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

THE PEOPLE, vs. CHARLES JACKSON.

HON. OTTO A. ROSALSKY, J., and a Jury.

Tried, New York, January 22nd, 1907.

Indicted for Grand Larceny in the Second Degree.

Indictment filed January 10th, 1907.

Appearances:

ASST. DISTRICT ATTORNEY WILLIAM S. MC GUIRE, for the People.

COHEN BROTHERS, represented by LAWRENCE COHEN, ESQ., for the Defense.

Frank S. Beard, Official Stenographer.

THE PEOPLE'S TESTIMONY.

THOMAS HANSON, a Witness called on behalf of the people, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MC GUIRE:

Q Mr. Hanson, where are you employed?

A I was acting ticket agent from Grand street up, on the Sixth avenue line, the Grand street elevated, on the Sixth avenue line.

Q Down or up?

A Uptown side, on the night of December 21st of this year.

Q New York City and county?

A Yes, sir.

Q Who was there with you?

A Thomas Brown was my gate-man.

Q Who is Thomas Brown?

A The prisoner, indicating the defendant.

Q He is known as Charles Jackson here?

A Yes; but he was known as Thomas Brown on the railroad. That was his first night, and he want on duty with me, and he was a ticket chopper, and he was supposed to remain there until seven o'clock next morning.

MR. COHEN: I object to what he was supposed to do and move to strike it out.

THE COURT: Motion granted. Strike it out.

BY MR. MC GUIRE:

Q Was he on the same shift with You?

A Yes.

Q And were his hours exactly the same?

A Yes, sir, exactly the same; from seven o'clock at night until seven o'clock the next morning.

Q Now when did you see Brown or Jackson last, on the morning of the 22nd of December?

A Somewhere about three o'clock, because I was rung up on the telephone from the Inspectors office, a short time before that, and I went to see if Jackson was attending to the trains.

Q Well what was Jackson doing at that time?

A At intervals between the trains, he would come back, sit down on the platform, or on the bench in the waiting room, inside.

Q And that was near your enclosure?

A At the back of my office.

Q Now, this office of yours, how is it entered?

A It is entered from the waiting room; the door opens into the waiting room from the ticket agent's office.

Q Now, before three o'clock, did you have anything, money or other property in your possession?

A Yes; I had two bags of cash, the day man's bag and my own.

I was waiting to give it to the collector.

Q How much did your bag contain?

A My own bag contained \$26.25, I think; and the other one contained \$211.40. That was the day man's bag of cash.

Q And where did you put those two bags of cash?

A In my safe.

Q In currency, was this money?

A Well, there were bills and silver, and all classes of money, all sorts.

Q Well what did it mostly consist of?

A Well, it wasn't me made up the money. It was the day man's bag that was taken. I really couldn't say what money was in it.

MR. COHEN: Well, I move to strike that out, what he says was in the day man's bag; and I move to strike out that the money in it was \$211.

THE COURT: Strike it out.

THE WITNESS: Well, I had to give a receipt for that, after that.

Q Who is the day man?

A He's here in court. And, before he went away, he gave me the bag, and I gave him a receipt for it, and I put it in my safe, and it was in my safe, with my bag, about three o'clock in the morning.

Q On the morning of the 22nd of December?

A Yes, sir.

Q Now was the door of the safe looked, on not?

A No, sir, the door of the safe was not locked.

Q Was Brown or Jackson there when you put the money in

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the safe?

A Yes, sir, Jackson was on the station when I put the money in the safe.

A I went to sleep for awhile.

Q And when did you wake up?

A I should say about half an hour.

Q And how do you know it was half an hour?

A Because I immediately telephoned to the Inspector's office about the loss of the money and the disappearance of the gateman.

Q And when was it then?

A 3:30.

Q On the morning of the 22nd of December?

A Yes.

Q You went to sleep about three o'clock?

A Yes sir.

Q December 22nd?

A Yes, sir.

Q Where was Jackson, when you woke up?

A Jackson disappeared, leaving his overcoat behind on the bench.

MR. COHEN: I object to that, as to his saying that he disappeared, and move to strike it out.

THE COURT: Strike it out.

BY MR. McGUIRE:

Q Was Jackson on the premises, on the platform, when you woke up at 3:30?

A No; he wasn't to be had.

Q Did you look for him?

A Yes, all around.

Q Did he leave anything there?

A Yes; he left his overcoat.

Q And when did you next see Jackson?

A In the Magistrate's Court.

Q How long after that, about? That is, when he was arrested?

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A Yes, sir.

Q The record will show that. Had you seen him before that time, at all?

A No, sir.

Q Had he been to your station at all during that time?

A No.

Q When you woke up at 3:30 in the morning, did you go to your safe?

A I went to my safe, and found a bag of cash missing.

Q Which bag was missing?

A The large bag, the day's man's cash.

Q The one that you had got from Smith, the night before?

A Yes.

Q Was the door from your compartment into the waiting room, where Jackson or Brown sat, open or locked?

A The door was just shut; but it wasn't locked.

CROSS EXAMINATION BY MR. COHEN:

Q How large was this place where you are seated, behind the counter, where you sell your tickets; how large is that enclosure?

A Large?

Q Yes?

BY THE COURT:

Q What is the size of your office?

BY MR. COHEN:

Q Or the size of the cage that you are in? Was it ten feet square?

A No; it wasn't ten feet square.

Q How large was it?

A It was about twelve feet long and about five foot wide.

Q And how large is the safe?

A The safe?

Q Yes?

A Oh, the safe would be about two foot square; a fairly good sized safe, anyhow.

Q And how many doors to the safe? One or two?

A There is one door, and several drawers in the safe.

Q But there is only one door to the safe?

A One door.

Q A combination safe, or with a key?

A With a key.

Q And did you have the key?

A I had the key.

Q In your pocket?

A No; I hadn't the keys. It was in the safe drawer, at the time.

Q And the safe was open, with the key in the drawer?

A Yes.

Q And how many keys are there to your case, to that safe?

A To my drawer there is one key. That I have. Each man has drawers, two drawers, the day man and the night man.

Q And you were asleep on your chair, at the window, where you sell your tickets; were you not?

A Yes.

Q And your best judgment is that you were asleep for half an hour?

A Yes.

Q Were you fast asleep?

A Fast asleep; just in the chair.

Q Fast asleep?

A Yes.

