwards changed to Meridian Oil? A Yes, sir. It was afterwards changed to Meridian Oil.

Q That is the Meridian Oil and the Dun Petroleum were the same? A Yes, sir.

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Q 68 shares did you say you recieved of a stock dividend? A There was a hundred per cent dividend declared.

Q That made the total amount of the number of shares?
A Yes, sir.

Q That made 336 shares in all? A Yes, sir.

Q You instructed Mr. Krause to sell those also together with the Acme Coal in February? A In March, I sold those in March.

Q Now did you ever have any conversation with Mr. Krause relating to the matters discussed in his letter of April 2nd, People's Exhibit 8, and your letter of April 4th, People's Exhibit 9, did you ever discuss those matters personally with him? A No, sir, I had no personal conversation.

Q The entire matter or the entire transaction was embodied in those two letters? A Yes, sir.

Q You never talked with him personally or over the telephone? A No, sir.

Q About the matter of receiving the 50 shares? A No. Never.

Q Of the Middle States Oil? A No, sir.

Q Instead of 27 shares? A No, sir.

Q Of Middle States Oil? A No, sir, never.

Q You wrote to him that you would --

THE COURT: Well, the letter is in evidence.

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MR. WHALEN: That is all.

BY THE TWELFTH JUROR:

Q May I ask the complainant a question. Was there any remuneration offered in settlement by the defendant or his attorney up to the present time before this action began?
(No answer.

Q Was there any offer made by the defendant before proceeding in this action, was any cash settlement offered?

THE COURT: That is a matter of testimony.

THE WITNESS: I believe my counsel called me up about a week ago, I think last Friday.

MR. WHALEN: I object to any offer made last Friday.

THE COURT: Yes. Any offer made before the indictment is material. Offers made after the indictment aren't material.

Q Were any offers made to you before the indictment?

A In the Jefferson Market Court.

BY MR. ISQUITA:

Q Once? A Yes, sir.

THE COURT: That was after the arrest of the defendant?

MR. ISQUITA: After his arrest.

THE WITNESS: Yes, sir.

BY MR. ISQUITA:

Q You say in the direct examination or you testified

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that you never after that wrote letters or had any conversation with the defendant, is that correct? A Well outside of the luncheon appointment.

Q So you did have one conversation? A Yes, sir, the luncheon appointment.

Q Isn't it a fact that you had other conversations after that time?

THE COURT: We said he had no conversation with the defendant after the letter of April 4th. He didn't say anything about before that.

Q You were fully satisfied to accept the terms as between you and the defendant as he specified in these letters? A Yes, sir.

Q Weren't you? A Yes, sir.
what

Q But you testified in answer to my question is the truth isn't it? A Yes, sir.

Q You would have done exactly as you said you would have done when you answered my questions, wouldn't you?

THE COURT: There is no use in asking him again if he has already said what he would have done. He need not answer that question.

(At this point the Court admonished the jury, calling their attention to Section 415 of the Code of Criminal procedure and took a recess until 2 o'clock.)

AFTER RECESS 2 p.m.

EDWARD P. CULLEN, A WITNESS FOR THE PEOPLE re-

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sumes the stand.

BY MR. ISQUITA:

Q I want to ask you just one more question. This letter of April 2nd, 1921 where the proposition of 50 shares of Middle States Oil is proposed and accepted, was that letter written to you, in response to a request made by you of Mr. Krause at the luncheon at the Marlborough Hotel?

A No, sir, it is not.

Q Was there any conversation at the Marlborough Hotel with regard to the specific proposition of giving you 50 shares of Middle States Oil stock in writing in the even of Krause's death? A No, sir, absolutely not.

LEO BROWN, a witness called on behalf of the People, being duly sworn, testifies as follows:

(The witness states he lives at 105 West 163rd street.

DIRECT EXAMINATION BY MR. WHALEN:

Q You are a dentist? A Yes, sir.

Q Where is your office? A 146 West 45th street.

Q Do you know the defendant Joseph J. Krause? A Yes.

Q When did you first meet him? A In the summer of 1920, June or early in July.

Q Where did you meet him? A In my office.

Q Did you have any conversation with him relating to Acme Coal stock? A Yes, sir.

Q When did you have that conversation first? A At

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that time he was in my office, on that same day.

Q That was June or July, 1920? A In the summer of 1920.

Q What was that conversation? A Mr. Krause spoke of the Acme Coal Co. stock and sold me a hundred shares of Acme Coal Company stock for \$275. I gave him a check for \$275.

Q That was how many years? A 100 shares of Acme Coal Co. stock.

Q Did you afterwards have any further transactions with him? A Yes, sir.

Q How many shares of Acme Coal Company stock did you buy altogether from him? A 100 shares of Acme Coal co. stock.

Q In February, 1921, how many shares of Acme Coal Co. stock did you have? A I was holding 100 shares of Acme Coal Co. stock and Miller & Co. of 150 Broadway were holding 200 shares of Acme Coal Co. stock under my name.

MR. ISQUITA: I object to this testimony as not being binding upon the defendant and not being relevant, material or competent, and I ask that it be stricken out.

THE COURT: I presume this is offered as a similar transaction to show intent.

MR. WHALEN: Yes, sir.

MR. ISQUITA: It is objected to unless the District Attorney can lead up to it and show that the transaction is a similar one. There is nothing in

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the testimony so far that shows that these transactions were similar.

THE COURT: They have to take it up one thing at a time. They cannot prove everything at once. If it is not similar I will strike it out and direct the jury to disregard it.

Q In February, 1921, you had personal possession of a certificate of 100 shares of Acme Coal Co. stock, and you had another certificate for two hundred shares which were in the possession of Miller & Company, the brokers?

A Yes, sir.

Q Did you have any conversation in February, 1921, with the defendant Krause? A Yes, sir.

Q Can you state the date of that conversation? A The exact date I cannot recall.

Q About when was it? A About the last week in February, 1921.

Q I show you a paper, and ask you if you delivered this paper to the defendant Krause? A Yes, sir.

Q When? A February 23rd, 1921.

Q This is in your handwriting? A Yes, sir.

Q You gave it to Krause at your office on that day?
A Yes, sir.

MR. WHALEN: I offer this in evidence.

MR. ISQUITA: I object to this on the ground that it is not addressed to the defendant; that it does not

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bind the defendant in any way. It is a complete transaction between this witness and Miller & Company. And I object on the further ground that it is irrelevant, immaterial and incompetent.

THE COURT: You say you delivered this to the defendant?

A Yes, sir.

THE COURT: I will allow it.

(Admitted in evidence and marked People's Exhibit 21.)

Q Did you give him anything else that day? A No, sir.

Q Did you deliver to him the certificate for 100 shares that you had? A Yes, sir.

Q When did you do that? A When Mr. Krause visited my office, the last week in February.

Q Now did you have any conversation with Mr. Krause at that time relative to 300 shares of Acme Coal? A Yes.

Q Please state what the conversation was? A Mr. Krause made me aware of the fact that on the 27th day of March, 1921, there would appear on the Curb market a stock by the name of Fay Oil. Mr. Krause advised me to buy Fay Oil Company stock. I told Mr. Krause that I had 300 shares of Acme Coal Co. stock and Mr. Krause offered to take the 300 shares of Acme Coal, the 100 shares I had and this here slip of paper to Miller & Co. and get the other 200 shares and

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with those 300 shares of Acme Coal would get me 400 shares of Bay Oil Co. stock which I never received.

Q Then you delivered to him the 100 shares? A Yes.

Q Did y u have any conversation with Mr. Krause again after that? A Yes, sir.

THE COURT: After you told him to do that?

BY MR. WHALEN:

Q Did you have any transactions with him after he sold the Acme Coal 300 shares, and with the proceeds purchased 400 shares of Bay Oil? A Yes, sir.

Q Are you familiar with Mr. Krause's handwriting? A Yes, sir.

Q Have you ever seen him write? A Yes, sir.

Q I show you a paper and ask you if that is his signature at the bottom? A Yes, sir.

MR. WHALEN: I offer this paper in evidence.

MR. ISQUITA: I object to this on the ground that it is not connected with the facts set forth in the indictment, and on the further ground that it is not relevant, material or competent, and on the further ground that it is not binding upon the defendant.

THE COURT: You say this was handed to you by the defendant?

A No, sir.

Q Is that in his handwriting the signature? A Yes, sir

THE COURT: I will allow it.

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MR. ISQUITA: I object to it on the further ground there are three different handwritings there, and he has not testified which is which.

THE COURT: Let him testify to it.

THE WITNESS: This here is Mr. Krause's handwriting.

(Indicating)

Q Indicating the last name on the paper? A Yes, sir.

MR. ISQUITA: I will only consent that that part of this paper go in evidence which is in the defendant's handwriting and which the witness knows is in the defendant's handwriting.

Objection overruled. Exception.

(The paper referred to is admitted in evidence and marked People's Exhibit 22.)

Q After that did you have any further talk with Mr. Krause?

A Yes.

Q When? A About the middle of March, 1921.

Q At your office? A Yes, sir.

Q Were all the conversations you had with the defendant at your office? A Yes, sir, all of them.

Q Did you ever meet him any place else? A No, sir.

Q In the month of March what was the conversation you had with him, or the transaction? A Mr. Krause came to my office and told me to buy 100 shares more of Fay Oil Co. at 50 cents a share. I bought 100 shares of Fay Oil Co.

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on the date and paid Mr. Krause \$52 by check at my office.

Q Did you ever get the pay Oil? A No, sir, never got any of the certificiates.

Q Did you ever get the money back? A No, sir.

Q When did you see him again to talk with him?

A Well the third transaction was a week or two later, I think it was the end of March, 1921.

Q He came to your office again? A Yes, sir.

Q What conversation took place at that time? A Mr. Krause offered me for sale 100 shares of Tandy Oil Co. stock which would be transferred into 200 shares of Fay Oil Co. stock on the first day of May, 1921. I bought 100 shares of Tandy Oil Co. stock and paid Krause by check \$25.

Q What did he tell you about it at that time? A On May 1st, positively my 100 shares of Tandy Oil Co. stock would be transferred into 200 shares of Fay Oil Co. stock, -- which never happened.

Q Did you pay for those stocks in full? A Yes, sir.

Q By check you gave to Krause? A Yes, sir.

Q What happened later on. When did you see him again?

A I did not see him.

BY THE COURT:

Q What did you tell him to do with the certificiates of these various purchases, was he to keep them for you?
A No, sir, I had ~~me~~ asked for them -- Mr. Krause mentioned

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to me that he had bought several thousand shares of Fay Oil Co. stock and was holding my stock with that other stock-- the amount of stock at his office.

Q When was that? A During one of these other transactions.

Q Did he say when he would deliver the Fay Oil Co. stock? A No, sir, he never promised to --

Q Did he ever say whether or not he would deliver Fay Oil stock to you? A No, sir, he never mentioned anything at all about that.

Q Did you have any conversation with him relating to the custody of the certificates? A I don't quite understand that.

Q Did you have any talk with Mr. Krause in which you told him what to do with the certificates after you bought the Fay Oil? A No, sir; I merely paid for them and expected him to send them to me or to give them to me in person.

Q Did you tell him to keep them? A No, sir.

Q Or speak of the Fay Oil Co. stock any further than you have told? A No, sir.