Q Do you know whether there were any passengers, during that half hour to buy tickets?

A Nobody bought tickets. They couldn't buy tickets from me when I was asleep. I was asleep

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for the half hour and I couldn't sell tickets when I was asleep.

Q Well, but you don't know whether there were any passengers who came up to buy tickets and didn't awaken you?

A No, sir.

Q And you don't know how many people approached that stand where you were asleep, during that half hour, do you?

A No.

Q Now, this \$211, this sum of money. I withdraw the beginning of that question. This sum of money, whatever it was, that had been left by the day man, was in a bag, and it made quite a large bag, didn't it?

A Certainly.

Q And it was quite heavy?

A Yes.

Q And it was in the safe?

A Yes, sir.

Q Together with whatever sum of money you had put in the safe?

A Yes.

Q Also in a bag?

A Yes.

Q And in order to extract that money from the safe, it was necessary to open the door leading into your cage?

A Yes.

Q Also necessary to open the door of the safe?

A The door of the safe was opened.

BY THE COURT:

Q What do you mean by opened? Unlocked?

A It was open entirely, and the money was in the drawer, inside.

Q Was that drawer locked with a key?

A No, sir, the key was in the drawer, but it wasn't locked.

Q How far were you from the safe?

A It was right behind

my back, right opposite my chair at the back, and I faced the window; right in the back of my chair.

BY MR. COHEN:

Q Was there any noise of any kind that disturbed you in your sleep for the half hour?

A No, sir.

Q You heard nothing?

A No, sir.

Q Were these bags containing this money in some small compartment inside of the safe?

A They were in the safe drawer.

Q In the drawer?

A Yes, sir.

Q So that the drawer had to be opened into the safe to get into the bags?

A Well, the drawer wasn't fully closed.

Q Could these bags be seen by a person standing at the window to buy a ticket?

A No.

Q They couldn't?

A No.

Q Had this colored man, this defendant, been within your cage at any time that evening?

A Yes. He was in my office that night when I was going to the toilet.

Q That was the only time?

A Yes.

Q Did you speak to him about the bags containing money?

A No, sir, I didn't say anything to him at all.

Q And this was the first time he had ever worked for the company, that night?

A No, sir, he was in the employ of the company before that night, but that was the first night I worked with him.

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Q How close to your chair was this safe containing this money?

A Right at the back of my chair (illustrating).

BY THE COURT:

Q How close, one or two feet or What?

A I should say within a few feet.

Q And this door which leads into your cage, how is that situated with relation to the stairs on which passengers come up to buy tickets?

A The door that goes into my office opens from the waiting room.

Q The door which goes into your office opens into the waiting room?

A Yes.

Q Well, then, people -- well, how is it with relation to passengers who come up the stairs? Can they get near your door?

A No, they come by the window; that's altogether in front of the office.

Q Well, if a person came down on a train and got off the train, they could get into the waiting room, once having been on the platform?

A Yes.

Q And once in the waiting room that door leading into your cage was within a foot or two leading into your cage was within a foot or two of the waiting room?

A The door was inside of the waiting room. The office is taken off the waiting room.

Q And a person could get into your cage through that door of your cage?

A No; not unless I was asleep.

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Q Well, if you were asleep?

A Yes.

Q Then a person getting off a train either coming uptown or going downtown could enter the waiting room?

A Yes.

Q And enter your cage through that door?

A Yes.

Q And the trains were running all night?

A Yes.

Q And how close are they together, going up and down?

A At ten minute intervals.

Q And during a half hour, at least three trains stopped at your station?

A Yes.

Q And you do not know whether passengers got off, do you during that time?

A No, sir.

Q You did not see the defendant in your waiting room at that time, I mean in your cage, did you?

A No.

Q You are sure you didn't take this money, aren't you?

A Yes.

Q You are sure about that?

A Yes.

RE-DIRECT EXAMINATION BY MR. McGUIRE:

Q What did you do with the defendant's overcoat?

A The Inspector took it away.

Q Has he ever called for it, to your knowledge?

A He has never called for it.

RE-CROSS EXAMINATION BY MR. COHEN:

Q And where was the defendant's overcoat?

A On the

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the bench where he was lying.

Q Was it a cold night?

A Yes; it was cold enough to have an overcoat on, outside.

Q And notwithstanding the fact that it was a cold night he left his overcoat there?

A Yes.

Q Now, how do you know it was his overcoat?

A I seen it on his.

Q You saw it on him?

A Yes.

Q When?

A That night.

Q When he was standing outside?

A Yes.

Q And he had it on when you went to sleep?

A Yes.

Q And yet when you awakened ---

A He had it on him

outside of the door, and, after twelve o'clock, he stopped inside, and used to go out every time there was a train at the platform.

BY MR. McGUIRE:

Q And what did he do with his overcoat after twelve o'clock?

A Put it under his head where he was lying down.

BY MR. COHEN:

Q Did you send the defendant down to get any drinks after one o'clock?

A I asked him to get some coffee and sandwiches, and he couldn't get no coffee, and he brought me up a glass of beer.

Q Didn't he bring you up a pint of beer?

A No; he brought up what you would call the full of a coffee-pot.

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Q And you drank it?

A Yes.

WILLIAM T. SMITH, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McGUIRE:

Q Smith, where do you work?

A I work as day agent on the Grand street station of the Sixth avenue Elevated Railroad.

Q Uptown or downtown side?

A On the uptown side.

Q On the night of the 21st of December, at seven o'clock that night, did you give night agent Hanson anything?

A Yes; I gave him a bag, containing \$211.40, and hold his receipt for it.

Q And in what denominations was it?

A \$130 in currency, bills, and the balance in quarters and halves and dimes; \$80 worth.

Cross examination: None.

JOHN J. BURKE, called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McGUIRE:

Q What precinct, officer, are you attached to?

A The Detective Bureau.

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Q When did you first see the defendant here, Jackson or Brown?

A On the 26th of December.

Q That was when you arrested him?

A Yes, sir.

Q Where did you arrest him?

A In the basement of 58 East 107th street.

Q A warrant having been previously issued for him?

A No, sir, no warrant, a complaint.

Q A complaint?

A Yes, sir.

Q What did he say when you arrested him? First, did you tell him what he was wanted for?

A I asked him if his name was Tom Brown. He said no. Was he ever known ---

Q Tom Brown was the name given you by the elevated railroad people?