Q You said something about March 7th? A March 7th that was the date when the Fay Oil Co. stock first appeared upon the Curb market.

Q Is that what he told you? A Yes, sir.

Q That is what I want to get. I want you to tell all the conversation you had relating to the Fay Oil on

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March 7th? A Prior to the 7th of March, 1921 Mr. Krause took that 100 shares of Acme Coal Co. stock and an order for 200 shares of Acme Coal Co. stock on that day, which was the last week in February, and Mr. Krause said that the Fay Oil Company stock would appear on the Curb Market on the 7th day of March.

BY THE COURT:

Q Did he then tell you what he had done with your Acme Coal stock? A No, sir.

Q Did he ever report he had sold it? A No, sir, he simply said he had taken it from Miller & Co. the 200 shares.

Q But he did tell you he bought the Fay Oil? A Yes.

Q You hadn't given him any funds to buy it except the proceeds of the 300 shares? A Yes, sir.

BY MR. WHALEN:

Q Did you ever get any Fay Oil stock? A No, sir; never got any. stock.

Q Did you ever get your Acme Coal stock back? A No.

Q Did you ever get any money from the defendant? A No

Q Did you have any further conversation with him after March 7th? A Yes, sir, that was the third transaction on the 100 shares of Tandy Oil which was late in March.

Q That was later than March 7th? A Yes, sir.

Q The last conversation you had with the defendant was

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towards the end of March when he bought 100 shares of Tandy Oil? A Yes, sir.

Q Did you ever get any Tandy oil stock? A No, sir.

Q Did you have any conversation over the telephone with Mr. Krause after that? A No, sir, I called him up several times on the telephone and tried to talk with him but I was never able to talk with him on the phone.

MR. ISQUITA: I ask that the latter part be stricken out.

THE COURT: Yes, that is a conclusion. You called him up, but never got him?

THE WITNESS: Yes, sir, I called him several times your Honor.

BY MR. WHALEN:

Q Did you receive a letter from the defendant after that? A No, sir.

Q Did you receive a letter from him after the date you purchased the Tandy Oil? A No, sir.

MR. WHALEN: That is all.

MR. ISQUITA: I move at this time to strike out the entire testimony of this witness on the ground that this transaction alleged to be shown by the District Attorney between this witness and the defendant is not similar in any way with that of the complaining witness and the defendant.

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THE COURT: Motion denied. Exception.

CROSS EXAMINATION BY MR. ISQUITA:

Q Now, Mr. Brown, you say the first time you met the defendant was in June, 1920? A In the summer of 1920.

Q In the summer time? A Yes, sir.

Q Did you at that time have any stock either of the Acme Coal Company or the Fay Oil Company or of the Tandy Oil Company? A Yes, sir.

Q You did have? A Yes, sir.

Q How many shares and what stock?

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A I was holding 150 shares of some kind of oil stock that I don't quite remember the name of.

Q Now you bought 100 shares of Acme from this defendant, didn't you? A I bought 100 shares of Acme Coal stock from Mr. Krause in the summer of 1920.

Q That was in June? A Yes sir.

Q Have you got that stock? A Yes sir.

Q You have it in your possession? A Yes sir.

Q You had owned that for several months? A Yes sir, I had owned that for several months.

Q Now after that -- by the way, how much a share did you pay for that stock? A Paid \$2.75 a share.

Q Now after that when was the next transaction that you had with the defendant in purchasing Acme Coal stock? A None whatsoever.

Q Did you at the time that you purchased those 100 shares of Acme have any other shares of Acme Coal? A No sir.

Q You testified in the direct examination that you had 200 shares of Acme Coal stock with Miller & Company? A Yes sir.

Q Now when did you purchase that stock? A January, 1921.

Q That was after you knew this defendant? A Yes sir.

Q Through whom did you purchase that stock? A Miller & Company.

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Q What did you pay for that? A \$208.

Q That is \$2.00 a share? A \$1.00 a share.

Q So that you had 300 shares of Acme Coal stock at the time that you say that you turned over your entire claim to the defendant? A Yes sir.

Q Did you at that time have in your possession, or did you own any other stock outside of the Acme Coal Company?

A Yes sir.

Q Is that the stock you referred to a moment ago? A 150 shares of a stock that I cannot recall the name of.

Q It was oil stock? A Yes sir, it was oil stock but it was not Fay Oil.

Q Might it have been Tandy Oil? A No sir, it was not Tandy Oil.

Q Now it was not Tandy Oil? A I sold that.

Q This receipt, People's exhibit 22, authorizing or rather showing that 200 shares of Acme Coal were delivered by Miller & Company which you gave to Mr. Krause? A Yes sir.

Q That was delivered in February, 1921? A Yes sir.

Q Is that right? A Yes sir.

Q Now this authorization, dated February 23rd, People's exhibit 21, where did you get that? A I don't quite understand.

Q Where did you get that to bring it into court with you, that letter authorizing Krause to get 200 shares?

THE COURT: The order on Miller & Company.

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THE WITNESS: I did not bring that paper into court.

Miller & Company sent a messenger to Mr. Simmons' office with that authorization.

BY MR. ISQUITA:

Q Now you say you had 300 shares of Acme Coal which you turned over for 400 shares of Fay Oil? A Yes sir.

Q You bought that Fay Oil and you entered into a negotiation for the purchase of the Fay Oil before it was on the Curb, is that right? A Yes sir.

Q You were to get it at the subscription price, is that right? A Yes sir.

Q What was that, what was that price? A \$1.00 a share.

Q \$1.00 a share? A Yes sir.

Q Acme coal at that time was how much a share? A Not quite a dollar a share.

Q So that you turned over less than \$300 worth of Acme Coal stock and were to receive \$400 worth of Fay Oil plus the commission, is that right? A Yes sir.

Q Well, did you pay the balance in cash? A No sir.

Q How do you account for the discrepancy here of \$125?

A Mr. Krause had 300 shares of Acme Coal Company stock, and he told me, "I will get you 400 shares of Fay Oil Company stock".

Q You heard Mr. Cullen testify this morning, didn't you?

A Yes sir.

Q You heard him testify he was to get a present of 23 shares of Fay Oil? A Yes sir.

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Q How do you want the Court and jury to understand that you were to get a present of \$125? A No present at all, sir.

Q How do you account for the discrepancy in the market value or the price of the stock when you gave it to Krause -- where you say you gave Krause less than \$300 worth of Acme Coal and were to get about \$410 worth of Fay? A On the date, March 7, 1921, the Fay Oil Company's stock appeared on the market.

Q At \$1.00 per share? A It didn't appear more than a few minutes, or probably half a day at that price, it went down to 75 cents a share; the trouble was it never appeared at \$1.00 a share.

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

THE COURT: Yes.

THE WITNESS: A little less than a dollar a share.

Q What did Fay Oil open at? A \$1.00 a share.

Q 400 Fay Oil were worth \$400 plus commission at the opening of the market? A I don't know, sir.

Q You know it opened at a dollar a share, don't you?

A Yes sir.

Q 400 times 1 is 400, isn't it? A Yes sir.

Q \$400 worth, the commission is \$16, isn't it? A I don't know that, sir.

Q You know you paid \$4.00 a hundred? A Yes sir.

Q That is four times four? A Yes sir.

Q Isn't it? A Yes sir.

Q 400? A Yes sir.

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Q And that is 416, isn't it? A Yes sir.

Q So that the Fay Oil at the time you got 400 shares was worth \$416, is that right?

MR. WHALEN: I object to that as calling for a conclusion.

A No sir.

Q You got this stock at the pre-subscription price? A I didn't get it, sir.

Q You ordered it at the pre-subscription price? A Krause said he would get me 400 shares of Fay Oil Company stock.

Q Answer the question in a simple way. When you ordered this stock you got it at the price on the Curb? A I didn't get it, sir.

Q You bought it at the price on the Curb? A Yes sir.

Q You ordered it, anyway, you wanted it at that? A Yes sir.

Q At the time before it was on the Curb the par value was \$1.00 per share? A I don't know that, sir.

Q Have you any confirmation from Krause showing that you bought 400 shares of Fay Oil? A Yes sir.

Q Let us see it? A I haven't got it, sir.

Q You haven't got it here? A No sir. It was handed in to the Magistrates Court at 54th street.

Q I didn't ask you that. You haven't got it here?

A No sir.

Q Did you get an order from Krause for 400 shares of Fay

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Oil? A No sir.

Q You haven't got it here? A No sir.

Q Have you got the buy-order from Krause for 400 shares of Fay Oil? A No sir.

Q You haven't got that here? A No sir.

Q Have you any sell-order for 300 shares of Acme Coal here?
A No sir, I haven't got it any, sir.

Q Have you got any confirmation of the sale of 300 shares of Acme here? A No sir, I never had.

Q Did you have any papers that show the relation of the purchase and sale of stock dealings between you and Krause?

A I haven't got any.

Q Yes or no? A No sir.

Q Isn't it a fact, Dr. Brown, that you did not buy this stock outright, but you bought it on margin, and you were supposed to put ^{up} 100 and some odd dollars with Krause, when you got the stock? A No sir.

Q Now this last transaction of 100 shares of Tandy Oil which was turned into 200 shares of Fay Oil, you say you gave him a check for \$25? A Yes sir.

Q Have you got the check here? A No sir.

Q You haven't got that here? A No sir.

Q The Fay Oil was worth twice as much as the Tandy Oil, is that right? A I don't know that, sir.

MR. WHALEN: I object to questions of that kind from this witness as to what the stock was worth.

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THE COURT: Well, that means what it was selling at I suppose.

BY MR. ISQUITA:

Q You know the value of Pay Oil, don't you? A No sir.

Q You knew it at the time you bought it, didn't you?

A No sir.

Q Did you know the value of Tandy Oil? A No sir.

Q Did you know the value of Acme Coal? A Yes sir.

Q You did know the value of Acme Coal? A Yes sir.

Q You knew that it was worth less than \$300? A On the day that I handed that to Mr. Krause?

Q I am talking about the day you got it back? A Yes.

Q You knew it was worth less than \$300? A Yes sir.

Q Was it worth \$250? A I don't know the exact value, sir?

Q It may have been less? A No sir, it was more.

Q It was more? A Yes sir.

Q It was not 300? A I don't know the stock value, sir.

Q You testified it was 300, didn't you? A Yes sir.

Q You know that, don't you? A I don't know the exact value.

Q You know what you testified to, don't you? A Yes sir.

Q Then you know it was less than 300, don't you? A Yes sir.

Q Isn't it a fact that that Acme Coal Company was sold at the rate of 52-1/2 a hundred? A I don't know that.

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Q At the time you delivered this stock? A I don't know what it was sold at.

Q Isn't it a fact that you got a statement from Krause & Company that your stock was to be sold for \$187.50? A No sir.

Q 300 shares of Acme Coal? A No sir; I never received any such confirmation.

Q You received some papers from Krause & Company? A Yes sir.

Q You knew you were going to testify here today, didn't you? A Yes sir.

Q Why didn't you bring those papers with you? A Because those papers were taken from me in the Magistrates Court in 54th street, in October, after giving testimony there.

MR. ISQUITA: I call on the District Attorney to produce the confirmations, buy and sell orders, and receipts.

MR. WHALEN: I have not been able to find them.