A Yes. Was he ever known by the name of Tom Brown? "No, sir". Did he ever work for the Elevated Railroad people? "Never". "You are sure?" "Yes." I showed him that colored man there (indicating a colored man in the audience, and I asked him did he know that man, and did he ever write him a letter of recommendation to the company, to get him this position, and he said never, never saw him before.

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Q Did you search him?

A Yes, sir.

Q And what did you find on him?

A A handful of nickels, dimes and quarters.

Q Aggregating how much?

A Well that I wouldn't say -- I couldn't say how much it amounted to, but in the neighborhood of ten dollars.

CROSS EXAMINATION BY MR. COHEN:

Q Well, don't you always make a record, Officer, of how much money you find on a prisoner?

A Well, that's where there was a claim made for it. There was a representative of the company there, and nobody claimed it; and, when I out of his pocket, I asked him where he got it, and he said he got it shooting craps.

Q Well don't you know how much it was?

A Well not exactly.

Q Don't you know that it was \$2.40?

A No; there was more than that.

Q Why do you mention that, then, that you found money on him?

A I was asked the question.

Q That's the only reason?

A Yes.

Q When did you first learn of the case, officer?

A My partner received the complaint.

Q How did you learn that he had written anything --

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anything about a letter of recommendation?

A I spoke to the other colored man, Mr. Seabrooke, who is employed on the road, and he told us that he had written a letter for his man to the Superintendant of the road, to get him a position; that this man asked him to do it.

THE COURT: The hour of adjournment having arrived, we will take the recess now.

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

AFTER RECESS.

GEORGE W. DUMONT, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MC GUIRE:

Q Mr. Dumont, you are employed by the Interborough Railway Company in this city?

A Yes.

Q What is your business?

A I am night inspector of the Western Division.

Q When did you first see this man here, Jackson or Brown.

A On the night of December 18th.

Q Under what name did you meet him then?

A Thomas Brown.

Q And under what circumstances, did you meet him, that night?

A He had been appointed that day.

MR. COHEN: Objected to, as prior to the date mentioned in the indictment, and prior to the circumstances here, and as having nothing to do with the case.

THE COURT: Objection overruled.

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MR. COHEN: Exception.

A (Answer continued) He had been appointed, that day, at the superintendent's office, and was sent over there to report at 81st street, to my office, for orders.

Q That is, you distribute the various men to their posts?

A Yes.

Q Where did you assign him, that night?

A The night of December 18th?

Q Yes?

A Well, I had him in the office, and, after instructing him and several other men, I assigned him to the 50th street station, down town side.

Q And where was he assigned, the next night?

A He wasn't assigned at all. He didn't report. Left without leave.

Q And was he assigned by you on the night of the 21st of December?

A Yes, as gateman, on the Sixth avenue line, at Grand street, on the uptown station.

CROSS EXAMINATION: None.

MR. MC GUIRE: The People rest, if your Honor please.

MR. COHEN: If your Honor please, I ask your Honor to direct the jury to acquit, on the ground that the People have failed to make out a case.

There is no evidence against this defendant. There is no evidence that this money was taken by the defendant.

On the contrary, the evidence shows that absolutely there was any amount of opportunity for any one to have stolen that money; and, where we have no eye witnesses, the proposition is that the hypothesis, or, rather, the conclusion is drawn that all the circumstances lead pointedly to this one man who could have stolen that money.

But the evidence is that the trains stopped there every ten minutes, and people got off, or could have gotten off, and could have entered the waiting room, and that the door of the cage was open, and the door of the safe was open, and he was tight asleep for half an hour, the complainant.

The only evidence in the case that is at all suspicious, and we don't convict on suspicions, is that this man left that place of employment, and that his overcoat was there.

Well, conceding that that is so, that is no evidence of larceny, if your Honor please.

He didn't have in his possession the proceed of this larceny when he was arrested. The testimony

is that he had some money in his pocket.

Now, then, where ordinarily after the larceny the stolen property is found in the possession of the defendant, that might call upon him for an explanation, that is not so in this case. Not only did they not identify this money, and show that it was the same money that was stolen, but it was several days after, and the amount was so small as to appear insignificant, as compared with the amount of money that was stolen. Any number of persons might have stolen this money, and the Court of Appeals have held, time and time again, that, under those circumstances, it would be dangerous to submit such a case to the jury for their speculation; and I ask your Honor to advise the jury to acquit.

MR. MC GUIRE: If the defendant simply had the opportunity, and had not disappeared, or made these denials, subsequent to his arrest, there would be admittedly little or no case here. But he had, during the half hour, access to this room, the opportunity, the exclusive opportunity. The money was not visible to any persons passing through that room. To have known that the money was there, a person must have seen it put there, and the defendant

saw it put there. And then he fled the premises. And the ticket man goes to sleep at three o'clock, and when he awakes, at half past three, the defendant and the bag of money are gone, and the defendant's coat is left there. When the defendant is arrested, he does not make an honest explanation of the circumstances. He denies flat-footed that he was ever employed by the company, or ever went under the name of Brown.

We have brought here, besides the gateman, the Inspector of the company, and I have not called the other colored man, because it seemed unnecessary. And he is given the date when he was employed, and the name under which he was employed. And it seems to me that in line with the lesser case, we have in addition to the opportunity to commit the offense, the denial and incriminating circumstances of the flight, the leaving of his overcoat and the denial of his name, and the double name, as well as the denial that he had ever worked for the company. Why did he do all this? MR. COHEN: But the Court of Appeals decided that he must have the sole opportunity. And I had that very question in this very court in an arson

case. The defendant must have the sole opportunity.

Now, it can't be said, because the defendant had an opportunity to get that money, that, because he happened to do something in connection with that, that he ran away. Suppose he did? That doesn't make larceny. Or that he said his name was Brown or Smith, or any other name. Those facts don't constitute larceny. He isn't charged here with getting money under false pretenses, or representing himself as some one else.

If he admitted getting the money, that would be one thing, but he denied it.

And whether his name was Brown or Smith, doesn't prove that he had the sole opportunity to take the money. It isn't an opportunity, but the sole opportunity, to take the money, that is required by the Court of Appeals. Otherwise, a man could be convicted on absolute speculation.

THE COURT: I have called your attention, Mr. District Attorney to the case of the People against Lesser, because that is one of the important cases on the subject of exclusive opportunity.

MR. MC GUIRE: Yes, sir.

THE COURT: Of course, it is difficult to find new cases where all the attendant circumstances are similar. In some instances, you may find two cases alike. But where is there evidence in this case of exclusive opportunity?

MR. COHEN: There is not.

THE COURT: If the defendant had been in the room, with the complaining witness, and the room had been locked, and the defendant had left the place, and no exit could be gained, unless the door was opened by either party, why, then, flight, under those circumstances, would be considered as a circumstance tending to show first, guilty knowledge, and, secondly, exclusive opportunity, because of the two men having occupied that one room.

But in this case there are a few suspicious circumstances. The denial by the defendant that he was employed by the company. The fact that he left his overcoat there; that he left the place where he was employed at an early hour of the morning, and before the completion of the day's work.

MR. McGUIRE: And he was there when the money was put in the safe.

THE COURT: Yes. Now, the law does not indulge in any presumption against a person charged with crime. Assuming that he was there at the time the money was placed there?

MR. McGUIRE: No man could have gotten the money while the defendant was there unless seen by the defendant.

THE COURT: That is the conclusion that you draw. But it seems to me there is not sufficient evidence of exclusive opportunity.

In the Lesser case, the defendant was a canvasser. He entered the apartment of the occupant by her invitation. About fifteen minutes before there was placed upon the mantelpiece a pocket book, containing a sum of money. The lady left

the apartment in charge of this man, and being away for about twenty or twenty-five minutes upon her return, this canvasser, who was eagre to solicit the lady's subscription, had left, and the pocket-book was gone.

MR. McGUIRE: Left and left his address;

THE COURT: The mere fact that he left his address may be concluded favorably and yet unfavorably. It is like the case of the receiver who buys property with guilty knowledge and yet gives his check. He fortifies himself so that, in the event of a prosecution, he may say to the Court and jury, "Why, I had no guilty knowledge. I gave my check." That may be done with a view of concealing crime.

Now, in this case, the defendant left his place, it is true, contrary to his agreement to work a certain number of hours a day, but that fact is a mere suspicious circumstance.

The point that controls me in the matter is that it is not a case of exclusive opportunity.

MR. McGUIRE: It was their joint duty to keep the premises; they were jointly in charge of the premises.

THE COURT: It is true, but assuming that the

defendant said, "I will leave the job at this hour and I will give no notice, I don't care to work for the company. I will abandon it."

MR. McGUIRE: But it seems to me that this is a matter that requires explanation. It is very near the border line.

THE COURT: Well, assuming that the defendant denies his guilt, where is your case to go to the jury on.

MR. McGUIRE: Well, if he denies it and it is sustained on cross examination, his denial, then it seems to me that my case is a very weak one.

THE COURT: It seems to me in view of the Lesser case, Mr. Cohen, that I am obliged to deny your motion, and put your defendant to his defense.

MR. COHEN: But let me call your Honor's attention to the fact that the agent testified that a person stopping at the window where he was seated could look straight into the safe, and see these bagsful of money.

MR. McGUIRE: Oh, no; just the opposite. He couldn't see them.

THE COURT: No, but the principle controlling the case is the point of exclusive opportunity.

MR. COHEN: Then your Honor denies my formal

and I shall take a formal exception. I shall not take up any further time now.

THE DEFENSE.

THOMAS BROWN (Indicted as Charles Jackson), the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION by MR. COHEN:

Q What is your right name?

A Thomas Brown.

Q Where do you live?

A 71 East 98th street.

Q And you are the defendant?

A Yes, sir.

Q You are the man who was working on this night that this money was stolen?

A Yes, sir.

Q At Grand street and Sixth avenue?

A Yes, sir.

Q You heard the testimony of the agent, who testified that this money was stolen?

A Yes, sir.

Q Did you take that money?

A No, sir.

Q Any part of it?

A No, sir.

Q Did you touch the bags that night?

A No, sir.

Q Sure?

A No, sir, I didn't see them.

Q Did you take them or either of them?

A No, sir.

Q What time did you leave that morning?

A Half past three.

Q Why?

A Because he wouldn't leave me inside by the fire, and it was very cold, and I told him I was going home.

Q Now, if it was cold, why did you leave your overcoat didn't need the overcoat. It wasn't much good to me.

Q Now did you take this money, when you left?

A No, sir; I never seen the money.

Q Have you ever been arrested before, or convicted of any crime?

A No, sir.

CROSS EXAMINATION BY MR. MC GUIRE:

Q Where did you say he wouldn't let you go into?

A I want in, and he told me to go outside, because the Inspector might come along, and see me standing by the fire, and it was very cold outside, and I told him I was going home, I was going to quit.

Q Well, why didn't you take your overcoat with you, when you went home?

A Well, I had a better one at home. I didn't want that overcoat.

Q Well you wore it there, that night; didn't you?

A Yes.

Q And it was good enough to wear there, wasn't it?

A Yes.

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Q Well, why then didn't you wear it, when you went outside?

A Well, I didn't bother with it.

Q Well, it was a cold night, outside?

A Yes.

Q And then why did you leave the coat inside?

A Because I didn't want the coat, sir.

Q Well, you wanted to keep warm, didn't you? It was better to have a coat on, to keep warm, wasn't it, than to be without one? How about that?

A (No, sir.)

Q Isn't it better to have a coat on, than have none?

A Yes; but I didn't want that one.

Q Why not?

A Well, I didn't want that one.

Q Well, you know what an oath is; don't you?

A Yes.

Q And you know that you were sworn to tell the truth here, don't you?

A Yes.

Q Well, why didn't you want that coat, that night?

A Well, because it wasn't any good to me. It was all torn around. My intention was to come back, the next morning, at seven o'clock, but I went to work; got a job.

Q What kind of work?

A Calcomining.

Q Well, we haven't got away from the overcoat yet. Why did you leave it there?

A I had no reason to leave it there.

Q Wasn't it because you were in a pretty good hurry to get away, and didn't think to pick it up?

A No, sir. The agent was awake when I went away.

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Q The agent was awake when you went away?

A Yes.

Q Well why did you go back? You had pay due you; hadn't you?

A I didn't go back that day because I went to work.

Q Whereabouts?

A Between 109th and 110th streets, in a baker shop.

Q Who did you go to work for?

A For Hirschberg.