MR. ISQUITA: They were produced in the Magistrates Court.

THE COURT: They ought to be here.

MR. WHALEN: I wish to state that I have inquired all over as to where they could possibly be and I have not been able to get them.

BY MR. ISQUITA:

Q Do you remember testifying in the Magistrates Court?

A Yes sir.

Q Do you remember testifying that you had given Krause 300

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shares of Acme Coal of the value of -- which were to be sold for \$187.50? A No sir, I never testified to that.

Q Do you remember testifying that you still owed Mr. Krause some money if he would deliver that stock to you? A No sir, I never testified to that, sir.

Q Didn't you? A No sir.

Q You have been the owner of several different kinds of stock? A Yes sir.

Q You knew the value of the stock when you bought it and sold it? A Yes sir.

Q This was not your ^{first} stock transaction, was it? A No sir.

Q Yet you don't recall the value of the Fay Oil at the time, or rather, of the Tandy Oil at the time it was merged into Fay Oil? A No sir.

Q You don't? A No sir.

Q That is the only transaction that you don't remember, is that right, yes or no? A I do remember that transaction, sir.

Q Well, if you remember what you paid for it you know what it was worth? A The price was never given to me, sir.

Q You read the newspapers, don't you? A Yes sir.

Q You look up the stock that you hold in the quotations in the newspapers, don't you? A Yes sir, I do.

Q You had been following and were certainly interested in Fay Petroleum at the time? A Yes sir.

Q You did not follow that up in the newspapers? A I don't know what the price was, sir.

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Q Would you tell us if you knew? A Yes sir, I would tell all I know.

Q Do you know what the lowest, the very lowest price that Fay Oil was listed at during the months when you were supposed to buy, or you bought 100 shares of Tandy and turned it into 200 shares of Fay? A No sir, I did not know the price.

Q Do you know what the lowest price was that Fay Oil ever was at? A Yes sir.

Q What was it? A It went off the market and never appeared again.

Q That does not give us the price, what was the lowest?

THE COURT: By that it went to nothing?

THE WITNESS: Yes sir, that is what I meant, sir.

BY MR. ISQUITA:

Q Do you know what it was? A I just made that statement, sir.

Q What was it? A Nothing, sir, zero, nought.

Q That is they were giving it away for nothing, is that what you mean? A Well, I just said, sir, it was wiped off the market.

THE COURT: It doesn't mean that anybody was giving it away. It means you couldn't get anything for it.

Q When you paid \$25, as you say you did, for 100 shares of Tandy which was 200 shares of Fay, that would bring down the price of the Fay to 12-1/2 cents? A Yes sir.

Q During any time that you were the possessor of several

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hundred shares of Fay, and from your acquaintance with the stock was it ever that low? A I cannot answer that. I don't know.

Q Isn't it a fact that when you first bought the 100 shares of Fay Petroleum in March, 1921, or in the month of March, as you said you did, you paid 50 cents a share? A Yes sir.

Q You testified to that? A Yes sir.

Q And that would be \$1.00 per share for Tandy, is that right? A I don't know, that, sir.

Q You know you got two Fays for one Tandy? A I got 100 shares of Fay Oil for \$52 in the middle of March, 1921.

Q Now Tandy is worth twice Fay? A I don't know that, sir.

Q Well, Tandy was merged into Fay, wasn't it? A I don't know that, sir.

Q You don't know that? A No sir.

Q Do you know anything about Fay Petroleum or Tandy Oil?

A Yes sir.

Q What do you know about it? (No answer)

Q You don't know the price, you don't know that it was merged into it, you don't know when you got it, you don't know what the value of it was when you ordered it, what do you know about it? A Well, I have made several statements about buying Fay Oil.

Q You bought it for \$52, 100 shares? A In the month of March, 1921 I bought 100 shares of Fay for \$52.

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Q You know the value at that time? A Yes sir.

Q One week later you say you don't know the value. Towards the end of March you bought 100 shares of Tandy, and you say you don't know the value of it, and yet you paid \$25? A No sir, I don't say that.

Q Do you know, or did you not know, or did you receive any information of any kind whatever, that the Tandy was at any time at all merged into the Fay? A Mr. Krause —

Q Never mind what Mr. Krause told you. A That is the only way I can answer it.

THE COURT: He doesn't ask you where you got the information. He asks you what information it was you got.

THE WITNESS: The information I got was on the 1st day of May, 1921, 100 shares of Tandy Oil I bought at the end of March, 1921 for \$25 to change it into 200 shares of Fay Oil Company stock.

BY MR. ISQUITA:

Q So that you did get information of some kind or other that one Tandy would be turned into two Fay? A Yes sir.

Q Now you are getting it clear in your mind, is that right, it is coming back to you, is that right? (No answer)

THE COURT: I don't know what that question means.

Q That two shares of Fay is worth one of Tandy, and you paid \$25 for 100 Tandy, you say, then you paid \$25 for 200 shares, is that right? A No sir.

Q It is not right? A No sir.

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Q You say that you paid \$25?

THE COURT: It is perfectly plain that he said he paid \$25 for the Tandy, and it was to be changed into 200 shares of Fay.

MR. ISQUITA: Then he said the price was not the same.

THE COURT: He did not say that. He said he did not buy 200 shares of Fay, but bought 200 shares of Tandy which was to be changed.

BY MR. ISQUITA:

Q Did you know that the 100 shares of Tandy Oil which you had ordered was what is called escrow stock until a specified time elapsed? A There is only one way I can answer that.

Q Yes or no? A I can't answer it that way.

Q You either know or you don't? A I am sorry I cannot answer it in that way; I am willing to answer it the best way I can.

Q Did you ever pay to the defendant the balance of \$175, the Fay Oil, that you were supposed to get, 400 shares instead of 300?