Q What is his first name?

A I don't know.

I got \$7. for calcimining the bakery.

Q Who gave it to you?

A Himself.

Q What kind of a looking man is he?

A A kind of tall man.

Q Any hair on his face?

A Yes; moustache.

Q Any beard?

A No, sir.

Q Did you ever see him before?

A No, only that time.

Q How did you get that job?

A Through a friend of mine.

Q And what's the name?

A Mc Neill.

Q Where is his place of business or residence?

A 1835 Third avenue. He is a calciminer.

Q And when did he tell you to go there, to that job?

A That morning.

Q When? You didn't know anything about that calcimining job when you left at 3:30 o'clock, did you?

A No; sir.

Q Well why did you go back, and get your two days' pay

that was due?

A I didn't bother with it.

Q You didn't bother with it?

A No, sir; as I was working.

Q Well, why did you go back, the day after that?

A Well it was such a little bit of money that I didn't bother with it.

Q Is money so easy that you don't bother about two days' pay?

A Only a night and three-quarters pay.

'Q Well but you told me you were going back, the next day. Now which is true?

A Well, I went to work, but was still going back.

Q And how long did that job take you?

A Not five hours.

Q Well, but you said that you finished that job in five hours. That didn't leave anything to do, the next day. What did you do the next day?

A I didn't do anything.

Q Well what did you mean by saying that you went to work, and didn't have time to go back to the station?

A I went to work that Saturday, sure.

Q Well what did you do, the second day after?

A I didn't do anything.

Q We are speaking of the 23rd now?

A I didn't do anything.

Q What did you do the 24th?

A Nothing.

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Q The 25th?

A I didn't do anything.

Q The 26th?

A Nothing. That's the day I got locked up.

Q Yes, I know it was. And you left this money there with the company, and you never took the trouble to go around for it, and never went around to report, and you left your that night, because it was cold, and you would rather be without an overcoat than with? That's all straight; is it?

A Yes.

Q Where did you get this chain that you had in your pocket?

A I won it, shooting craps. I won out two dollars and sixty cents.

Q Where did you win it?

A Oh, in a street game. There's lots and lots of them.

Q Did you know any of the fellows in the street game?

A No.

Q Why did you give the name of Tom Brown, when you went to get work there?

A Sir?

Q (Question repeated.) Why did you give that name to the company?

A That's my name.

Q Well what is Charles Jackson doing on the indictment here?

A I told the officer my name was Thomas Jackson.

Q Well, why did you tell the officer that you had worked there before, and worked for the company before?

A Well, not

on that division before. I worked all the summer on Third avenue.

Q But the officer says you told him your name was not Tom Brown, and that you never worked for the company. Now how about that?

A I did work for the company.

Q But did you tell him that? That's what we are interested in?

A I worked for the company.

Q But did you tell the officer that you worked for the company?

A No, sir; I didn't tell him right then, because I didn't know who he was.

Q Well, did you tell him that you ever worked for the company?

A No, sir; I didn't know who he was, or what he wanted with me at all.

Q And that's why you lied to him, and told him your name was Charles Jackson; was it?

A Yes.

Q It wasn't because you wanted to cover up this \$211. theft?

A No, sir; I didn't know nothing about that until I got to Police Headquarters.

Q And why didn't you then tell him that you had worked for the company? Why did you wait until they confronted you with all these witnesses before you told him that you worked for the company?

A I didn't know what they wanted of me.

Q Not in the Police Court either?

A No, sir.

Q So you want us to understand that you left your overcoat, on a cold winter's night, because you didn't want it?

A Yes.

Q And that you left the job because he wouldn't let you in by the fire, where you had your overcoat rolled up on the bench, for a pillow, and you didn't come back to get the money, because it was so insignificant in amount that you didn't want to bother about it, though, another time, you told me that you intended to?

A I was going back for it, of course.

Q Well, when were you going back for it? Here were four days that you didn't have anything to do?

A Well, I had a little money, and didn't bother about that.

Q Well I think you did. I firmly agree with you on that. Well, did you have so much that you couldn't afford to go back for this two days' pay?

A No, sir.

Q Where did you get the money that you had, that was keeping you going all the time?

A That's the money that I worked uptown for, calcimining, \$7.

Q For the five hours' work?

A Yes; in the baker shop.

Q And that's the job that you say you left the railway station, at 3:30 o'clock in the morning, to get?

A No, sir; I didn't tell you that.

Q I thought you told me that, first?

A No, I didn't.

RE DIRECT EXAMINATION BY MR. COHEN:

Q That night, when you went away, where did you go?

A I went home.

RE CROSS EXAMINATION BY MR. MC GUIRE:

Q Who did you see, when you got there?

A There was nobody but my people there.

Q Who was there?

A Well my people that I am stopping with, my wife, and so on.

Q Where's your wife now?

A She is working.

Q And who else?

A My mother.

Q Your mother?

A Well, her mother.

Q Where is she now?

A She's up at the house.

Q Well, why didn't you bring some of these people down?

MR. COHEN: Well, perhaps they are here. He doesn't know.

MR. MC GUIRE: Well, are they here?

MR. COHEN: No, sir; they are not.

MR. COHEN: The defendant rests, your Honor.

THE COURT: Let the defendant return to the stand.

THOMAS BROWN, (indicted as Charles Jackson), the defendant, being recalled to the witness stand, testified as follows:

BY THE COURT:

Q What time in the morning was it when you asked the ticket agent to let you remain inside?

A Three o'clock.

Q Three o'clock?

A Yes.

Q Did you see the ticket agent asleep at any time?

A No, sir; I didn't see him asleep at no time.

Q Are you sure about it?

A Yes.

Q Did you see anybody come into that room?

A Yes; there were two or three passengers in the room.

Q Did you see these passengers go into the room occupied by the ticket agent?

A No, sir.

Q What did the ticket agent say, when you told him that you were going to leave?

A I told him, and he didn't say anything. He told me to stay outside, and it was very cold, and he wouldn't leave me by the fire.

Q It was very cold, that night?

A Yes.

Q And what night was this?

MR. MC GUIRE: The 22nd of December.

THE COURT: Now, you have not proved that this is a corporation, Mr. Mc Guire.

MR. MC GUIRE: Well, I suppose it is conceded that it is a corporation, the Interborough?

MR. COHEN: Well, I don't like to admit it.