MR. WHALEN: I object to that as assuming something not in evidence.

THE COURT: It assumes there was a balance due. I sustain the objection.

BY MR. ISQUITA:

Q You did receive confirmation from the defendant for the purchase and sale of various stocks that you say you had?

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A Yes sir.

Q And those confirmations set forth the specific prices?

A I don't know that, sir.

Q How long did you have them in your possession? A A few months, sir.

Q You can read and write English? A Yes sir.

Q You know what was on them, don't you? A No sir, I do not really know what is on them at this moment.

Q You knew what was on them? A At the time I held them, sir.

Q You don't remember now? A I can't say for certain what is on them now.

Q Do you remember whether there was any price on them?

A Yes sir.

Q There was a price? A Yes sir.

Q So that you do recall there was a price on them? A I cannot say definitely.

Q You just testified there was some price on them? A Yes sir, I said that I know there was, but what that price was I cannot say.

Q There was a price? A I said so; I think so, I am not positive.

Q There was an amount on the confirmations? A Yes sir.

Q The orders and the receipts? A Yes sir, probably.

Q If you had produced the confirmations, the orders and the receipts we would be able to show to the jury the exact

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price or what the value of that stock was, wouldn't we? A I don't know that, sir.

Q At any rate those confirmations and orders would show whether the figures which you set forth here as being the values entered into between you and the defendant were true or not, wouldn't they? A Yes sir.

Q So that if the figures did not conform to what is set forth by you, you would not be telling the truth, is that right?

MR. WHALEN: I object to that.

THE COURT: That is argumentative.

Q If those figures on the receipts, or on the confirmations, or on the other papers, were not as just set forth by you, you would change your testimony, wouldn't you?

MR. WHALEN: I object to that.

THE COURT: I will allow it.

A No sir, I would not.

Q You would stick to your testimony regardless of ^{what} the written confirmations, receipts and orders called for, is that right? A I don't know, sir.

Q You don't know whether you would stick to your story or to the story as told in the figures on the papers received by you at the time the transactions took place. Is that what you want the Court and jury to believe?

Objected to. Objection sustained.

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THE COURT: That is hypothetical.

Q You testified before the Grand Jury, didn't you, Dr. Brown?

Objected to. Question allowed.

A Yes sir.

Q Did you tell the Grand Jury about the Fay Oil and the Tandy Oil transactions? A Yes sir.

Q Between you and the defendant? A Yes sir. The same as I have stated this afternoon.

Q Did you tell the Grand Jury the price and the values set upon those different stocks at the time you were supposed to order them? A If I had mentioned any price I stated it without knowing the value of them -- just exactly what the values were.

Q Now doctor, that was only recently, wasn't it? A Why, that was a few months ago that I appeared before the Grand Jury.

Q It was not a year ago? A No, no, it wasn't a year ago; it was only a month or two ago.

Q You ^{would} remember things which happened/a few months ago, ^{only} wouldn't you? A Well, when I appeared before that Grand Jury I don't know, I am sure, that I was not asked the exact price of those different stocks that I had bought.

Q You just said if you did tell the Grand Jury a certain price you would not have told them the correct one, is that what you mean? A No sir.

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Q You wouldn't know, would you? A I don't quite understand.

Q You wouldn't know whether the figures or the price you told to the Grand Jury were the correct ones or not, would you?

A The same figures that I am giving now.

BY THE COURT:

Q You gave the same figures you are giving now? A Yes sir, I gave the same figures I am giving now.

BY MR. ISQUITA:

Q Did you have the confirmation, orders and so forth with you at the time you appeared before the Grand Jury? A No sir.
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Q So that/those figures you stated to them were not the figures you stated on your paper, they would not be correct, would they?

Objected to. Objection sustained. Exception.

Q Do you still insist that none of these transactions that you had with the defendant were on a marginal account? A No sir.

Q You still want the jury and the Court to understand that all you were to get was about \$120 worth more of stock?

Objected to. Objection sustained.

Q You paid \$25 in the end of March for 200 shares of Fay?

MR. WHALEN: I object to that question.

Q Is that what you still say? A No sir, I didn't pay \$25 for 200; I paid \$25 for 100 shares of Tandy Oil.

Q Have you any of the other checks here, Mr. Brown, that

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you say you paid to the defendant? A All the checks were handed over to the clerk in the Magistrates Court in October, 1921.

Q You haven't of them outside of this? A They were taken in the Magistrates Court.

Q In other words, you haven't anything except your own story, is that right? A Yes sir.

Q You haven't any papers? A No sir, I have no papers.

Q You are here merely asking us to take your word that everything is so? A No sir.

Q What is that? A No sir.

Q You don't owe to this defendant \$175.50?

THE COURT: He has answered that a number of times.

There is no use asking it again.

Q If you did owe this defendant any money would you admit it here in court? A Yes sir.

Q If any of these transactions were marginal accounts would you say that? A Yes sir.

Q If any of this testimony which you give here today was found not to be correct, would you change it?

Objected to. Objection sustained.

MR. ISQUITA: I renew my motion to strike out the entire testimony of this witness, on the ground that there has been no connection whatever shown between the transactions of this witness and those of the complainant; that the transactions had between this defendant and this witness

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are in no way similar to the transactions had between the complaining witness and the defendant.

Motion denied.

Exception.

MR. WHALEN: The people rest.

MR. ISQUITA: I move to dismiss the indictment on the ground that the complaining witness testified that he was not telling the truth before the Grand Jury at the time this indictment was found.

THE COURT: I did not hear him testify to that effect.

MR. ISQUITA: On the further ground that he testified that he told the Grand Jury that this defendant retained unlawfully 27 shares of Middle States Oil stock and he testified here today that this defendant had entered into a contractual relationship as evidenced by People's exhibit No. 1.