MR. MC GUIRE: Then I shall ask a continuance to get the certificate of incorporation from the County Clerk's office.

MR. COHEN: Well, I have always made it a point not to concede anything in a criminal case.

MR. MC GUIRE: Very well. Then I will have to send to Albany for a certified copy of the incorporation, and will prove that it is an incorporation, the Interborough Railroad.

MR. COHEN: Then I don't make any point.

THE COURT: It is conceded, then, that the property was the property of a certain corporation called the Interborough Rapid Transit Company?

MR. COHEN: No, sir. I will concede that the Interborough Rapid Transit Company is a corporation; that's all. That's all you need, Mr. Mc Guire?

MR. MC GUIRE: Well, I will ask a single question of the complainant.

MR. COHEN: Then I will concede that the money mentioned in the indictment, and contained in the safe belonged to that company.

MR. McGUIRE: Now, if your Honor please. I think that there has been something additional proved.

THE COURT: Yes, I deny your motion, Mr. Cohen.

MR. COHEN: Well, I ask your Honor to advise the jury to acquit, making my formal motion on the ground that the People have failed to make out a case.

THE COURT: I will take away from the jury the count charging criminally receiving stolen property.

MR. COHEN: Yes, sir, and on the whole case, then, I ask your Honor to take away from the jury the count of Grand Larceny in the second degree.

THE COURT: Motion denied. I will let the jury determine the question as a question of fact.

MR. COHEN: Will your Honor confine the question, just so I will know what I have to meet? Just to the point that this man took the money?

THE COURT : Yes.

MR. COHEN: Well, I don't know what appeals to your Honor as to this direct examination or cross examination, as far as the crime is concerned. As to the cross examination, anything brought out in that makes not a particle of difference in the

case. it was all in evidence before, and I don't know of a single thing that was not in at the close of the prosecution's case. Those claims of suspicious circumstances were in, and appeared in evidence then, and are in now. That he left his overcoat there in a certain place was in, and that's the reason I didn't touch upon it.

But there is no evidence now as to exclusive opportunity that there was not then; and, in fact, your Honor asked a few questions that made it more so; because the defendant testified that, when he left, there were several persons in the waiting room, and the prosecution's witness testified that that waiting room connected with the cage in which the complainant was seated, through a door. The case isn't as strong as it was before.

THE COURT: Well, it is not proper for the Judge to express an opinion as to the evidentiary facts, but I think there is a question of fact for the jury to determine on; and if you desire, I will point out in what respects, but I think it would be unfair to the defendant.

MR. COHEN: No, sir, I don't care for you to do so.

THE ELEVENTH JUROR: I would like to know what

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this man's duties were.

MR. COHEN: I think that we can concede that he was the ticket chopper there.

THE ELEVENTH JUROR: But I understand him to say that he left the ticket chopper there.

MR. COHEN: No, sir; the ticket agent. He was the ticket chopper. And if your Honor denies my motion I will except to your Honor's denial.

THE COURT: Yes, I deny the motion.

MR. COHEN: I will take an exception.

THE COURT'S CHARGE.

Gentlemen of the Jury:

The defendant, Thomas Brown, indicted as Charles Jackson, has been indicted by the Grand Jury of this county upon the charge of Grand Larceny in the second degree.

Every person, regardless of his race or color, in an enlightened community such as this is entitled to the benefit of a fair trial, and it is hardly necessary for the Court to admonish you that the law is no respecter of persons, and that no discrimination must be made against any person charged with a criminal offense. The humblest person, as well as the greatest benefactor in the community, when arraigned at the bar of Justice and charged with crime, is entitled to a fair and impartial trial. The law does not seek vengeance, nor does it demand any victim. Its object is to do justice, and to punish the wrongdoer.

The People claim that this defendant committed the crime of Grand Larceny in the second degree.

A person who, with intent to deprive or defraud the true owner of his property or of the use and benefit thereof, or to appropriate the same to the

use of the taker, or of another, takes property from the possession of another, where the amount taken is more than twenty-five dollars and less than five hundred dollars, is guilty of grand larceny in the second degree.

On the early morning of the day in question, it is claimed by the People, that the complainant was in possession of \$211.40, lawful money of the United States of America, the property of the Interborough Rapid Transit Company, and that the defendant took that money from the complainant's possession, with intent to deprive or defraud the true owner thereof, the Interborough Rapid Transit Company, of the use and benefit thereof, and that, as the sum of money so taken by the defendant was more than twenty-five dollars and less than five hundred dollars, the defendant committed the crime of Grand Larceny in the second degree.

There is no direct evidence in this case, tending to show that the defendant feloniously took, stole and carried away on that day any money belonging to this railway company.

But the People claim that there is circumstantial evidence tending to establish his guilt of the crime charged; and it is for you to say whether or

not such evidence is sufficient to satisfy you beyond a reasonable doubt of the guilt of the defendant.

The defendant was employed by this company as a ticket chopper, and he was required, according to the testimony of the people to be on duty as a ticket chopper from seven o'clock in the evening until seven o'clock the following morning.

On the early morning of the 22nd of December last, one of the witnesses for the People, the ticket agent at the elevated railroad station where the defendant was employed, claims that he fell asleep at about three o'clock; and he fixes the time by the fact that he had some conversation over the telephone with an inspector of the company, just before he fell asleep; and that he had this money in question in the safe, which was situated close behind the chair in which he was sitting when he fell asleep; and that the defendant was present when the money was deposited in the safe.

He claims further that, when he awoke, he found that the money was missing, and that he saw the defendant's overcoat on one of the benches in the waiting room. He searched for the defendant on the elevated station he also claims at that time, but did not find him.

The defendant, in his own behalf, claims that he did not take this money, that he did not steal any property whatever belonging to this corporation; but that he left his place of employment, the elevated station, early on that morning, because the complaining witness, the ticket agent, refused to allow him to remain in this warm waiting room of the station, it being very cold outside; and that he left his overcoat behind him because, as he claims, he had no further use for it.

Therefore, a question of fact is presented to you for your determination. You are the exclusive judges of all questions of fact. You have the right to interpret the facts according to the dictation of your conscience, and to determine what conclusion as to the guilt or innocence of the defendant you will come to upon those facts.

In this case the People rely mainly, if not wholly, upon circumstantial evidence. The law of this State is that circumstantial evidence when established to the satisfaction of a jury by the testimony of witnesses in whom the jury has faith as to their accuracy and truthfulness, is legal evidence and maybe relied upon by a jury with the same degree of confidence that direct evidence is depended upon.

But, where the evidence is circumstantial, all of the circumstances testified to must point to the guilt of a defendant, to the exclusion of every other hypothesis; and, if all of the circumstances proven do not point to the guilt of the defendant, to the exclusion of every other hypothesis, then he must be acquitted.

The People claim, in this case, that there was exclusive opportunity on the part of this defendant to take the money belonging to this company, and that, while there is no direct evidence tending to show that the defendant physically put his hand into the safe, and abstracted this money, the circumstances testified to indicate that he had an exclusive opportunity of taking this money; and that his leaving his post of duty at that hour of the morning, without permission, though the defendant testified that he had permission, or at least, left after notice; his leaving his property, his overcoat behind; and his denial to the officer that he had ever been employed by the company, in the capacity that the officer referred to in his conversation, that those circumstances, taken together with other evidence in the case, indicated that the defendant stole this money. You, Gentlemen, will

consider all the testimony in this case very carefully.

The law of our State provides that the circumstance of flight may be considered by a jury as a circumstance tending to show consciousness of wrongdoing. But flight may be considered by a jury from two view-points; that is, a jury may put upon the circumstance of flight either an innocent or a guilty construction, and it is for you to say, upon the whole evidence in the case, whether or not the act of the defendant in leaving the station, at that hour of the morning was an innocent act on his part, or whether that act tended to show a consciousness of guilt.

The defendant in a criminal case is presumed to be innocent until the contrary be proven to the satisfaction of a jury, and beyond a reasonable doubt. He is entitled to the benefit of every reasonable doubt, arising upon the evidence or lack of evidence, in the case.

A reasonable doubt is such a doubt as reasonable men may entertain after a careful and honest review and consideration of all the testimony in the case. And, if you entertain such a doubt in this case, it is your duty to acquit the defendant.

If you believe in this case that the People have

failed to establish the guilt of the accused beyond a reasonable doubt it is your bounden duty to promptly acquit him, but if you believe on the other hand, that the People have established his guilt of the crime charged, to your satisfaction and beyond any reasonable doubt, you may convict him of grand larceny in the second degree.

Any requests or exceptions?

MR. COHEN: I except to that part of your Honor's charge in which your Honor states that there is a question of fact for the jury's determination.

And I except to that portion of your Honor's charge in which you state that the People claim that the defendant had exclusive opportunity of taking this money.

And, in that connection, I want to state to your Honor that Mr. McGuire stated distinctly, in answer to your Honor's question, at the close of the People's case, that he didn't think that he had exclusive opportunity.

THE COURT: Well, I cannot help what the District Attorney thinks.

MR. McGUIRE: And I shall disclaim saying that.

MR. COHEN: But your Honor's language was that the People claimed that the defendant had exclusive

opportunity in taking this money.

THE COURT: But that does not mean that the District Attorney claims it. The District Attorney is here merely as the representative of the People. I said that the People claim that the defendant had exclusive opportunity to take the property. It is for the jury to say, upon the facts, if that be so. It is a mere contention on the part of the People; but the jury must be satisfied, beyond a reasonable doubt that the defendant had exclusive and they are to take into consideration all the evidence in the case; the fact that others besides the defendant may have passed through the station and the fact that, according to the testimony of the ticket agent, at least three trains must have stopped there, on the way uptown, during the time that he was asleep, as well as all the other facts in the case.

MR. COHEN: Yes; but I didn't want to have it appear that the jury were foreclosed on that proposition.

MR. McGUIRE: And I only want to remind the jury in this connection that the defendant testified that he left there about 3:30, when the complaining witness says he awoke.

MR. COHEN: And the defendant went straight to his home from his place of employment, showing his entire innocence of wrongdoing. And I ask your Honor to define what flight means in a criminal case.

THE COURT: I have done so, and I have given to the jury what I believe to be a substantially correct definition on the subject of flight.

Gentlemen of the Jury,

While flight is regarded in the eyes of the law as a circumstance tending to show consciousness of guilt, it is insufficient, by itself, to prove guilt. It is important in a criminal case to ascertain whether or not the act of fleeing was innocent or indicative of guilt. A person who flees may show any facts tending to explain his conduct as due to entirely innocent and proper motives. But the term flight does not necessarily imply that the person fleeing must be seen actually running away at a rapid rate of speed. It means absence, leaving a post, or designation, after the alleged commission of an act, going elsewhere, whether by hasty or other process.

MR. COHEN: That is all, sir.

THE COURT: The jury may retire.

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(The jury found the defendant guilty of grand larceny in the first degree.)

MR. KINSLEY: I appear for Mr. Cohen, as he had to go away on important business. Will your Honor kindly remand the defendant until Friday?

THE COURT: Until Thursday morning next.

New York, January 24th, 1907.

(The defendant being arraigned for sentence.)

MR. COHEN: I ask your Honor to set aside the verdict of the jury and give this defendant a new trial, upon the ground that the verdict is contrary to the weight of evidence, and to the evidence, and on the ground that the verdict is contrary to the law, and on the ground that the Court erred in failing to direct the jury to acquit at the close of the prosecution's case.

On the further ground that the Court erred in failing to direct the jury to acquit at the close of the whole case.

On the ground that the Court erred in admitting evidence over the objection and exception of the counsel for the defendant.

On the further ground that the Court erred in excluding evidence which was offered by the defendant over the exception of this defendant.

THE COURT: Motion denied.

MR. COHEN: And we take an exception on each ground.

And the defendant now asks for an arrest of Judgment, to arrest judgment against the defendant, on the ground that no sentence can be predicated on the verdict of the jury in this case; on the ground that the facts set forth in the indictment do not constitute a crime; and on the further ground that no sufficient evidence has been adduced against this defendant as matter of law, upon which he can be sentenced. And in that connection, I want to say this, your Honor: In my opinion, the legal question which is presented is one that, I submit, ought to address itself to your Honor's discretion and give us a certificate at this time.

For this reason: At the close of the prosecution's case, your Honor was in much doubt whether this case should be submitted to the jury; and it was a question then whether or not two suspicious circumstances were sufficient to call upon the defendant to explain these circumstances, one being the finding of his coat there, and the other the leaving of his place of employment at three o'clock in the morning. The leaving of his place of employment was regarded by your Honor as flight, and the leaving of the coat as a suspicious circumstance.