THE COURT: I deny your motion.

MR. ISQUITA: I call your Honor's attention to the part of his testimony where he said he would want to correct his testimony; that part of the testimony of the complaining witness where he said that he had not told all the truth, that he had told the truth but not the complete truth to the Grand Jury at the time he testified.

THE COURT: That is not any reason for dismissing an indictment. Very often before the Grand Jury a man is not asked all the questions he is asked here.

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MR. ISQUITA: I further move to dismiss the indictment on the ground that in accordance with People's exhibit 9 there was no crime committed here.

THE COURT: What is People's exhibit No. 9?

MR. ISQUITA: The letter dated April 4th, setting forth a contractual relationship between the complaining witness and this defendant wherein this defendant was to give to the complainant certain additional shares of stock, and which was a gift on the part of the defendant to the complaining witness for the use or disposition of this stock.

THE COURT: That is not a letter from the defendant to the complainant. That is the answer of the complainant to the defendant, and written after the date of the alleged larceny. According to the People's contention the defendant sold this property and then writes a letter expressing regret and saying that if the complaining witness will overlook the matter and not take steps against him he will give him back the property with some additions. If that is accepted by the complaining witness it does not affect the question as to whether a larceny had been committed prior to that time.

MR. ISQUITA: The complaining witness testified that at the time this letter was written by the defendant that the prior transactions were to be wiped out.

THE COURT: Well, that may be a question between them but it is not as between the People of the State of New York

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and the defendant. The question is whether on the 10th of March there was a larceny. If on the 10th of March there was a larceny, then the fact that they may have entered into negotiations subsequent to that for the return of the money is immaterial.

MR. ISQUITA: I don't believe that in this case there was a larceny because the complaining witness at no time relinquished his right to the stock.

THE COURT: A man never relinquishes his right to his own property and that is what makes it larceny, -- to take property belonging to another.

MR. ISQUITA: The stock was at no time taken from the complainant but was at all times in the possession of the defendant with the complainant's consent.

THE COURT: Well, the charge is that he having it in his possession as agent, trustee or bailee of the complaining witness converted it to his own use.

MR. ISQUITA: There is no testimony here that the defendant converted the property to his own use. The only testimony here is that --

THE COURT: There is testimony here, his written admission, that he had the property and will deliver it to the complainant at the earliest possible moment.

MR. ISQUITA: We don't deny that.

THE COURT: He had the property in his possession, and the complainant has testified that he never did deliver it

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to him, he has never gotten it yet.

MR. ISQUITA: Now we admit that the property was given by the complainant to the defendant, but we do not admit that the property was at any time converted by the defendant to his own use without the knowledge or without the consent of the complainant. And furthermore that after such consent and knowledge was had by the complainant on April 4th a new relationship was entered into between the parties before any crime was committed at all showing that the defendant had no intention to defraud the complainant.

THE COURT: If no crime has been committed why this defendant must be acquitted. The indictment charges that the crime was committed in March. The defendant had the property in his possession and he was to turn it over on demand.

MR. ISQUITA: I move on that ground.

THE COURT: There is evidence to sustain the allegation but whether it is true or not is for the jury to say. The complaining witness has testified, and the People have put in evidence an admission by the defendant that he had this property, namely these shares of stock. The complainant says that he demanded it and never got it back. I will deny the motion and give you an exception.

Exception.

MR. ISQUITA: I further move for a dismissal of the indictment on the ground that there was no intent to defraud

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this complainant throughout the entire People's case. I made specific inquiry of the complainant and the complaining witness testified that at no time did he know of any intent on the part of the defendant to defraud him of the possession of the stock.

Motion denied.

Exception.

J. K R A U S E, the defendant, being duly sworn, testified as follows:

(The witness states he lives at 2872 Stillwell avenue, Brooklyn.)

DIRECT EXAMINATION BY MR. ISQUITA:

Q Are you a duly licensed broker in the city of New York?

A I am. I beg pardon, I was. My license expired.

Q Do you recall meeting Mr. Cullen, the complaining witness in this case? A Yes sir, I do.

Q Do you remember when was the first time that you met him? A About June.

Q June, 1920? A Yes sir, June, 1920.

Q Will you explain the first transaction of a commercial or financial nature that you had with the complainant? A Yes sir, I will.

Q Tell the Court and jury what that was. A I had several acquaintances in Saks & Company who had been dealing with me, in Saks, buying such as Stutz Motors, Texas Pacific Oil, and so forth.

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THE COURT: Never mind about the details. You are asked about your dealings with Mr. Cullen.

THE WITNESS: I was told about several people to call on.

THE COURT: Never mind what you were told. Tell us what you had to do with Cullen.

THE WITNESS: Well, I came up to the advertising department and I met Mr. Cullen, and while I was negotiating for a sale with Mr. Redmond Mr. Cullen asked me what stock that is. I told him it is some Oil Stock which is actively traded ⁱⁿ on the New York Curb, and it is handled exclusively by ^{Cullough} Tellegen & Company by whom I was employed at that time, and Mr. Schewitt who handled the stock exclusively on the New York Curb and that stock actually represented an investment of about 130 per cent on the capitalization. Mr. Cullen was interested in this, and he said, "I would like to invest in something like that." I said I will leave you a circular here. You look it over, and he says all right. Mr. Redmond gave me an order. The next day I came up to see Mr. Cullen, and I asked him, I said, "What do you think about it?" He said, "It is pretty good". I said, that is the way it looks to me -- I says, they have been paying just now a dividend of five per cent, and I showed him a copy of it in the New York Globe and the American and the Sun. The papers stated that by the present outlook, on account of the shortage of coal that they might pay as high