The defendant went upon the stand, and I addressed myself entirely to one single question. "Did you steal that money?", and he said "No."

The People then made the defendant their own witness. I didn't interrogate him at all on those other questions, and, as to that, they would be bound by his answers.

There is absolutely nothing in the case except the circumstances, which certainly don't show exclusive opportunity on the part of the defendant to steal that money; and, notwithstanding that, notwithstanding the presumption of innocence, and notwithstanding the fact there is no evidence to connect the defendant with this crime, except that he left his place of employment and \$211 was abstracted from the safe, and though this defendant went on the stand and denied it, and though your Honor was not quite satisfied of exclusive opportunity; and even after his denial, and after the people making him their own witness on these immaterial points, nevertheless your Honor sends the case to the jury.

And, at the end of the whole case, my case was fortified by the denial of the defendant, that he had taken the money, with nothing to contradict it.

THE COURT: The jury had a right to disregard

and disbelieve the testimony, had they not? And the jury had the benefit of the additional testimony of the defendant that the complaining witness, the ticket agent, was not asleep at the time that he left, and that he asked his permission to go, which testimony was denied by the complaining witness; and the fact that it was a very cold morning, and yet he left his overcoat there; and the fact that he left his place of employment at that early hour in the morning; that the company owed him money, and yet he never returned to make a demand for the money; and that, after the officer placed him under arrest he gave a false name, and denied that he had ever been employed by the company, and, though he had been employed by the company under the name of Thomas Brown, and when reemployed gave the name of Charles Jackson, no reason being given by him for doing so, altogether it seems to me that there were many suspicious circumstances, many circumstances which could not be characterized by the Court as suspicious, of course, at the trial, but which made up a chain of circumstances that satisfied the jury of the defendant's guilt.

MR. COHEN: Why, your Honor, that's all there is to the case, a mass of suspicions.

THE COURT: No. Take the lesser case, and carefully analyse that case and you will find that the Court above reversed on these grounds; Lesser was a canvasser and went into a house, not by the invitation of the lady, but after he gained admittance he was there by her permission, and fifteen minutes before she placed her pocketbook on the mantelpiece, and in that case there was no proof that the defendant saw the pocketbook placed on the mantelpiece; and then she excused herself and left the apartment; and that, about ten minutes afterwards the defendant left the apartment, but he left a card on the table giving his address. The lady ---

MR. COHEN: But the point of exclusive opportunity was there your Honor?

THE COURT: Oh, no. The door was open and anybody had an opportunity to enter the apartment. There was no proof, as I said before, of the defendants having seen the pocketbook on the mantelpiece. Upon her return she made an investigation and found the pocketbook was missing.

There was, therefore, in that case some opportunity of some one other than the defendant going into the place. In the Lesser case there was evidence of good character established; and the Court there

said that, under all the circumstances, there being no evidence of flight, the defendant leaving his name and address on a table, upon a card, he being a man of good character, that there was insufficient proof to justify a conviction. Now, your case is the reverse of the Lesser case. The defendant was employed by the company. Certain duties were assigned to him. In the early hours of the morning he left, and soon thereafter the agent awoke, and found that the money contained in a bag, to the amount of \$211 and some cents was missing. He immediately communicated with his superior officer.

When arrested he denied that he was ever employed by this company. He gave another name. He left his overcoat behind him, on a very cold morning. It seems to me that all the circumstances of circumstantial evidence, taken in connection with the entire testimony in the case, in my judgment, strongly point to the guilt of this defendant.

MR. COHEN: Well, assuming that, I will concede that to your Honor, but ---

THE COURT: And I feel so confident of the matter, of the justice the conviction, that I will deny your request for a certificate of reasonable

doubt.

MR. COHEN: But the question of the coat cannot possibly make any difference, the fact of a man leaving his coat there. Your Honor has regarded that as a suspicious circumstance, a cold morning he left his coat there. How can that possibly in any way affect the crime, or show that the man committed the crime?

THE COURT: It did not show that he committed a crime, but it showed a circumstance that a man, who had worn that coat until that night, and who said it was a bitter cold night, and gave as an excuse for leaving that the ticket agent would not allow him to remain in the warm waiting room, should leave his overcoat behind him. I am satisfied that the entire evidence was sufficient.

MR. COHEN: But he testified, the ticket chopper testified, that people could get out of the trains and walk right in the room where his cage was. He said he was asleep and tight asleep. Then the best proof is that somebody else did take that money during that period, that is, assuming that he didn't take it himself, and there is nothing to base that on, but here was a period of half an hour when this place was left practically unwatched,

and three trains stopped there. And the mere fact that he gave other names, or said that he wasn't employed there, doesn't prove larceny.

THE COURT : But It is a suspicious circumstance.

MR. COHEN: And in this motion in arrest of judgment your Honor should take only in consideration the People's case, because my motion was made then, at the close of the People's case.

THE COURT: No; you are mistaken. I do not consider that on a motion in arrest of judgment. I must consider whether the facts stated in the indictment constitute a crime.

MR. COHEN: Yes, sir, but at the close of the People's case I made the motion, and it can be made now, with the same force.

THE COURT: Do you mean that you are now making a motion for a new trial on the ground that the People failed to present sufficient proof?

MR. COHEN: Yes, sir, the motion is for a new trial; that, at the close of the People's case, the motion to acquit should have been granted; and your Honor was in much doubt there, and, at one time, your Honor was going to direct the jury to acquit, and called upon the District Attorney to say where

there was anything to go to the Jury. And the only point that this man went on the stand to testify about, was to deny that he took the money; and if he contradicted anybody, he contradicted my theory, and he contradicted the prosecution's own witness. They are held down to the same rule that applies in a civil case, that, if they ask this man questions on new matter it makes him their own witness, just as much as it does in civil cases. I limited the defendant to one specific denial.

THE COURT: I will give you an opportunity to file a brief in the matter.

MR. COHEN: I would like to have it. I am busy. Will your Honor give me until some day next week, say Monday?

THE COURT: No, you may have until Wednesday.

MR. COHEN: Thank you, sir.

THE COURT: Then I will reserve my decision until I have received and considered the briefs. The District Attorney should also submit a brief.

MR. McGUIRE: I will, sir.