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as 30 per cent. I said, of course, I take it for what it is worth. That remains to be seen. But they actually have paid five per cent, and that I know. I showed him in the New York Times and the Sun, that the stock had paid a dividend. He gave me an order for 50 shares. He also gave me his check which I turned into Tellegen & Company and a confirmation was sent to Mr. Cullen. A few days later I came back and told Mr. Joseph in the clothing department, and over in the shoe department Mr. Barnard as I came up, and I told Mr. Cullen again. I asked him if he received the confirmation, and he said yes, and he thanked me for it. I told him, I said, as soon as I have the stock I will deliver it to you. He said, "I think I better buy another 100 shares." I said, well if you feel that way, the way it looks, I said, I would. Of course I don't urge you to buy it. It is up to you entirely. So he gave me an order for another 100 shares. I became very friendly with him. I liked him and he liked me. I told him exactly every little detail that I heard about it on the market and I conveyed the information to him. He said, well, when the stock goes down buy another hundred. I said, you better hold on to it. I will let you know when there is another drop. They were frightened at that time, and pretty/^{near}every stock dropped and also the Acme, and he bought another hundred shares from me.

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BY MR. WHALEN:

Q When was that? A I just don't recall the exact date. They bought 100 shares from me.

BY THE COURT:

Q That was after you left Calaghan? A Yes sir, after the 150 share transaction.

BY MR. ISQUITA:

Q That was 350 shares all told? A Yes sir.

Q That Mr. Cullen had? A Yes sir.

Q Now do you remember when you first left Tellegen, or immediately thereafter any conversation that you had with Mr. Cullen, and if so will you explain what it was? A Yes sir, I went to Mr. Cullen. In fact I went to everybody, all my customers, who are my clients, not Calaghan's, the house I was working for, they only know me -- I went to Mr. Cullen and I said, Mr. Cullen, I decided to go into business for myself. I have somebody that has made me a loan of \$500, I says, I have a very nice clientele, I can get more nearly every day. I says, there is a chance for me to go into business for myself, I says, I would like to have your co-operation. He said, anything you want, he says, I can do for you. Everybody in here likes you very well, and you can have their account. So I showed him the letters that Mr. Calaghan personally wrote to me where he stated that he was sorry that I left him and wished me the best of luck.

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Q I show you this letter from Calaghan & Company dated July 28th, and ask you whether that is the letter you showed to Mr. Cullen? A Yes sir, that is the letter.

Q You showed that to Mr. Cullen? A Yes sir.

Q You handed that to him? A Yes sir, I showed it to everybody.

Q Did you hand it to Cullen? A Yes sir.

Q Did he read that? A Yes sir, he did.

MR. ISQUITA: I offer it in evidence.

(Marked Defendant's Exhibit E.)

Q When was that letter shown to Cullen? A I think just a couple of days after I received the letter I went there with the letter.

Q What date did you receive that letter? A I think that came to my house the next morning.

(Mr. Isquita reads defendant's exhibit E to the jury.)

Q Now what did Mr. Cullen say to you after he had seen this letter? A He says it speaks for itself.

Q Did he at that time let you have any stock? A At that time? What do you mean?

Q Did he at that time ask you to take from Calaghan & Company 150 shares of Acme? A He says if I want his account I could have it. I told him I would appreciate it.

Q Did he order you to withdraw from Calaghan & Company 150 shares of Acme Coal? A I think he gave me a letter and it was turned over to me several weeks after, and I had time to get

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the stock.

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Q You don't remember whether that was at that time or not?

A After this letter.

Q After? A Yes sir.

Q Now do you recall any transaction after that between you and Cullen with regard to Meridian Oil and Dun's Petroleum. If so explain it to the Court and jury.

A Mr. Cullen gave me some stock of the Dun Petroleum which he changed for Acme as collateral to hold until he paid for the Acme, to sell the Dun Petroleum and give credit to the account of the Acme.

Q When was that? A Around June following I think.

BY THE COURT:

Q At the time you left Calaghan's and got those 350 shares that had all been paid for? A Well, when I left Calaghan's--

Q When you left Calaghan's or after you left Calaghan's you got 150 shares of stock that Calaghan had? A Yes sir.

Q And you got 200 shares more that you bought? A Yes sir.

Q That all had been paid for? A Yes sir, Calaghan paid for it first by the sale of some stock, some Meridian Oil.

Q It was paid for in full? A Yes sir.

Q And the 200 shares you bought were paid for in full?

A Yes sir.

BY MR. ISQUITA:

Q Mr. Cullen had ordered you to sell that Dun's Petroleum?

A Yes sir, I couldn't give the order unless --

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THE COURT: He said the proceeds were to be applied towards paying for 150 shares, and the balance of 150 shares were paid for in cash?

THE WITNESS: Yes sir.

BY MR. ISQUITA:

Q You heard Cullen testify this morning? A Yes sir.

Q Did you hear him say that at no time did he order you or Calaghan to sell that Dun Petroleum? A I heard him say that, yes sir.

Q Now did he order you or Calaghan to sell the Dun Petroleum? A I couldn't sell it any other way.

Q It was sold? A According to that order, only with his consent.

Q Now after you had bought for Mr. Cullen 200 shares of Acme Coal, and you had received 150 shares of Acme Coal, making 350 shares of Acme Coal altogether, did you have any further conversation with Mr. Cullen in regard to the custody of this stock? A I asked him what he wants to do with it, and he said, go ahead and keep it.

Q Did you deliver to him the actual stock, the 200 shares after you had purchased it? A Yes sir.

Q What was done, if anything, by him with that stock? A Well, he signed his name on the reverse side.

Q You mean he endorsed it? A Yes sir.

Q In blank? A Yes sir.

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